

# **ALASKA SENTENCING COMMISSION**

**1992 Annual Report to the Governor  
and the Alaska Legislature  
December 1992**

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The Alaska Sentencing Commission was created by the Alaska State Legislature, 1990 SLA Ch.73. Its purpose is to evaluate the effect of sentencing laws and practices on the criminal justice system and to make recommendations for improving criminal sentencing practices. The commission began work in August 1990 and is established until June 30, 1993. This report is submitted to the governor and the legislature as the commission's final annual report, as required by AS 44.19.561-.577.

The following Alaskans served on the commission during 1992:

Chair: James V. Gould, Nome, Academic Background in Criminal Justice Issues  
Vice-Chair: Philip R. Volland, Anchorage, Background in Criminal Rehabilitation  
Jayne E. Andreen, Homer, Crime Victim Advocate  
Beverly W. Cutler, Palmer, Superior Court Judge  
Steve Frank, Fairbanks, Alaska Senate  
Dean Guaneli, Juneau, Assistant Attorney General, representing Attorney General  
Charles E. Cole  
JoAnn Holmes, Anchorage, Alaska Native Representative  
Gayle Horetski, Juneau, Deputy Commissioner of Public Safety, representing  
Commissioner Richard Burton (until August 1992)  
Warren W. Matthews, Anchorage, Supreme Court Justice  
Gigi Pilcher, Ketchikan, Crime Victim Advocate  
Frank Prewitt, Anchorage, Deputy Commissioner of Corrections, representing  
Commissioner Lloyd Hames (until September 1992)  
Lloyd Rupp, Juneau, Commissioner of Corrections (after September 1992)  
John Salemi, Anchorage, Public Defender  
C.E. Swackhammer, Juneau, Deputy Commissioner of Public Safety, representing  
Commissioner Richard Burton (after August 1992)  
Duane S. Udland, Anchorage Deputy Chief of Police, Law Enforcement  
Representative  
Fran Ulmer, Juneau, Alaska House of Representatives

The commission recognizes the contributions of the many state employees who have generously assisted in the commission's work during 1992. In particular, the commission thanks Emma Byrd and Bruce Kelly, Division of Community Corrections, for their work on alternative punishments, and Sam Trivette, Executive Director of the Parole Board, for his consistent help and dedication.

The commission also thanks the Alaska Judicial Council staff for its assistance with commission staffing.

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## **Executive Summary**

Throughout 1992, Alaska's prisons operated at their maximum capacity. The Department of Corrections spent thousands of dollars flying inmates from prison to prison to keep each prison within its emergency capacity. Hundreds of misdemeanor offenders could not be sent to jail until nine months after they were sentenced because space simply was not available. Rehabilitation programs and prison discipline were disrupted by the overcrowding.

Alaska has barely enough prison space to house the offenders it sentences. Even if Alaska had the huge amount of money it takes to build and operate new prisons, other states have found it difficult to build their way out of prison overcrowding. Alaska must look seriously at ways to keep sentencing practices and prison capacity in balance.

The Alaska Sentencing Commission recommends a fundamental change in the way people think about sentencing. Prison terms are not the only way to protect the public, reform the offender, and provide punishment. The commission recommends that the state make widespread and systematic use of alternative punishments such as halfway houses, drug and alcohol treatment programs, community work service, fines and forfeitures, and restitution. For many offenders, alternative punishments can be less expensive and more effective than prison in punishing the criminal, protecting the public, and rehabilitating the offender. The Department of Corrections should make greater use of these alternatives to reintegrate inmates back into the community after serving long sentences. The legislature should consider alternatives that would punish first offender drunk drivers more cheaply, quickly and effectively than jail sentences. The commission recommends increasing the use of discretionary parole as an additional, relatively safe response to prison overcrowding.

Alaska Natives make up one-third of the prison population and an even higher percentage of certain crime categories. While there is a clear connection between alcohol abuse and crime all across Alaska, the alcohol connection is particularly strong in rural areas and among Alaska Natives. The commission endorses good substance abuse treatment programs as one of the best correctional investments the state can make. The commission recommends that state agencies work more closely with local village councils and tribal courts, and develop alternative punishments that will work in rural areas.

Crime and punishment are important, complex, and costly public issues. Yet until recently, little attention was given to collecting the information needed to make sensible sentencing policy. State agencies are just beginning to collect the information needed to evaluate the effectiveness of treatment programs, forecast prison and probation populations, determine the risk of new offenses, and predict the costs of proposed legislation. The commission has urged all agencies to improve their data collection procedures.

If there are serious budget cuts over the next few years, the commission recommends the use of alternative punishments and discretionary parole for even more offenders. The state should look for long-term ways to reduce the prison population to a financially sustainable level, rather than reduce it through emergency releases, cuts in prison programming, or non-prosecution of offenses. There are no easy answers to crime problems, and careful planning for the future is required.

The commission will be meeting with the Governor and the Legislature in February 1993 to discuss its proposals.

## **Summary of Commission Recommendations**

Summarized below are the commission's recommendations for action by the executive, legislative, and judicial branches. The full recommendations and reasoning behind them are found on the pages indicated.

- ★ All branches of state government should encourage the responsible use of alternative punishments for more felons and misdemeanants. Non-prison programs such as halfway houses, drug and alcohol treatment programs, community work service, fines and forfeitures, and restitution can be used effectively to protect the public, rehabilitate the offender, and provide appropriate punishment. (page 8)
- ★ Probation officers should regularly inform judges, prosecutors and defense attorneys about the availability of Department of Corrections and private programs and their suitability for particular offenders. (page 8)
- ★ Probation officers and judges should use alternative punishments as a response to many probation violations. The supreme court should provide for expedited probation revocation proceedings so that offenders can be quickly controlled if they are not complying with their conditions of release. (page 9)
- ★ The Department of Corrections should increase the use of alternative punishments at the end of most sentences, to provide for better supervision of the offender and reintegration into the community. Gradual reintegration should not be restricted to low-risk offenders, since supervision and aftercare are even more important for serious offenders reaching the end of long prison terms. (page 10)
- ★ The legislature should provide an adequate level of funding for alternative punishments, including new programs, expanded capacity, and enough new probation officer positions for adequate enforcement. (page 9)
- ★ All criminal justice agencies should undertake a program of internal education to promote and improve the use of alternative punishments. They should ask for community input to improve local services and resolve safety concerns. (page 10)
- ★ The Department of Corrections should collect data for long-term evaluation of program effectiveness and availability. (page 9)
- ★ The Department of Corrections should use alternative punishments as part of some presumptive sentences. High supervision programs such as community residential centers, inpatient treatment programs, intensive supervised probation, and day reporting centers can control risk to the public, provide rehabilitative opportunities, and fulfill the goals of presumptive sentencing at lower cost than spending the entire presumptive term in prison. If necessary, the legislature should revise statutes to make this possible. (page 45)

- ★ The legislature should amend the law providing that DWI first offenders must be sentenced to jail for three days. Instead, the legislature should investigate other creative alternatives to punish drunk drivers more quickly, cheaply, and effectively. In the meantime, the Department of Corrections should figure out a way to clear up the backlog of DWI offenders waiting to serve their jail terms. (page 44)
- ★ The Department of Corrections should revise its classification system for determining which offenders are eligible for programming and community custody. Quicker and more uniform classification will increase opportunities for rehabilitation. The legislature should provide adequate funding for these changes. (page 27)
- ★ The state should invest more money in quality substance abuse treatment programs for all offenders who need them. Failure to provide treatment is a false economy for the state, resulting in greater risk of reoffense following release and higher cost to the state and society in the long run. The Department of Corrections should pay particular attention to the needs of Alaska Native offenders with substance abuse problems. (page 18)
- ★ Alternative punishments should be developed for use in rural areas as well as urban settings. State criminal justice agencies should work more closely with local organizations such as tribal courts, village courts, and village councils to address local criminal matters. (page 19)
- ★ All state agencies should maintain accurate data with respect to minorities in sentencing and re-examine it periodically for evidence of bias. They should pursue vigorous policies of minority recruitment and hire, particularly at policy-making levels. (page 21)
- ★ Eligibility for discretionary parole should be expanded to include some Class A presumptively-sentenced first offenders, except manslaughter and sex offenders, on two conditions: successful completion of all court required treatment or release into an appropriate program, and service of one-half of the presumptive term. (page 24)
- ★ Even if serious budget reductions become necessary in the future, presumptive sentencing should be retained. However, it may become necessary to increase further the use of alternative punishments for the majority of non-presumptively sentenced, non-violent offenders. This will reserve costly prison space for the most violent and repetitive offenders, and will allow less serious offenders to be punished through cheaper and possibly more effective means. If budgets are to be reduced drastically, alternative punishments designed to address substance abuse problems and to intervene in cycles of violence may be used in combination with reduced periods of incarceration for more violent offenders. Further expansion of eligibility for discretionary parole also should be considered under these circumstances. (page 45)
- ★ In the event of severe budget constraints in the future, the legislature may find it necessary to consider a permanent reduction in statutory sentence lengths, to reduce the prison population to a financially sustainable level. While this is not ideal, it is

preferable to a series of emergency releases, cuts in prison programming, or non-prosecution of offenses. (page 47)

- ★ Statewide coordination and monitoring of the criminal justice system will continue to be necessary after the end of the Sentencing Commission. The governor should convene an ongoing group of criminal justice agencies, with the participation of the court system, to provide for internal policy coordination between the branches of government. (page 50)
- ★ The legislature should take advantage of the commission's work to produce a guide to criminal sentencing geared to the general public. The guide would be designed to help legislators, reporters, victims, and defendants understand how the sentencing system works. (page 51)
- ★ Criminal justice agencies should improve interagency communication and exchange of data. This should be done at both the policy and technical levels. The legislature should provide funding to maintain the comprehensive database of criminal justice information created by the Sentencing Commission. (pages 32-34, 51)

## I. INTRODUCTION

### A. The Need for Sentencing Reform

The Alaska Sentencing Commission was established by the 1990 Legislature to address the twin problems of sentencing reform and prison overcrowding. Over the last 2-1/2 years, the commission has provided a forum for legislators, judges, prosecutors, defense attorneys, law enforcement, corrections officials and members of the public to discuss these issues equally and cooperatively. The commission has worked to fulfill its legislative mandate to evaluate sentencing laws and practices and to make recommendations for improvement.<sup>1</sup>

In 1992 the daily number of prisoners in Alaska fluctuated just above and below prison capacity, as it has for the last six years. As the year progressed, the waiting list for prison space became longer. As of October, 2,400 offenders (mostly misdemeanants) were waiting nine months to serve their sentences because prison space was not available. The Department of Corrections routinely transferred inmates between institutions to stay in compliance with population caps set by the settlement in the lawsuit Cleary v. Smith, and by November was finding it hard to meet court requirements. The Department of Corrections continued with intensive review of policies and procedures, including alternatives to incarceration which might relieve overcrowding.

The experience of other states suggests that the corrections system will break down when sentencing practices send more offenders to jail for longer periods than the state has the capacity to handle. Overcrowded prisons are difficult to manage and provide little rehabilitation. Eventually overcrowded jails and prisons result in the inappropriate use of early release mechanisms simply to relieve overcrowding. The integrity of the system is compromised and public confidence is eroded when citizens and offenders realize the court-imposed sentence bears little relation to the sentence the state can afford to enforce.<sup>2</sup> In Alaska, the likelihood that oil revenues will decline over the next few years, causing a corresponding decline in the state operating budget, underlines the importance of keeping sentencing practices and prison capacity in balance.

The Department of Corrections and the inmates they supervise struggle most under overcrowded conditions, but each branch of government is affected. The Legislature must find the money necessary to implement the policies it has chosen. Judges find that the sentencing options available vary with statutory changes and budgetary shifts. Law enforcement agencies,

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<sup>1</sup> The commission staff consists of a half-time attorney, a full-time research analyst, and a full-time secretary. The staff has worked under the direction of the Executive Director of the Judicial Council, taking advantage of the Judicial Council's expertise in sentencing work and freeing the commission staff from administrative work. The commission's budget for FY'93 is \$165,700, divided as follows:

Personnel	\$118,900
Commission & Staff Travel	17,000
Contractual	22,800
Commodities	4,500
Equipment	2,500
TOTAL	<u>\$165,700</u>

<sup>2</sup> In some states, felony offenders serve an average of two months in jail for every year imposed by the court. See 1990 Alaska Sentencing Commission Annual Report at p. 3; 1991 Alaska Sentencing Commission Annual Report at p. 10. Misdemeanants may serve as little as 10% of the court-imposed sentence.

prosecutors, public counsel, and victim rights advocates see their own funding decline as prison costs rise. Striking an appropriate balance among these interests has been the job of the Alaska Sentencing Commission over the last 2-1/2 years.

## **B. The Work of the Alaska Sentencing Commission**

The purpose of the Alaska Sentencing Commission has been to evaluate the effect of sentencing laws and practices on the criminal justice system, and to make recommendations for improving criminal sentencing practices. The Legislature asked the commission to consider:

- (1) statutes and court rules related to sentencing of criminal defendants;
- (2) sentencing practices of the judiciary, including the use of benchmark sentences;
- (3) alternatives to traditional forms of incarceration;
- (4) the use of parole and probation in sentencing criminal defendants;
- (5) the adequacy, availability, and effectiveness of treatment and rehabilitation programs;
- (6) crime rates, including the rate of violent crime, in this state compared to other states;
- (7) incarceration rates in this state compared to other states; and
- (8) the projected financial effect of changes in sentencing laws and practices.

AS 44.19.569. The Legislature also required the commission to solicit and consider information and views from a broad spectrum of interested constituencies, basing its recommendations on the following factors:

- (1) the seriousness of each offense in relation to the other offenses;
- (2) the effect of an offender's prior criminal history on sentencing;
- (3) the need to rehabilitate criminal offenders;
- (4) the need to confine offenders to prevent harm to the public;
- (5) the extent to which criminal offenses harm victims and endanger the public safety and order;
- (6) the effect of sentencing in deterring an offender or other members of society from future criminal conduct;
- (7) the effect of sentencing as a community condemnation of criminal acts and as a reaffirmation of societal norms;
- (8) the elimination of unjustified disparity in sentences; and
- (9) the resources available to criminal justice system agencies.

AS 44.19.571.

The commission now has addressed all of the issues set forth in its legislative mandate. It will meet at least one more time, in February, 1993, to present its recommendations to the Legislature and to the Governor. However, the need for coordinated sentencing policy continues. The commission strongly recommends that state agencies continue to work together to ensure improvement of the sentencing system.

## **II. 1992 SENTENCING COMMISSION FINDINGS AND RECOMMENDATIONS**

### **A. Increasing the Use of Alternative Punishments**

In response to rising prison populations, many states are making a more concerted effort to use "intermediate sanctions," alternative punishments that are less costly than prison but place significant restrictions on offenders. These non-prison alternatives include halfway houses, drug and alcohol treatment programs, boot camps, community work service, fines and forfeitures, and restitution.<sup>3</sup> When used instead of or in combination with incarceration, these alternatives can save money and promote rehabilitation, while still protecting public safety and providing an appropriate level of punishment. While most of these alternatives are currently used in Alaska as conditions of probation,<sup>4</sup> they are not used as widely or as systematically as they could be.

The Alaska Sentencing Commission has concluded that the Alaska criminal justice system should greatly increase the use of alternative punishments. A graduated system of alternative punishments is both sound correctional practice and an opportunity to control prison overcrowding. The criminal justice system should work to provide a range of sanctions that are highly structured, intensive, and well-monitored. The guiding principles should be the same as for all criminal sentencing - recognition of the seriousness of the offense, protection of the public, community condemnation and deterrence of criminal behavior, and rehabilitation of the offender.

Alternative punishments are not appropriate for all offenders. Very violent criminals and serious recidivists still need to be incarcerated. However, prison is not the only means by which offenders can be punished and public safety protected. Alternative punishments also can accomplish those goals, often less expensively and more effectively than incarceration. For that reason, the commission encourages the expansion of judicially imposed alternative punishments in appropriate cases. It also recommends that the Department of Corrections work to systematize and increase the use of alternative punishments at the end of all sentences, both presumptive and non-presumptive, to provide better supervision of the offender and better reintegration into the community.

To forward its work on alternative punishments, the Alaska Sentencing Commission participated in a national project promoting the systematic use of alternative punishments. This project was directed by the Center for Effective Public Policy and funded by the National Institute of Corrections, the State Justice Institute, and the Institute for Court Management. The

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<sup>3</sup> So-called "front end" alternative punishments are imposed by the courts as conditions of probation, as part of the sentence itself (such as a license suspension or a fine), or in response to probation revocations. Post-incarceration alternative punishments are used by the Department of Corrections to promote treatment, education, restitution, reintegration into the community, or as part of parole releases and revocations.

<sup>4</sup> Probation is imposed by a court as part of a suspended term of imprisonment, or in lieu of imprisonment upon certain conditions. Common conditions of probation include regular reporting to a probation officer employed by the Department of Corrections, efforts to maintain steady employment, restrictions on possession of weapons and association with other offenders, and submission to drug tests and searches upon request. The court may revoke probation if the offender does not comply with these conditions.

grant provided consulting services, technical assistance, and general guidance to the Sentencing Commission and other state officials throughout 1992.

The commission's work on alternative punishments took place on four fronts:

- (1) A team of commission members and other key officials met throughout the year to discuss policy questions and to direct staff research.<sup>5</sup>
- (2) A group of interested professionals in Anchorage held ongoing meetings throughout the spring and summer of 1992 to discuss front-end alternative punishments, and to identify which non-presumptively sentenced offenders might be appropriate candidates for judicially imposed alternatives.
- (3) A nationally recognized consultant, Dr. Mary Mande, conducted public opinion research on the use of alternative punishments in Alaska.
- (4) Following a presentation by commission staff, a group of criminal justice professionals and interested citizens in Sitka has worked for increased use of alternative punishments in response to local problems. During the spring of 1993, commission staff plans to continue meeting with communities to promote creation of more local alternative punishments.

The findings and recommendations about alternative punishments appear in the following sections of this report.

## **1. Important Considerations for Alternative Punishments**

The working groups set up by the commission identified a number of important concerns:

- ▶ The judges in the groups wanted more information about available programs, more options to choose from, and a way of handling cases so that increased choices did not become burdensome to the system.
- ▶ Both judges and prosecutors felt that quick revocation procedures were important, so that offenders could be quickly controlled if they were not complying with their programs.
- ▶ Defense attorneys were concerned that multiple sanctions not be piled on a single offender to such an extent that compliance was not realistic.

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<sup>5</sup> Team members were Chair Representative Fran Ulmer, Superior Court Judges Larry Zervos of Sitka and Rene Gonzalez of Anchorage, Anchorage District Attorney Ed McNally, Public Defender John Salemi, and Department of Corrections officials Frank Prewitt, Emma Byrd, Sam Trivette, and Bruce Kelly.



- ▶ Probation officers pointed out that proper recommendation and enforcement of alternatives could not be done without a substantial increase in the number of probation officers and program slots.
- ▶ Institutional correctional officers were concerned that programs not be overwhelmed with participants, particularly people who would be sentenced to regular probation if the program had not been available.
- ▶ Everyone was concerned that the programs themselves be effective and reliable, so that risk to the public was reduced and offenders had a real chance to succeed in quality programs.

These concerns form an important background to all of the recommendations. The working groups identified a number of other changes that would help the effort succeed: education of criminal justice professionals in using alternative punishments, shorter waiting lists and more available programs, probation supervision for misdemeanants, a return of the pre-trial services office, shorter but more timely presentence reports, transmittal of the court's sentencing remarks in time for use in classification, and greater use of alternative punishments as bail conditions and for probation revocations. They also believed there was a strong need for community education and input into the process.

The working groups also were concerned that expectations for the effectiveness of alternative punishments be realistic. Many offenders will fail under alternative punishments and will return to prison. Some offenders will have failed at one or more programs in the past and will not be good candidates for further programming. Some offenders will commit new crimes while out in the community instead of in prison. It is important to recognize that the recidivism rate for people released from prison already is high and that very few people are held in prison forever. If an alternative punishment program reduces the likelihood that offenders will commit new crimes, that benefit is a net gain for public safety.

Expectations for cost-saving also should be realistic. Apart from community work service, which is relatively inexpensive to administer, alternative punishments involve costs of their own and must be adequately funded to succeed. Closer monitoring is likely to result in discovery of more violations and therefore more revocations. The most intensive programs are expensive, but most alternative punishments are cost-effective. If alternative punishments are used for enough offenders for partial or complete substitution jail time, long run costs for prison construction and operation can be minimized.

The cost of a particular sentence varies with the number of conditions imposed and by location. Estimated 1991 operating costs for various options for one year for one offender were:

Prison (\$96/day) <sup>6</sup>	\$ 35,040/year
Halfway house (\$44/day) <sup>7</sup>	16,000/year
Intensive supervised probation (\$20/day) <sup>8</sup>	7,300/year
Day reporting center (\$14/day) <sup>9</sup>	5,110/year
Electronic monitoring (\$4.50/day) <sup>6</sup>	1,650/year
Regular probation/parole supervision <sup>6</sup>	2,000/year
Community work service, per offender <sup>10</sup>	120/offender
Inpatient alcohol treatment, per episode <sup>11</sup>	1,500-10,000/episode

## **2. Public Acceptance of Alternative Punishments**

To obtain citizen feedback on the use of alternative punishments, the commission hired Dr. Mary Mande to do public opinion research in various areas of the state.<sup>12</sup> The commission sought in-depth information about which alternatives have public support, what types of offenders the public thinks should participate, and how cost considerations affect public thinking.

The conventional wisdom is that the public demands tough sentences for criminal offenders. However, public opinion on criminal justice and sentencing actually is quite complex, and varies considerably depending on the specificity of the discussion. For that reason, the commission chose to use intensive discussion sessions called "focus groups" to address this question.<sup>13</sup> Groups were conducted in Ketchikan, Bethel, Fairbanks, and Anchorage, and included

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<sup>6</sup> Information provided by Alaska Department of Corrections.

<sup>7</sup> Alaska Department of Corrections, "Alaska Corrections in Review," 1991 Report at p. 102, and Allvest Inc.

<sup>8</sup> Legislative Budget and Audit Committee Report, "Intensive Supervision Surveillance Program," p. 6 (Feb. 23, 1992). This report suggests that daily costs should increase somewhat if the auditor's suggestions for program improvement are followed. Costs are exclusive of specific treatment programs.

<sup>9</sup> Information provided by Alaska Department of Corrections, estimate for pilot program.

<sup>10</sup> Information provided by Municipality of Anchorage, Department of Parks & Recreation, average cost per misdemeanor offender.

<sup>11</sup> The cost of alcohol treatment varies widely depending on whether it is publicly or privately provided, inpatient or outpatient, and by length and intensity of aftercare. Information provided by Alaska Department of Corrections and Providence Hospital Breakthrough Program.

<sup>12</sup> Dr. Mande is a sociologist from Boulder, Colorado, who has done extensive public opinion research on criminal justice issues. She is former Research Director of the Colorado Department of Public Safety, Division of Criminal Justice, and currently consults with sentencing commissions and criminal justice agencies nationwide. Her work was paid for in part by federal funds from the Center for Effective Public Policy and its funding agencies.

<sup>13</sup> The focus group is a qualitative research method that has been used widely in marketing research and now is receiving greater attention in the social sciences. The method lends itself particularly well to policy issues that consider multiple factors such as philosophy, expenditure of public funds, problem causation, effectiveness of solutions, personal safety, and sense of community.

people from smaller outlying communities. Citizens were recruited to represent a cross-section of each community in terms of age, race, sex, and type of employment.

Each group was presented with information about the system, including correctional trends, sentencing options, and costs, and was asked to assume the roles of both judge and policy maker. They then were given three offender profiles, a residential burglary, a bar fight with a stabbing, and a sexual abuse of a 15-year-old boy by a scoutmaster. Group members were asked to discuss the case, reach a decision on the appropriate sentence, and explain the purpose of the sentence.

- ▶ All six groups recommended placing the burglar in an alternative punishment such as boot camp or intensive supervised probation. They strongly recommended alcohol treatment and training for employment. Even though many group members were troubled by the hypothetical offender's juvenile burglary record, they felt that placing a young person in prison with "hardened criminals" would only make him worse.
- ▶ Participants considered the assaultive offender as much more of a threat to public safety than a burglar. They were more inclined to suggest incarceration as a possibility in this case, to deter the offender and to express community condemnation. However, after discussion of the options, most groups recommended an alternative punishment rather than imprisonment. They strongly recommended alcohol treatment and anger management programs.
- ▶ The sexual abuse of a minor case was a different story. The groups reacted with abhorrence and anger, and wanted the sex offender out of society for a very long time. Most groups recommended long-term incarceration with treatment; a minority recommended that the sex offender be placed in a high-surveillance, intensive treatment program and monitored for a very long time.

The study concluded that most participants supported well-designed alternative punishments for some serious felony offenders, in order to provide incapacitation and rehabilitation. Even where the participants recommended incarceration for more violent or repetitive offenders, they supported rehabilitation and follow-up programs to change criminal behavior. Overall they were more concerned with prevention and behavior change than with punishment. Yet the group members were not "soft on crime:" they were very interested in making offenders accountable for their behavior and in making them pay their own way.

The participants generally thought that the cost of corrections should be taken into account in sentencing and that incarceration by itself is not cost effective. They were shocked at the cost of prison. They believed strongly that incarceration alone does not make positive changes in a prisoner's behavior. Because of the high cost and low effectiveness of prison, the participants were willing to support alternatives that met their goals of control, rehabilitation, and punishment. They also thought that if funds are limited, money is best spent on preventive programs.

The Alaska findings are consistent with other surveys done nationwide. Dr. Mande concluded that Alaska citizens are very interested and concerned about corrections policy, and are fully capable of understanding the difficult choices which must be made. She recommended

that more work be done to explain to the public how alternative punishments can hold the offender accountable, protect public safety, and provide for restitution. She concluded that when given enough information, Alaskans will support alternative punishments as the best solution to a difficult problem.<sup>14</sup>

### **3. Policy Recommendations on Alternative Punishments**

Based on its discussions and research on alternative punishments, the commission unanimously adopted the following recommendations. These recommendations address the need for statutory and policy changes, programming and facilities, public education, and meaningful evaluation of program success for different types of alternative punishments.

1. **All branches of state government should develop policies that encourage the responsible use of "intermediate sanctions," or alternative punishments,<sup>15</sup> for more felons and misdemeanants.**
2. **DOC should systematically expand its use of alternative punishments, consistent with its responsibility to protect the public. A well-organized range of alternative punishments is both sound correctional practice and a reasonable response to prison overcrowding.**
3. **The DOC Division of Community Corrections should implement a system for regularly informing judges, prosecutors and defense attorneys what programs are in operation, how long they last, which offenders they are designed for, what the goals of the program are, and how many slots are available in DOC and privately run programs.**
4. **The Division of Community Corrections should monitor the demand for programs and the waiting time to get in, and should report twice a year to the judiciary and the legislature on program needs.**
5. **DOC should educate presentence report writers to include recommendations on alternative punishments in presentence reports for non-presumptively sentenced offenders. For presumptively sentenced offenders, presentence report writers should include any suggested recommendations to DOC for treatment, education, and considerations upon release. Presentence report writers also should inform the judge at what point multiple sanctions for an individual offender will make compliance unrealistic. The presentence report form should be revised to provide a place for these recommendations to be discussed.**

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<sup>14</sup> Dr. Mande's study, "Opinions On Sentencing in Alaska: Results of Five Focus Groups" (1992), is available upon request from the Alaska Sentencing Commission.

<sup>15</sup> The term "intermediate sanctions" is used in a number of states to describe these sanctions that are less expensive than prison but more restrictive than regular probation supervision without special conditions. The commission prefers to use the term "alternative punishments" because it is more understandable and because it makes clear that the purpose of the alternative still is to punish the offender.

6. **Where alternative punishments are imposed, judges should specify them clearly in sentencing remarks and articulate how they fulfill the purposes of sentencing and Chaney criteria. It is important that the appellate courts, DOC, and the public understand the reasoning behind any sentence that includes alternative punishments.**
7. **The Supreme Court should adopt a rule providing for expedited probation revocation proceedings, so that offenders can be quickly controlled if they are not complying with their conditions. A brief update giving the circumstances of the violation, the offender's performance on probation, and the probation officer's recommended disposition should be used instead of a complete presentence report.<sup>16</sup>**
8. **Probation officers and judges should consider expanding the use of alternative punishments as a response to probation violations. For example, as happens already, an offender who violates probation by using drugs might be sent to a drug rehabilitation program; an offender who violates curfew might be considered for home confinement with electronic monitoring. There always should be a back-up sanction available to give teeth to the threat of revocation.**
9. **The Division of Community Corrections should work with other criminal justice agencies to evaluate alternative punishments to assure that programs are developed and used appropriately and that sufficient resources are available. It is essential that programs be effective and reliable, so that risk to the public is reduced and offenders have a real chance to succeed.**
10. **DOC should begin collecting data for long-term evaluations to see if programs are effective in addressing their initial objective (e.g., substance abuse or employability) and their ultimate objective (reduced recidivism). The Sentencing Commission and the Judicial Council should assist DOC in designing data collection methods.**
11. **The legislature should fund a substantial number of new probation officer positions to provide well-informed presentence recommendations and adequate enforcement of alternative punishments. Successful monitoring and rehabilitation programs require small caseloads and adequate support and referral programs.**
12. **The legislature should be prepared to provide an adequate level of funding for community programs. The contract beds in halfway houses are filling up, and most substance abuse treatment programs have long waiting lists. Programs will need to be expanded in many locations and new programs brought on line. While most alternative punishments are less expensive than prison, they cannot be run for free.**
13. **Increased use of alternative punishments poses the problem of "net-widening," the idea that more intensive (and therefore expensive) sanctions will be applied to offenders who currently are being placed on regular probation. The Division of Community Corrections should periodically evaluate whether the positive effects of**

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<sup>16</sup> This issue is discussed in more detail in 1991 Alaska Sentencing Commission Annual Report at p. 27.

any net-widening (e.g., reduced recidivism, greater community protection) have outweighed the increased cost.

14. Criminal justice professionals in various communities should meet to consider the increased use of alternative punishments and what local resources are available. Recommendations have been put together in Anchorage as an example of what is being done and what further steps can be taken. Meetings also have been held in Sitka and Bethel to discuss these issues.
15. Public education and involvement is important to the success of alternative punishment efforts. Criminal justice professionals should solicit community input to improve local services and resolve safety concerns. Public opinion research indicates that most citizens support alternative punishments for many offenders when fully informed of the costs, risks and benefits.
16. The use of alternative punishments is likely to be somewhat different in locations outside of Anchorage, depending on the local offender population and the availability of programs. More informal mechanisms can be developed to reach the same goals in areas where programs are not available. Other areas of the state are encouraged to take a look at their own alternative punishment policies and consider new ways to increase their use.
17. DOC should include an estimate of the demand for community placements, not just prison beds, in its population forecasting. DOC also should attempt to forecast the demand for in-prison programming.
18. District attorneys statewide should consider greater use of Criminal Rule 11 SIS agreements as an alternative to trial and sentencing for adult first offenders accused of nonviolent property crimes and lesser drug offenses, and requiring restitution, community work service, and/or substance abuse treatment.
19. The criminal justice system should explore the use of probation supervision for selected misdemeanants who are considered a risk for escalating to more serious criminal behavior.
20. The Sentencing Commission should coordinate a program on alternative punishments at the state judicial conference in June 1993, discussing the philosophy behind structured use, some of the pitfalls to be avoided, and practical suggestions for implementation. The Sentencing Commission should work with the Department of Law, the Public Defender and the Office of Public Advocacy to offer similar training to prosecutors and defense attorneys. All criminal justice agencies should undertake a program of internal education and discussion to promote and improve the use of alternative punishments.
21. DOC should increase the use of alternative punishments at the end of most sentences, through the use of halfway houses, day reporting centers, intensively supervised probation, and similar programs. This will provide for better supervision

of the offender and planned reintegration into the community. Gradual reintegration into the community should not be restricted to low-risk offenders, since supervision and aftercare are even more important for serious offenders reaching the end of their prison terms.

22. When community residential centers are used for end-of-sentence furloughs, placement should be for long enough to provide adequate programming and encourage a successful transition to the community.
23. The DOC Division of Institutions should continue review of its classification system for determining which offenders are suitable for programming and community custody. Quicker and more uniform classification will increase opportunities for rehabilitation.
24. The legislature should expand immunity for the state and for state employees for the release and supervision of offenders on parole, probation, furlough, work release, or similar conditional release. This should help individual officers who currently take an unnecessarily conservative approach to release because of concerns about personal or departmental liability.<sup>17</sup>
25. The legislature should adopt legislation promoting the increased use of forfeitures and fines as alternatives to jail time. It should work with the courts to create effective mechanisms for the collection of fines and restitution and to investigate the use of day fines.<sup>18</sup> It should also revise statutes if necessary to permit judges to sentence offenders to non-DOC alternatives such as home confinement with electronic monitoring.
26. Judges should increase the use of forfeitures and restitution orders for presumptive sentences and the use of fines, forfeitures, and restitution orders for non-presumptive sentences. These alternatives are under-utilized by many judges.
27. Statewide coordination of alternative punishments will be needed after the Sentencing Commission sunsets at the end of FY 93. Criminal justice agencies should set aside the time and a small amount of travel money to continue to work out problems and improve the system. Something along the lines of the former criminal justice working group should be formed to assure the necessary coordination.

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<sup>17</sup> This issue is discussed in more detail in 1991 Alaska Sentencing Commission Annual Report at p. 26-27.

<sup>18</sup> Unlike standard fines, day fines are linked to the offender's daily income, so that poor and rich offenders are sentenced equitably. Day fines are described in more detail in 1990 Alaska Sentencing Commission Annual Report at p. 37.

#### **4. Recommendations for Judges on Alternative Punishments**

Alternative punishments have long been used by judges in Alaska as conditions of release on probation. Substance abuse treatment, community work service, area restrictions,<sup>19</sup> fines and forfeitures, and restitution are all common conditions of probation. However, access to treatment programs is often limited: programs are full in larger communities and non-existent in smaller communities, and access to private treatment often depends on the offender's ability to pay. Monetary punishments, such as fines, forfeitures, and restitution orders, are under-utilized and under-enforced.<sup>20</sup> Even where alternatives are available, judges may be unaware of all the options, and there may be a lack of uniformity from judge to judge.

As part of the commission's work on alternative punishments, a group of interested judges, prosecutors, defense attorneys, and corrections officials from Anchorage met throughout the spring and summer of 1992 to discuss front-end alternative punishments for non-presumptively sentenced offenders. The recommendations that follow are the result of much discussion and compromise on the appropriate use of alternative punishments for these offenders. The recommendations are an example of what is being done and what further steps can be taken. They are meant to be suggestive, not exclusive.

The use of alternative punishments is likely to be somewhat different in locations other than Anchorage, depending on the local offender population and the availability of programs. More informal mechanisms can be developed to reach the same goals in areas where programs are not available. Other areas of the state are encouraged to take a look at their own alternative punishments policies and consider new ways to increase their use. During its remaining months, the commission will be working with several localities on this issue.

Although these recommendations are directed to non-presumptively sentenced offenders, many of the alternative punishments discussed can be part of a presumptive sentence as well. Inpatient treatment and halfway house confinement may be used as part of a term of incarceration, and judges may make such a recommendation to the Department of Corrections.<sup>21</sup> The commission also has recommended that probation officers address alternative punishment options in appropriate presentence reports. To increase public understanding of the sentencing process, judges, prosecutors, and defense attorneys should articulate carefully how these recommendations will work to fulfill the goals of sentencing.

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<sup>19</sup> An area restriction is one that forbids the offender from returning to the area of the crime. Area restrictions commonly are used in cases of prostitution, drug sales, and shoplifting.

<sup>20</sup> Data taken from the commission's statewide study of presentence reports and judgment forms shows that fines were imposed in only 4.4% of the felony cases studied, while restitution was ordered in only 2.2% of those cases. The commission finds that monetary sanctions are under-utilized and their use should be increased.

<sup>21</sup> Judges currently cannot sentence offenders directly to halfway houses or other Department of Corrections programs, although the Department of Corrections will attempt to follow court recommendations for placement and programming.



The commission unanimously adopted the following policy statement issued by the alternative punishments team as a preface to the recommendations for judges:

### **Alternative Punishment Policy**

A new policy supporting alternative forms of punishment is necessary to avoid prison and jail overcrowding, to lessen the long-term costs associated with incarceration of offenders, to reduce the risk of recidivism, and to promote honesty in sentencing.

Judges at the time of sentencing should consider alternative forms of punishment for all offenders meeting the criteria in the attached schedule.

The alternative form of punishment may include halfway house placement, intensive supervised probation, electronic monitoring for home confinement, community work service, inpatient treatment, or other similar deprivations of liberty. The punishment must require the offender to pay restitution if appropriate, to take responsibility for and to control alcohol, drug, anger, or sexual problems, and to contribute to the cost of the alternative punishment through salary deduction or community work service.

Any alternative punishment must provide adequate monitoring and control of the offender and must ensure that the goals prescribed by the sentence are fulfilled.

After reviewing the discussions of the alternative punishment working group, the commission unanimously adopted the following recommendations for judges:

#### **a. Property Offenders**

In reaching the following recommendations on property offenders, the working group primarily discussed the most common offenses: first and second degree burglary, second degree theft and forgery, and second degree criminal mischief. More unusual offenses such as arson and first degree theft were not discussed.

1. **First felony offenders with no prior misdemeanor or juvenile record, or with a comparatively minor record, should be considered for a sentence of alternative punishments for all property crimes except first-degree burglary. Alternative punishments may be used either without jail time or following a period of shock incarceration. This is akin to the current use of Rule 11 agreements.**
2. **Judges have the option of imposing "shock incarceration," defined as up to 120 days of jail time to be served immediately, on those offenders for whom they believe incarceration is necessary as a deterrent to future criminal behavior. Judges may**

also consider setting incarceration for the end of the period of probation; if all conditions are met, the offender can ask the court to waive service of the jail time.

3. First felony offenders with more extensive prior misdemeanor or juvenile records should be considered for alternative punishments for a portion of their sentences, but the appropriate amount of jail time may vary depending on the circumstances.
4. First felony offenders committing first-degree burglary should generally receive jail time longer than shock incarceration, but they should be considered for halfway house placement or other alternative punishments for at least a portion of their sentences.
5. Restitution is an important consideration in property crimes. Sentences should be structured to require and enable the offender to pay back the victim or the community through employment or through community work service.
6. Area restrictions should be considered where appropriate, such as to prevent shoplifters and bad check writers from returning to certain stores or burglars from returning to certain neighborhoods.

b. Drug Offenders

1. Judges should continue to consider the Waters categories with respect to the commercial nature of drug sales. Where a cocaine possessor appears to be a "recreational" user, the sentence may include drug education, fines, and community work service or other form of restitution to the community. Alternative punishments should generally be used in lieu of jail time.
2. Where an offender committing cocaine possession appears to be a drug addict, the sentence should be designed to promote treatment of the addiction. Drug treatment, fines, community work service and other alternatives generally should be used in lieu of jail time.
3. Where an offender committing a cocaine sale appears to be a drug addict, the primary focus of the sentence still should be on treatment. However, the court also may recommend halfway house confinement or use of a secure treatment facility to ensure that the treatment program is carried out. The court also may impose an initial period of shock incarceration or boot camp.
4. Where an offender sells or manufactures cocaine, or sells or grows large quantities of marijuana, and appears to be primarily motivated by profit, deterrence and incapacitation are important elements of the sentence. The court should consider the use of fines and forfeitures, vocational rehabilitation programs, and incarceration to deter the offender from reentering this line of work. For street sales, incapacitation may be effected through the use of area restrictions and curfews, backed up by electronic monitoring.

5. **Illegal drugs are an offense against the community in which they are used and sold. The court should consider restitution to the community at large, through contributions to drug education programs, community work service, or other means.**

**c.     Sex Offenders**

1. **First felony offenders committing Class B and C sex offenses may be appropriate candidates for highly structured alternative punishments during or following incarceration. For Class B offenders, alternative punishments should be used in combination with a substantial period of imprisonment. For Class C offenders, there should be at least some period of incarceration to express community condemnation, followed by alternative punishments. Judges should take all the facts of the case into consideration, not just the charge of conviction.**
2. **Sex offenders should receive psychological and substance abuse evaluations. If the offense is part of a pattern of more serious behavior or sexual deviance, the offender should receive inpatient or outpatient sex offender treatment as part of the sentence. Offenders should receive substance abuse treatment, anger management, or other counseling if appropriate. Incarceration should be followed by a graduated return to the community, such as through halfway house placement or referral to a secure treatment facility. Following release, the court should recommend outpatient follow-up care and intensive monitoring.**
3. **The victim's needs are a particularly important consideration in sex offenses. Sentences should be structured to require and facilitate restitution and payment of counseling costs. Sentences should be structured in a way that allows the offender to pay back the victim and to participate in programs.**

**d.     Assault Offenders**

1. **First felony offenders committing Class B assault generally should receive jail time, although they may be considered for halfway house placement or other alternative punishments for a portion of their sentences. Programs such as intensive supervised probation may be used to provide a graduated return to the community for offenders showing repeated assaultive behavior.**
2. **For Class C and misdemeanor assaults, offenders with no prior history of assaultive behavior should be considered for a sentence of alternative punishments in lieu of jail. Judges have the option of imposing shock incarceration on those offenders for whom they believe incarceration is necessary to deter future criminal behavior or to express community condemnation. Substance abuse and anger management programs also may be an appropriate part of the sentence.**
3. **Domestic violence is a particularly sensitive problem generally calling for intervention to break the cycle of violence. Shock incarceration should be imposed in most cases to deter future domestic violence or to express community**

**condemnation. Substance abuse programs, batterer's treatment, and anger management programs also should be required as appropriate.**

- 4. Restitution is an important consideration in assault crimes. Sentences should be structured to require and facilitate the payment of restitution.**

## **B. Alaska Natives in the Criminal Justice System**

### **1. Special Problems of Alaska Natives**

The commission spent most of its March and April meetings addressing the special problems of Alaska Natives in the criminal justice system. These issues generated the greatest amount of public testimony, public attendance, and press coverage of any topic addressed by the commission.

A number of speakers addressed the connection between the abuse of alcohol and the commission of criminal offenses by Natives. Commission staff presented data on Alaska Native crime patterns, which showed a high rate of crime and imprisonment among Alaska Natives relative to their numbers in the general population. Data on crime patterns by race is presented in Appendix B to this report. Harold Napoleon, a Yupik inmate at Wildwood Correctional Center, described his own experience with alcohol abuse and crime, and discussed why alcohol abuse is so prevalent among Natives.

Several speakers addressed alcohol treatment alternatives that respond to the linguistic and cultural needs of Native offenders. Victor Joseph, of the Tanana Chiefs Conference, and Phil Moreno, affiliated with Southeast Alaska Regional Health Corporation, discussed individual and family recovery camps; Marie Stark, of Alaska Native Alcohol Recovery Center, described urban in-patient programs; Richard Bentson, DOC Director of Statewide Programs, discussed current substance abuse treatment programs within the Department of Corrections. The commission also heard from Susan Soule, Director of Rural/Native Services for the Department of Health and Social Services, about a new behavioral health aide program that may help provide intervention and aftercare for alcohol abusers in rural villages. Vicky Wells, a substance abuse counselor working with women offenders at Meadow Creek Correctional Center, spoke about the difficulties of working with inmates with fetal alcohol syndrome and fetal alcohol effects.

The commission took testimony on a number of other aspects of the crime problem among Alaska Natives. It heard from Major Glenn Godfrey and Captain Tom Stearns, of the Alaska State Troopers, about the Village Public Safety Officer program. Joan Connors, Project Evaluator of the Alaska Judicial Council Rural Justice Project, described the operation of tribal courts and alternate dispute resolution forums in several communities. A number of adult probation officers from the Department of Corrections spoke of their experiences working with Native probationers, the options available for appropriate alternative punishments in both urban and rural locations, and sex offender treatment programs designed for Native offenders.

### **2. Commission Findings and Recommendations**

On the basis of its discussions, the commission unanimously adopted the following findings and recommendations regarding Alaska Natives in the criminal justice system:

a. Substance Abuse Treatment for Native Offenders

1. **The commission finds a clear connection between the abuse of alcohol and the commission of criminal offenses in Alaska. This alcohol connection is particularly strong in rural areas, and among Alaska Natives wherever situated. It is estimated that at least 75% of offenders have problems with substance abuse, and this figure is probably even higher for Native offenders.**
2. **The commission previously has found that good rehabilitation programs play an important role in reducing offender recidivism and making effective use of limited correctional resources. See 1991 Alaska Sentencing Commission Report at 29-31. One of the best correctional investments the state can make is quality substance abuse treatment programs for all offenders who need them. Failure to provide treatment is a false economy for the state, resulting in greater recidivism following release and higher costs to the state and to society in the long run.**
3. **The commission previously has recommended increasing the number of inpatient substance abuse treatment beds available statewide from the few inpatient beds currently available to the Department of Corrections. See 1991 Alaska Sentencing Commission Report at 31. The commission finds that despite years of effort and investment, Alaska still may not have adequate facilities and programs for the treatment of incarcerated offenders needing substance abuse treatment.**
4. **The commission recommends that the Department of Corrections evaluate the substance abuse treatment needs of incarcerated offenders and create a plan to address them.** The goal should be to provide treatment programs that are intensive, responsive to individual linguistic and cultural needs, and adequate to treat every offender with an alcohol or drug problem. Waiting time for entry into a program should be reduced to a minimum, by improvement of classification procedures and by providing enough program slots. Transfers between facilities should be avoided where it will disrupt programming. The Department of Corrections should consider whether some wings or entire facilities should be used to provide a milieu for intensive, 24-hour substance abuse treatment programs.
5. **The commission recommends that the Department of Corrections develop or contract for treatment programs sensitive to the needs of Native offenders with substance abuse problems.** DOC should consider options such as subsistence and culture camps, family camps, and programs designed for urban and rural Natives. The Department of Corrections and the Department of Health and Social Services should work to improve the availability of quality aftercare in rural areas, which is a particularly critical need.
6. **The commission recommends that comprehensive substance abuse treatment programs be developed for offenders sentenced to non-incarcerative sanctions. In those cases where it is likely to be effective, the state should fund programs for probationers who cannot afford treatment.** The commission recommends that the Department of Corrections and the Department of Health and Social Services evaluate the needs of unincarcerated offenders and create a plan to address them. Some state and

private programs currently provide such services on a sliding fee scale, but these programs are not available statewide and the waiting lists are long. Although developing such programs for probationers is expensive, the commission believes it will be worthwhile in the long run, to keep relatively minor offenders from becoming serious criminals.

7. **The commission recommends that the Department of Corrections and the Department of Health and Social Services begin the data collection and analysis necessary for evaluation of prison and non-prison substance abuse programs.** Comprehensive analysis is necessary to assure that the state is getting an appropriate return for its investment in treatment. The commission has previously recommended that all treatment programs be rigorously evaluated both to see if there are enough program slots to meet the needs that exist, and to see if the existing programs are effective in reducing recidivism. See 1991 Alaska Sentencing Commission Report at 31-32.

b. Alternative Punishments for Rural and Native Offenders

1. **The commission believes that a system of alternative punishments is sound correctional practice and effective in reducing the likelihood of recidivism. Alternative punishments also should be used more extensively in response to probation and parole revocations.** The commission previously has encouraged the Department of Corrections to expand the use of intermediate sanctions or alternative punishments for appropriate offenders, consistent with its responsibility to protect the public. The commission supports the increased use of treatment programs, work release, halfway houses, intensive supervised probation, and day reporting centers. The commission also supports the development of policies encouraging judges to use alternative punishments for more felony and misdemeanor offenders. Forty-one percent of those in prison on probation and parole revocations are Alaska Natives. The Department of Corrections should study the reasons for these revocations and consider changes in supervision and alternative punishments.
2. **Alternative punishments should be developed for use in rural areas as well as urban settings, to provide a range of alternatives appropriate to the range of offenders across the state. These programs should be intensive, responsive to individual linguistic and cultural needs, and adequate to work with the majority of offenders who are appropriate for them.** The commission recognizes that because of the vastness of the state and the small size of some villages, not every program will be available to every offender. For that reason, the commission recommends that judges and probation officers be given considerable flexibility in tailoring programs for rural offenders. It may be as appropriate to send a certain offender to subsistence camp as to require completion of a GED.
3. **Programs within prison need to be evaluated in light of their cultural appropriateness, and their entrance criteria should be evaluated to be sure that minorities are not inadvertently excluded.** The Department of Corrections should consider the use of culture and subsistence camps as part of programming.

4. **More halfway houses are needed for offenders making the transition from prison to the community, along with more support in finding housing and employment.** Because halfway houses exist in only a few communities, the Department of Corrections also should work on appropriate custodial arrangements in smaller towns and villages for offenders making this transition.

c. Alternate Dispute Resolution in Rural Areas

1. Issues of Native sovereignty and the authority of tribal courts have been discussed in Alaska for many years and these discussions likely will continue. **The commission takes no position on the resolution of these issues, which are beyond the scope of the commission's discussion.**
2. **The commission finds that a number of villages in rural Alaska are addressing certain community problems through the use of their own dispute resolution processes, such as tribal courts, village courts and village councils.** Some of these organizations handle matters that would be considered criminal in nature if charges were to be filed in state court, such as public drunkenness, disorderly conduct, domestic violence, and bootlegging. Many of these organizations appear to have credibility within their own communities and to be an effective means of solving local problems. The organizations function because community residents are willing to participate in them and to submit voluntarily to the direction of the local authority. State employees within the executive and judicial branches (including district attorneys, judges, troopers and DFYS workers) also cooperate with local organizations to further rural justice. Thus, these organizations function regardless of how questions of sovereignty or jurisdiction are resolved.
3. **The commission supports greater development of voluntary local dispute resolution processes in interested communities.** These processes are an effective and economical way of dealing with minor criminal matters, and provide a means of arriving at locally acceptable solutions to local problems.
4. **The commission recommends that state criminal justice agencies work more closely with such local organizations to exchange information and support.** When sentencing offenders from villages, presentence report writers and state court judges should seek input from local authorities as to the offender's criminal record and reputation in the village and suggestions as to the appropriate outcome from the village's point of view. Local authorities should try to keep records that will be adequate for this purpose. Probation officers and state judges also should call on local authorities for help in enforcing conditions of probation and for suggestions as to appropriate alternatives to incarceration which could be used within the village.
5. **The commission supports the work of the Village Public Safety Officer program and its cooperation with nonprofit regional corporations and villages to determine what services are best for the individual villages and which people should be hired as VPSOs.** VPSOs often mediate disputes and defuse problems before they turn into criminal matters, keeping many problems from ever reaching the state system. VPSO



presence in villages generally serves to keep the level of disorder and violence down. The VPSO program appears to work well with local authorities and courts and is an important addition to crime control for many communities.

6. **The commission supports the new behavioral health aide program now being implemented by the Department of Health and Social Services.** This program trains people to provide substance abuse counseling, suicide prevention, crisis intervention, and community organization in rural areas. These services promote local crime prevention efforts and offender rehabilitation and reintegration into the community.

- d. General Recommendations on Native Offenders

1. **The commission recommends that all state justice agencies maintain accurate data with respect to minorities and sentencing and reexamine it periodically for evidence of bias. All actors in the system should be sensitive to cultural and linguistic differences that may play a subtle part in influencing sentencing and correctional decisions. The commission recommends that criminal justice agencies continue to pursue vigorous policies of minority recruitment and hire, particularly at the policy-making levels, as well as providing cultural sensitivity training for existing employees.**
2. The commission finds that linguistic differences and lack of knowledge of the legal system sometimes impede communications between non-Native criminal justice personnel and Native offenders, victims, and witnesses. Even when interpreters are used, they are often untrained or uncomfortable with their roles. **The commission recommends that interpreters be properly trained and used wherever necessary in criminal justice interviews.**

## **C. Changes in Parole Eligibility and Procedure**

The commission spent most of its May meeting addressing questions relating to parole. Sam Trivette, Executive Director of the Alaska Parole Board, Parole Board Chair Reverend Alonzo Patterson, and Parole Board members David Cooper and Dolores Weiler participated in the discussion.

### **1. Discretionary and Mandatory Parole**

The Parole Board evaluates applications and sets conditions for discretionary parole, sets conditions for mandatory release, decides parole revocations, and issues parole warrants. Discretionary parole is the process people generally think of as parole, where inmates apply for release based upon a good institutional record and sound plans for creating a law-abiding life outside of prison. In granting or denying discretionary parole, the parole board relies upon a point-based risk assessment score sheet, recommendations of institutional parole officers, housing and employment plans for release, completion of treatment, and offender demeanor at the parole hearing in deciding when to release an offender and under what conditions.

An increasing part of the Parole Board's work relates to inmates on mandatory parole, those inmates entitled to release for "good time" credit.<sup>22</sup> The number of inmates on mandatory release has increased considerably over the last ten years due to presumptive sentencing statutes, which do not allow discretionary parole for presumptively sentenced offenders, and to liability considerations.<sup>23</sup> Parole revocations have increased for similar reasons.

The commission discussed whether the growing number of offenders on mandatory release merited changes in the pattern of supervision. Offenders serving a term of two years or more currently are supervised by parole officers when they are released on good time, while those serving less than two years are not supervised. AS 33.16.010. The Parole Board recommended changing the statute to apply mandatory parole to offenders serving terms of three years or more, to reduce the number of mandatory parole hearings and revocations and improve the effectiveness of supervision. The commission did not adopt this recommendation, deciding that offenders serving more than two years should continue to be supervised on mandatory release.

The commission discussed whether discretionary parole could be expanded safely to include some presumptively sentenced offenders. This issue raised the most intense debate and reconsideration of any the commission addressed. In the end, the commission recommended that

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<sup>22</sup> Good time is time credited for good behavior while in prison, and is available to offenders serving both presumptive and non-presumptive sentences. Accumulated good time is subtracted from the sentence imposed on the defendant, thereby allowing early release. Alaska allows one day of good time credit for every two days served, allowing a prisoner to reduce time served by one-third. AS 33.20.010.

<sup>23</sup> The commission has previously noted that officials of the Department of Corrections may be taking an unnecessarily conservative approach to release of offenders because of concerns about personal liability. The commission has recommended expanded immunity from liability for the state and its employees for the release and supervision of offenders. See 1991 Alaska Sentencing Commission Annual Report at p. 26, and this report at Section II-A..

eligibility for discretionary parole be extended to some Class A presumptively sentenced offenders on the condition that they have served one-half the presumptive sentence and have successfully completed all court-required treatment or are being released into an appropriate program. The commission made the further recommendation that if budget conditions require downsizing of the prison population, eligibility for discretionary parole could be expanded to all presumptively sentenced first offenders on the same conditions. See Table 1, at the end of this section, for an estimate of the number of prison beds that could be saved by these changes.

## **2. Commission Recommendations on Parole**

On the basis of its discussions, the commission adopted the following recommendations on parole:

1. **Discretionary parole should not be abolished.** A number of states have abolished discretionary parole. Some have done so in conjunction with shorter sentences in order to promote truth in sentencing.<sup>24</sup> Others have done so because of dissatisfaction with current parole practices or corruption on the parole board. However, a number of states which once abolished parole have since reinstated it, due to resultant prison overcrowding.

The commission recommends that discretionary parole be retained in Alaska. The Alaska Board of Parole historically has done an excellent job of screening offenders and setting conditions for release, carefully balancing public safety and rehabilitation considerations. The parole board has had written guidelines in place for over a decade to help the public and inmates understand their decisions. This recommendation passed unanimously.

2. **The term "mandatory parole" should be changed in the statute to "mandatory release."** The current terminology causes confusion with the public by giving the impression that release is in the control of the parole board, when in fact the offender is simply being credited for good time. Offenders, on the other hand, are told they are not eligible for parole, and therefore often fail to understand that the parole board will be setting conditions for release even when good time is earned. This recommendation passed unanimously.
3. **Parole statutes should be amended to allow special medical parole for terminally ill offenders.** Many offenders have serious medical problems that cost the Department of Corrections an extraordinary amount of money. The AIDS epidemic has not yet had a serious impact on Alaska prisons, but prison populations in some East Coast states are reported to be 40% HIV positive. In addition, there are a number of inmates serving long sentences who can be expected to grow old in prison.

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<sup>24</sup> Truth in sentencing refers to the idea that offenders should serve the sentence envisioned by the legislature and imposed by the judge, rather than be released early through parole or emergency overcrowding procedures. In some states, felony offenders serve an average of two months in jail for every year imposed by the court, a practice that deceives the public and the victim, and leads to disrespect for the law. See 1990 Alaska Sentencing Commission Annual Report at p. 3; 1991 Alaska Sentencing Commission Annual Report at p. 10.

DOC currently can furlough a terminally ill person, but it still will be responsible for medical expenses. Medicare or Medicaid will pick up the person's medical costs only upon release from DOC custody. The parole board should be allowed to grant parole to terminally ill offenders. DOC should study the offender population and devise a system to achieve this objective. This recommendation passed unanimously.

4. **Eligibility for discretionary parole should be extended to all Class A presumptively sentenced first offenders, except those convicted of manslaughter and sex offenses, on two conditions. First, the offenders must have successfully completed all court-required treatment or be released into an appropriate program. Second, offenders should be required to serve one-half of the presumptive terms before becoming eligible. Offenders convicted of sex offenses and manslaughter should not be made eligible. AS 33.16.090 and .100, which set out the criteria to be followed by the parole board in granting parole, must be amended for this recommendation to be implemented.**

This issue raised the most intense debate and reconsideration among commission members. Data presented by the parole board showed that over the last several years, only 3% of offenders released on discretionary parole committed a new felony within the first year after release, and 3% committed a new misdemeanor. Another 24% of parolees had their parole revoked for failure to comply with parole conditions. See Appendix C of this report. The commission agreed that the parole board currently does an excellent job of screening applicants for discretionary parole.

Given this history, the commission concluded that there are a number of offenders in prison, not now eligible for discretionary parole, who could be released to parole supervision without increasing the risk to the public. However, it was difficult for the commission to agree on which presumptively sentenced offenders should be eligible for release.

Members of the parole board favored expanding eligibility for discretionary parole to include all presumptively sentenced first offenders,<sup>25</sup> if the offenders met certain conditions.<sup>26</sup> After much discussion and compromise, the commission agreed on a

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<sup>25</sup> Most presumptively sentenced first offenders have been convicted of assault causing serious physical injury, robbery using a deadly weapon, sexual abuse of a minor (sexual penetration of a child under 13 or a son or daughter under 18), forcible rape, selling heroin to an adult, or manslaughter.

<sup>26</sup> Parole board members recommended that eligibility for discretionary parole be extended to all presumptively sentenced first offenders on the condition that they have successfully completed all court-required treatment or are being released into an appropriate program. Offenders also would have been required to serve one-third of their terms before becoming eligible. Proponents of this recommendation on the commission argued that it was a responsible step that would help reduce prison overcrowding without increasing risk to the public, and would reward participation in treatment programs. They believed that the parole board was capable of screening applicants with continued success. Opponents of this recommendation thought that it ran contrary to the intent of presumptive sentencing, that it would not meet with public or legislative approval, and that successful implementation depended on maintaining the current high quality of parole board members. They felt that the time to serve for most presumptively sentenced offenses is not disproportionate to the seriousness of the crimes, and that sex offenders should be excluded from eligibility.

cautious approach, targeting first offenders convicted of most Class A offenses (generally assault and robbery). The commission voted to exclude manslaughter offenders (also a Class A offense), believing that it would demean the seriousness of the offense to allow any reduction of the current five-year presumptive sentence. The commission also voted to exclude Class A sex offenders (attempted first-degree sex offenses), believing that the risk of repeat offenses and the level of harm is greater with sex offenses than with most crimes. This recommendation passed, ten in favor and two opposed.

Table 1

Estimate of Beds Saved by Making Certain First Offenders Parole Eligible									
	Assault 1	Robbery 1	Arson 1	Drugs 2	Total	Man- slaughter	SAM 1	Sex Assault 1	Total
Number of cases per year <sup>1</sup>	16	30	3	7	56	10	41	30	81
Percent of first offenders <sup>2</sup>	80	80	82	82		90	89	90	
Estimated number of first offenders	13	24	2	6	45	9	36	27	72
Less 50% parole denial rate <sup>3</sup> = number likely to be paroled	7	12	1	3	23	5	18	14	37
Mean time to serve for this offense in months <sup>4</sup>	78	86	84	61		61	93	108	
Less 1/3 good time reduction	52	58	56	41		41	62	72	
One-half presumptive sentence <sup>5</sup>	42	42	42	30		30	48	48	
Difference MTS and 1/2 presumptive = months saved per offender	10	16	14	11		11	14	24	
Months saved times number likely to be paroled	70	192	14	33	309	55	252	336	643
Beds saved per year	5.8	16	1.2	2.8	25.8	4.6	21	28	53.6

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<sup>1</sup> PROMIS data - average yearly number of offenders sentenced for this crime from 1986-1990.

<sup>2</sup> Judgment form study - 82% of all first offenders studied were first felony offenders. The rate was 80% for robbery I and assault I, 89% for sexual abuse of a minor I, and 90% for sexual assault and manslaughter.

<sup>3</sup> The judgment form study found that courts recommended treatment during incarceration in felony cases as follows: 32% of cases had a recommendation for substance abuse treatment, 10% for sex offender treatment, 10% for mental health counseling, 8% for vocational rehabilitation or GED. However, these courts do not recommend treatment during incarceration in every case where the need exists: at least 73% of the sample had chronic problems with substance abuse, 28% were sex offenders, and 40% did not finish high school. Rather than rely on completion of court recommendations for an estimate of how many people are likely to be paroled, this chart assumes that the parole board would continue to impose its current standards for completion of treatment, which are much higher.

The parole board estimates that for the last several years, 50% of those who apply are eventually paroled. Not every eligible offender applies for parole, in many cases because the difference between the mandatory release date and the discretionary release date is not long enough to bother. The dividing line seems to be about six months, and the difference in all the cases on this chart is longer than that, so the 50% figure has been used as a best guess.

<sup>4</sup> Alaska Judicial Council 1990 Plea Bargaining Study, mean time to serve (full sentence minus suspended time) in months for this particular crime.

<sup>5</sup> This assumes that most assault, robbery and arson offenders receive a 7-year presumptive sentence and most escape, drugs and manslaughter offenders receive a 5-year presumptive sentence, as the numbers for mean time to serve would suggest.

## **D. Inmate Classification**

### **1. Classification as a Prison Management Tool**

Classification is the process by which offenders sentenced to the custody of the Department of Corrections are categorized for institutional placement. Richard Franklin, Department of Correction's Director of Institutions, and Tom Martin, Institutional Probation Officer, participated in the commission's discussion of classification issues.

Since the early 1980's, Alaska has had a point-based, history-oriented system modeled after the Federal Bureau of Prisons, that classifies offenders to institutions by level of security and custody. Security refers to the number of bars and fences between the offender and the outside world; custody refers to the level of supervision and number of limits placed on the offender's liberty within the institution. The current classification model takes into account the offender's release date, number and nature of prior offense dates, treatment record, institutional work history, and other institutional behavior.

The classification system is designed to provide for graduated release of long-term inmates through a systematic decrease in the levels of custody. Cases are reviewed periodically, with reviews coming more frequently as the inmate moves down the custody ladder. At the bottom of the ladder is "community custody," a classification that allows inmates to serve their remaining time in community residential centers or on work release.

Classification is a primary tool in institutional planning, and can be used to predict demand for beds and programs in the various institutions. It can also be used to speed or slow the transfer of inmates to community custody status and to establish eligibility for alternative punishments outside the institution. The Department of Corrections has been working on classification issues over the last year, and hopes to implement a recent validation study by consultants recommending changes in the classification system.

### **2. Commission Recommendations on Classification**

On the basis of its discussions, the commission made the following recommendations on classification:

- 1. The Department of Corrections should work toward implementation of much of the recent classification validation study. The legislature should provide adequate funding for these changes.** Proper classification of inmates is an important tool in many respects. Proper security classification insures that the public is protected from the most dangerous offenders, without paying unnecessary security costs for less dangerous offenders. Proper custody classification allows inmates to make progress in the system through good behavior and participation in programming, and is essential to prison management and inmate control. Classification plays an important role in controlling over-population and planning for future needs. Funding should be provided to implement the recent classification study to the extent that DOC believes that the recommendations are valid and useful. This recommendation passed unanimously.

2. **The DOC Division of Institutions should develop an automated data collection system to monitor the effectiveness of its classification system.** DOC will have difficulty improving its classification system without access to data that now exist only in hundreds of paper records kept at twelve different institutions. Classification is a primary tool in institutional planning, and can be used to predict demand for beds and programs in the various institutions. It can also be used to speed or slow the transfer of inmates to community custody status and to establish eligibility for alternative punishments outside the institution. A management information system will help DOC monitor inmate prison population, predict demand for treatment programs, promote its graduated release policy, and study the effect of programming on recidivism. This recommendation passed, eight in favor and one opposed.
3. **The Department of Corrections should promote graduated release into the community for most offenders. Most offenders serving sentences of two years or longer should serve the final portion of their sentences in a halfway house or other structured community placement, which in most cases will be followed by a period of supervision.** In most cases, both society and inmates will benefit if those serving long sentences make a gradual transition back to the community. Studies have shown that helping inmates adjust to life outside prison reduces recidivism. Of those offenders who commit new crimes after release from prison, over half will do so in the first six months. Halfway houses, intensive supervised probation, and day reporting centers provide structure and supervision during this critical adjustment period. Job placement services, housing location, and counselling upon release increase the offender's ability to function outside of prison without returning to old habits. Graduated release policies have been adopted in Delaware and in the Federal Bureau of Prisons, among other jurisdictions. The Department of Corrections currently has a policy of graduated release, but it has not been fully implemented. This recommendation passed unanimously.
4. **DOC should preclassify offenders before sentencing so that the sentencing judge knows the offender's likely classification and access to programming.** Offenders currently receive their security classification within 15 days after sentencing and their custody classification within 60 days after sentencing. The initial classifications are based in large part on a matrix relying upon the offender's prior history and characteristics of the current offense, information that is available in the presentence report. This information could be scored and a tentative classification included as part of the presentence report, so the sentencing judge could determine how soon an offender would be able to start recommended treatment programs. The presentence report also should include an estimate of jail time served before sentencing.

Many times, particularly with sex offenses, the judge's sentence may not be long enough to allow completion of treatment because the programming is not available at higher classification levels. Preclassification would allow the judge to design a sentence that would fulfill the goals of sentencing and further expedite treatment. Preclassification also could be done with short-term offenders where treatment recommendations are likely, such as for alcohol treatment and anger management, so that treatment can be expedited and completed before the sentence ends. This recommendation passed unanimously.



## **E. Progress in Data Collection**

1992 was a year of rapid progress in data collection methods for criminal justice agencies, including the Sentencing Commission. If this hard work can continue over the next several years, policy and program information should be markedly improved.

### **1. Data Collection in Criminal Justice Agencies**

The three main departments concerned with the adult criminal justice system, the Departments of Public Safety, Law, and Corrections, each spent the year upgrading their internal database systems. The Alaska Court System also devoted considerable attention to developing a computerized database system for its own internal purposes. The improvement in data collection was due in part to new federal regulations and guidelines governing reporting practices, along with the availability of federal grant money. A second driving force has been a growing awareness, encouraged by the Sentencing Commission and its staff, that the sparse information currently available for addressing policy and efficiency issues must be improved substantially. While the information systems of each department work relatively well for internal purposes, they are not designed to permit overall statistical or policy analysis.<sup>27</sup>

The Department of Public Safety currently is updating 60,000 criminal history records and implementing an arrest tracking number (ATN) to track cases through the various agency databases.<sup>28</sup> This project has been operating under a grant from the United States Department of Justice, Bureau of Justice Statistics. As part of this project, Public Safety has worked with consultants to evaluate and improve criminal history information found in the department's APSIN database. Public Safety also has continuing grant money to improve interagency communication and exchange of information and data over the next two years.

The Department of Law modified its procedures to begin use of the arrest tracking number in the department's PROMIS database. The Department of Law also drafted legislation requiring agencies to return case outcome information to Public Safety to keep criminal history records up to date.

The Department of Corrections completed a rewrite of the OBSCIS database, greatly expanding its usefulness for in-house operations and for data sharing between agencies. Under the new system, Corrections intends to record ATN, APSIN, and court case numbers. Corrections also intends to record information that will help it evaluate the effectiveness of alternative punishments and treatment programs. The new version of OBSCIS allows it to record

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<sup>27</sup> For an extensive discussion of the existing databases and their capabilities, as well as the problems of using them for statistical purposes, see 1991 Alaska Sentencing Commission Annual Report at pages 42-48.

<sup>28</sup> Generally, two forms of data information systems are used by criminal justice agencies. Courts, prosecutors, public defenders, and to a large degree police depend upon case- or incident-based systems for their daily operations. The ATN is intended to be the systemwide standard for this purpose. Corrections departments and research agencies generally depend upon offender-based systems that can follow an offender's criminal career. The APSIN number can serve this purpose once it is recorded consistently and accessibly by all agencies on the appropriate documents and databases.

multiple count information on a case, rather than just the most serious offense. It also adds an "audit trail," allowing it to maintain information on repeat offenders, rather than overwrite information on old offenses as new offenses occur. Adult Probation and Parole always has been a weak point in data collection, but the system may be much improved in the OBSCIS rewrite. However, probation officers still do not have the individual computers they need to do their work efficiently, and additional positions may be needed to help with data entry.<sup>29</sup>

The Alaska Court System worked throughout the year on an automated case management system for trial and appellate courts.<sup>30</sup> The Court System has devoted a great deal of attention to defining the data elements needed for information collection and the formats needed to analyze and share the information with other agencies. The Court System has worked closely with Sentencing Commission staff in defining requirements for the system. The Court System projects that it will take another two years before the system is fully operational.

Interagency cooperation also was considerably improved during 1992. A technical users group was established by commission staff to bring together technicians from state agencies and the University of Alaska to discuss the technical issues surrounding data collection and information exchange. The group discussed implementation of the ATN number, changes in the various databases, and coordination problems. This group will continue to meet as long as the meetings prove fruitful. Since modifications in the operations of one agency can have profound (and sometimes unintended) effects on another agency, early communication can help avoid problems and ease adaptation of the systems.

While a great deal of work has been accomplished in the last year, there remains much to do. The commission recommends continuing the position of the commission's research analyst as a member of the Judicial Council staff. With support, criminal justice agencies should be able to build upon current efforts to achieve vastly improved data collection and analysis.

## **2. Development of a Comprehensive Criminal Justice Database**

The commission's staff have spent the past 2-1/2 years creating a comprehensive criminal justice database to answer policy questions, improve population projections, and prepare accurate fiscal notes. The staff have consulted regularly with individual agencies and with national experts who have studied data collection practices in other states. Based on this information, the staff compiled a list of important variables to respond with the needed information.

The commission's database incorporates the necessary information from the OBSCIS and PROMIS databases and cross-matches offenders between the two systems. It can also use the OBSCIS internal audit trail to obtain a historical picture of offenders and offenses over time. The commission currently is working with the Department of Public Safety to incorporate APSIN data, a process which is expected to be complete by May 1993. The database has been

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<sup>29</sup> The Alaska Judicial Council and the Sentencing Commission were able to transfer four computers to the Anchorage Office of Adult Probation and Parole in fall 1992.

<sup>30</sup> While the system is being established on in-house computers using the UNIX operating system, rather than on the state mainframe IBM, a good track record exists for interlinking UNIX and IBM.

supplemented with information taken from a limited number of original paper files such as presentence reports and court judgments, to fill information gaps and to validate the accuracy of the computer data.

The new criminal justice information system contains three primary files. The event file contains information about the offense, sentence, and punishment, tracking an individual from arrest until release. It also includes information about criminal history, NCIC and FBI reports, presentence report data, and revocations. The offender file holds static demographic information such as sex and race. The case file contains multiple charge records for individual cases, providing detailed information on case processing.<sup>31</sup>

Although more information remains to be imported, the comprehensive database already is producing useful information. The appendices to this report present some of this information, showing crime type by race, criminal history of offenders, and recidivism patterns. Once the importation of data is complete, several state-of-the-art software packages can be used to analyze the impact of proposed legislation or policy changes.<sup>32</sup> In addition, the comprehensive database can be used to update the computer systems of the individual departments. For instance, Public Safety can receive data on whether its arrests result in convictions, and the Court System can know how long offenders actually serve on the sentences the judges impose.

The Sentencing Commission will sunset at the end of FY'93. It would be a tremendous waste to allow the comprehensive database to end, since it will continue to be necessary for planning and monitoring of the criminal justice system by all three branches of government.

### **3. Commission Recommendations on Data Collection**

#### **a. 1991 Recommendations**

In its 1991 annual report, the commission made the following recommendations:

- (1) All criminal justice agencies should share data with the commission's comprehensive database, and use it as needed to review and change their own databases;
- (2) The state should maintain the database after the commission's end, by putting it in a neutral agency such as the Judicial Council with enough funding for one staff person;
- (3) Justice agencies should agree to use a common number (such as the APSIN number) for each offender, as well as the ATN number for each offense;

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<sup>31</sup> The commission currently is writing an operating manual for the comprehensive database that will contain a more complete description of the variables included.

<sup>32</sup> As an example, see the estimate of beds saved by making certain first offenders parole eligible, found in Section II-C of this report. As information is developed over time, the database can be used to answer important questions such as:

- \* Does incarceration increase or decrease the likelihood of recidivism for burglars?
- \* How successful are sex offender treatment programs?
- \* To what extent does presumptive sentencing affect prison population?
- \* How often do judges use mitigating factors to reduce a presumptive sentence?
- \* How many offenders would be good candidates for a boot camp?

- (4) The Department of Corrections should use the database as one of its resources for forecasting;
- (5) The court system should develop its own system in a way that allows it to participate in the automated database;
- (6) All Department of Corrections treatment programs should be evaluated to see if there are enough program slots for existing needs, and to see if programs effectively reduce recidivism rates.

b. 1992 Data-Related Recommendations

During 1992, the commission has made data-related recommendations as part of its recommendations on Native offenders, alternative punishments, and classification:

- (1) The Department of Corrections should collect sufficient data to evaluate whether alternative punishments are addressing their objectives;
- (2) The Department of Corrections should monitor the use of alternative punishments to see if net-widening is occurring, and evaluate whether the positive effects of any net-widening outweigh the increased costs;
- (3) The Department of Corrections should include an estimate of the demand for community placements in its population forecasting;
- (4) The Department of Corrections and the Department of Health and Social Services should begin collecting data to evaluate the effectiveness of prison and non-prison substance abuse programs;
- (5) The Department of Corrections should develop an automated data collection system to help monitor classification and program needs;
- (6) All state justice agencies should maintain data on minorities in sentencing, and re-examine it periodically for evidence of bias.

c. New Recommendations on Data Collection

Based on its discussions, the commission unanimously added the following recommendations:

- 1. **The legislature should support the Department of Public Safety in its efforts to improve interagency communication and exchange of data.** The Department of Public Safety has received federal grants from the Bureau of Justice Statistics and the Bureau of Justice Administration to update criminal history records, implement an arrest tracking number (ATN) to track offenders through the system, and expand the exchange of information between agencies. The Department of Public Safety is considering systems that will allow the exchange of critical information between agencies, including information about arrest record, case disposition, sentence length, and probation or parole status. The commission recommends that the legislature support initiatives that will take maximum advantage of the federal funding to unify and improve state data collection efforts.
- 2. **Criminal justice agencies should fill in those holes in data collection that inhibit analysis and understanding of criminal justice statistics.** For day to day internal operations, the Departments of Law, Public Safety, and Corrections each have an

operational information system. However, each fails to collect key pieces of information necessary to answer systemwide policy questions regarding recidivism, population forecasting, treatment effectiveness, and program planning. Also, the three systems do not share information with each other, making it difficult to know the outcome of the case or cross-check the validity of information.

Even where information is collected, it is often entered in ways that make it difficult to use for impact analysis or forecasting (as compared to usefulness for management or individual case decisions). A great deal of reformatting is necessary to analyze the information collected by any one database, let alone to cross-match information in several databases. The commission recommends that criminal justice agencies continue to work with Sentencing Commission and Judicial Council staff to address these problems. The Court System should continue its efforts to set up a database compatible with these recommendations.

3. **Criminal justice agencies should cooperate in an ongoing interagency effort to address data collection and information exchange.** During 1992, commission staff established a group for technical users from various state criminal justice agencies and the University. This group has met monthly to discuss common problems, plan for change, and set goals for the future. The commission recommends that each agency provide enough funding for its technical users to continue to meet to improve interagency communication and cooperation.
4. **The Department of Public Safety should expand its collection of information on statewide crime rates, particularly with respect to sex offenses, drug offenses, and driving offenses.** Public Safety currently collects arrest information from 26 out of 40 localities in the state, for the crimes of homicide, rape, robbery, aggravated assault, theft, burglary, and motor vehicle theft (UCR Part I). This list was developed many years ago and does not include many cases that account for a significant portion of the state's crime and prison population. Conspicuously missing from this list are cases relating to sexual abuse of a minor, possession and sale of drugs, and driving while intoxicated. The commission has been unable to compare state crime rates to national crime rates in a meaningful fashion because Alaska fails to collect information in these important areas. Alaska also needs this information to understand crime rates within the state and to make policy decisions that depend on reliable crime rate information. The legislature should provide funding for Public Safety to work with localities to provide this important information.
5. **Criminal justice agencies should cooperate in an effort to implement core data sharing, so that case and offender information needed by all agencies can be entered only once.** The Judicial Council should convene a group of policy makers and technicians from each agency to discuss the feasibility of a core data system. The justice system, here and nationwide, spends an inordinate amount of time in the mundane process of data entry. Each agency types in case information including defendant's name, aliases, address, physical description, social security number, APSIN and ATN numbers, court case numbers, date and description of offense, etc. Data entry is a slow process and is prone to typographical error. If feasible, it would make more sense to enter the core

data once and share it between agencies, to reduce the costs of redundant data entry and improve the consistency of information.<sup>33</sup> The Alaska Judicial Council should convene a systemwide group of policy makers and technicians to discuss the feasibility of this proposal.

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<sup>33</sup> Sharing and analyzing data across agencies often is hindered by differences in convention and platform requirements. "Convention" refers to intra-agency policy format decisions for a variable. For instance, one agency may record the last name of "MacDonald" with no space between the c and the first capital D, while another might use a space. Problems also arise with nicknames, hyphenated names, and aliases, making it difficult to match cases across systems. "Platform" refers to the particular hardware and software that manage the database. Because different systems handle alphanumeric characters in different fashions, information from one system must be translated before it can be used in another. Use of a single core data entry system would eliminate these problems for the core information.

### **III. POLICY PLANNING FOR DECLINING STATE REVENUES**

Forecasting the future is a notoriously risky business. It is particularly risky in Alaska, which is prone to boom-and-bust cycles in both revenue and population. The Alaska Sentencing Commission boasts no particular expertise in revenue or population forecasting. However, much evidence suggests that Alaska may face a marked decline in oil revenues, and therefore in the state operating budget, over the next 10 to 20 years. Since the commission ends in FY '93, it has made a number of general recommendations designed to guide policy makers in keeping the criminal justice system in equilibrium if drastic budget reductions become necessary.

Making recommendations on how to do more with less is a difficult undertaking. The commission was greatly aided in its discussion by Dr. E. Lee Gorsuch, Director of the Institute of Social and Economic Research (ISER) at the University of Alaska Anchorage. Dr. Gorsuch presented background revenue and population information and facilitated the commission's discussion.

#### **A. Ten Year Revenue and Population Picture**

##### **1. Revenue Forecasts**

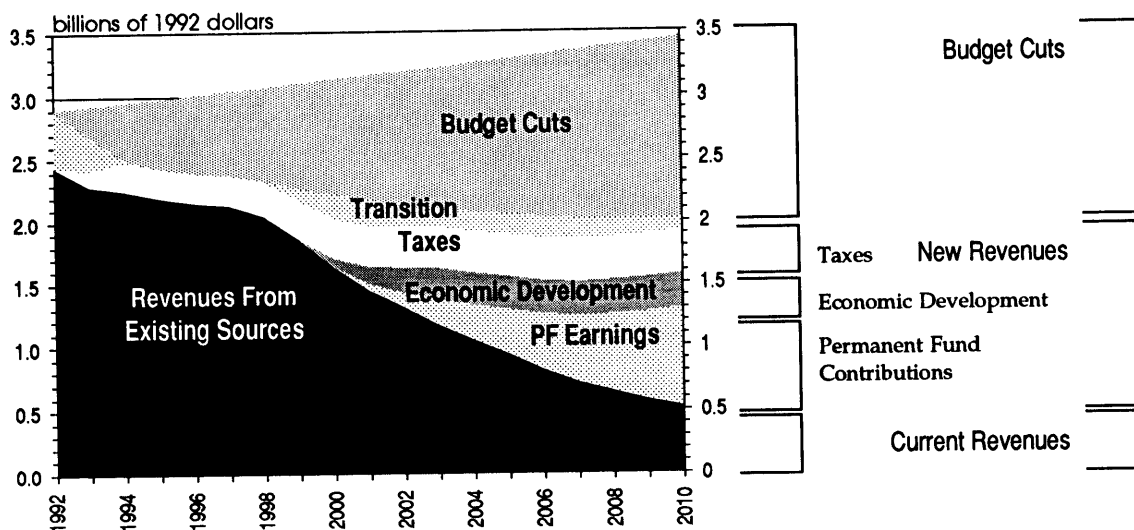
Some economists have predicted that Alaska will face rapidly shrinking oil revenues over the next 20 years. ISER economist Scott Goldsmith has predicted that state oil revenues will decline gradually until 1998, after which they will drop off sharply. See Goldsmith, "Safe Landing: A Fiscal Strategy for the 1990's," ISER Fiscal Policy Paper No. 7 (July 1992). Mr. Goldsmith notes that while the state can and should encourage responsible economic development, economic diversification is a gradual process and will not come close to making up for the contribution which oil once made to the state's economy. The ISER study predicts that declining oil revenues and the inability of other industries to fill the gap will result in a state fiscal crisis, unless Alaska adopts a comprehensive budget reduction and revenue increase strategy. The strategy must cope with a projected state fiscal gap of \$1.5 billion in the year 2000, increasing to almost \$3.5 billion by the year 2010.<sup>34</sup>

Goldsmith recommends that the state take stringent measures to deal with this problem: (1) end permanent fund dividends and use the money to augment the state operating budget; (2) encourage new economic development; (3) implement a personal income tax; and (4) use the money in various reserve accounts to aid the transition to a smaller state government. However, even if these stringent measures are implemented, the state still must cut \$1 billion from its budget over the next two decades. Figure 1 graphically represents ISER's theory. The ISER report suggests cutting real spending by 20% from the current level over the next decade, since making very deep cuts in just a single year could throw the economy into a recession. The commission used these projections as the starting point for its discussions, although it recognized the need for flexibility if the projections were not borne out in the future.

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<sup>34</sup> This forecast assumes current spending trends (constant dollars per capita, adjusted for inflation) with no new revenue sources and oil prices at \$19.00 per barrel.

**Figure 1  
ISER Safe Landing Strategy**



University of Alaska Anchorage. Inst. of Soc. & Econ. Research, "Safe Landing: A Fiscal Strategy for the 1990s," ISER Fiscal Policy Paper No. 7, July 1992.

## 2. Historical Spending Patterns

Operating expenditures for criminal justice agencies have increased 41.3% between FY'78 and FY'91, when adjusted for inflation and population growth<sup>35</sup> (247% in nominal, non-adjusted dollars). In comparison, expenditures of all state agencies increased only 18.3% over the same time period (189.4% in nominal dollars). Criminal justice expenditures have taken an increasing share of the total state operating budget, rising from 6.57% of the operating budget in FY'80 to 8.05% in FY'91.

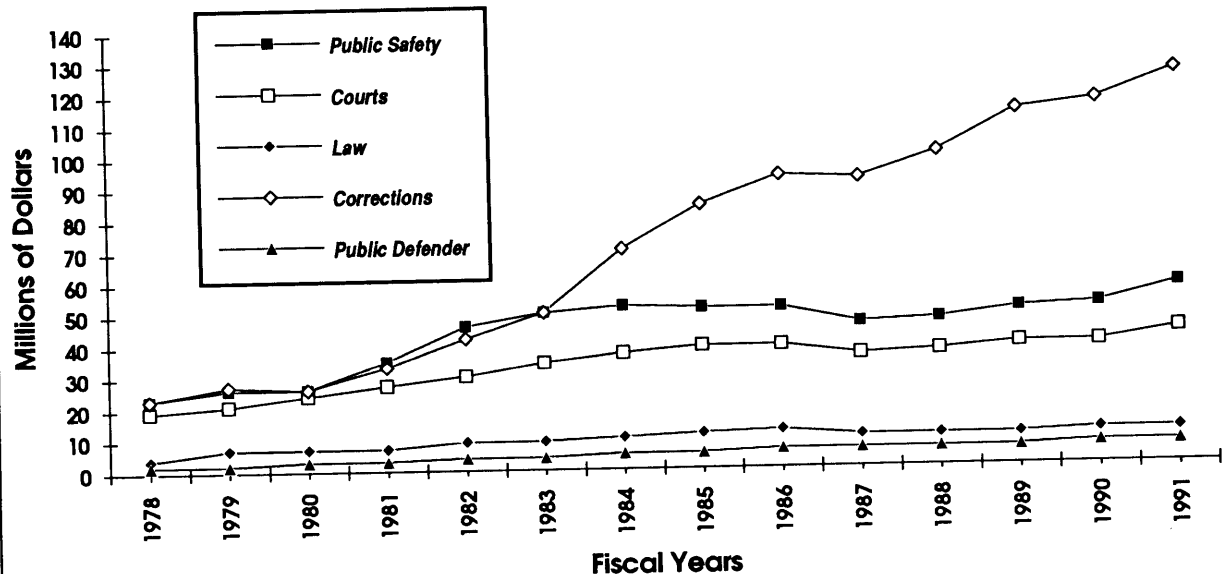
Most of this increase was attributable to the Department of Corrections budget, which far outpaced other criminal justice agencies, due principally to a larger prison population. The department's share of the state operating budget grew from 1.9% of the total in FY '80 to 4.1% in FY '91.<sup>36</sup> Figure 2, based on figures provided by the Legislative Research Agency, shows state criminal justice spending for the past 12 years.

<sup>35</sup> See Alaska Legislative Research Agency, Crime and Costs of Administration of Justice in Alaska: 1978 - 1991 (May 19, 1992). This memo summarizes the expenditures of the Alaska Court System, the Department of Law, Adult and Juvenile Corrections, Public Safety, and the Public Defender. The Court System figures include both civil and criminal cases.

<sup>36</sup> The ISER report identifies several "budget busters" in the state operating budget over the last five years, programs which grew faster than others, causing decline in the real budgets of other state agencies. The most notable examples were federally funded AFDC and Medicaid programs, school foundation funding, the longevity bonus, and prison spending.



**Figure 2**  
**Operating Expenditures for Administration of Justice Agencies**  
**FY '78 - FY '91**



Legislative Research Agency, *Crime and Costs of Administration of Justice in Alaska: 1978-1991* (May 19, 1992). The Court System figures include both civil and criminal cases.

### 3. Population Projections

The Alaska Department of Labor estimates that the overall population of Alaska will grow over the next two decades, but at a slower rate than the last two decades. The Department of Labor projects that by the year 2000, the population will increase from 553,600 to 716,500, at an annual growth rate of 2.57%.<sup>37</sup> The Institute of Social and Economic Research believes that a suffering economy will result in slower growth, and predicts an annual growth rate of closer to 1%.<sup>38</sup> Either way, population growth will continue to put pressure on the state budget.

The Department of Labor expects two age trends in Alaska's population over the next two decades. First, children of school age are expected to increase 23.7% by the year 2000, and

<sup>37</sup> Alaska Department of Labor, *Population Projections: Alaska 1990 - 2010* (1992). These figures are from the "middle series" of the projections, based on the assumption that future mortality, fertility, and in-migration will resemble historical rates.

<sup>38</sup> Goldsmith, "Safe Landing" at page 7 and comments of Dr. Gorsuch.

42.7% by the year 2010.<sup>39</sup> Alaska Natives will grow from 19.5% of all school age children in 1990 to 21.8% by the year 2000. This will put pressure on the state's budget for more primary and secondary schools, Aid to Families with Dependent Children (an entitlement mandated by federal law), and other family programs. The projected increase in the number of school age children may also have implications for the crime rate: since people in the 20 to 30 year age range commit a disproportionate percentage of crimes relative to the general population, the state may experience a rise in the crime rate over the next ten to twenty years as those school age children become young adults.

A second trend, in Alaska and in the nation as a whole, will be an increase of adults 65 years of age or older. This will strain the state's overall resources, affecting Longevity Bonus payments, Medicaid, and Pioneer Homes.

#### **4. Prison Population Projections**

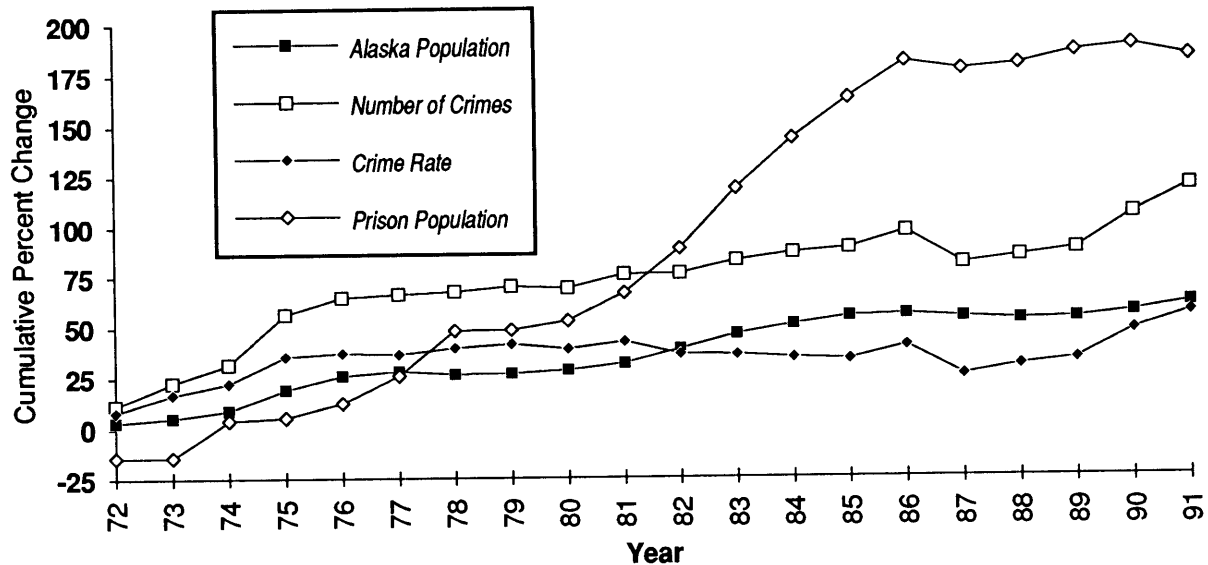
As this report went to press, the Department of Corrections was preparing population projections for 1993-94. DOC officials were projecting some increase in population.

Even without further growth in the prison population, current overcrowding warrants immediate concern. As of October 1992, 2,400 misdemeanor offenders statewide were waiting for up to nine months to serve their sentences, because space simply was not available. Most of these offenders were serving sentences under ten days in length, 40% of them for driving while intoxicated. State prison population has been at institutional capacity for many years, causing expense and disruption to the system. Changes in sentencing policy and practice are needed just to cope with current conditions. Figure 3 shows the comparative growth of the general population, the crime rate, the number of crimes committed, and the prison population. The figure shows that increases in prison population are not directly related to increases in the crime rate or the general population.

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<sup>39</sup> Department of Labor Population Projections at pages 27-29.

**Figure 3  
Population Trends\*  
1972 - 1991**



\* Prison population figures provided by Department of Corrections, Alaska population figures provided by Department of Labor, number of crimes provided by Department of Public Safety. Crime rate is calculated by dividing the number of crimes by the general population to provide a rate per 100,000 population. Cumulative percent change was selected as the measurement in order to view the different curves comparably.

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## B. The Need to Consider New Ideas

Serious budget reductions call for a rethinking of old ideas and a willingness to consider any option that does not compromise public safety. It is certainly fair to ask if the public gets its money's worth from the high cost of incarceration, and if changes can be made that will meet the goals of sentencing as well or better than current practices.

The two primary goals of penal administration, set forth by the Alaska Constitution, are protection of the public and reformation of the offender. AS 12.55.005 also requires sentencing courts to consider certain criteria:

- (1) the seriousness of the defendant's present offense in relation to other offenses;
- (2) the prior criminal history of the defendant and the likelihood of rehabilitation;
- (3) the need to confine the defendant to prevent further harm to the public;

- (4) the circumstances of the offense and the extent to which the offense harmed the victim or endangered the public safety or order;
- (5) the effect of the sentence to be imposed in deterring the defendant or other members of society from future criminal conduct; and
- (6) the effect of the sentence to be imposed as a community condemnation of the criminal act and as a reaffirmation of societal norms.

See also State v. Chaney, 477 P.2d 441, 444 (Alaska 1970).

Not every sentence must meet every one of these goals. For non-presumptive sentences, judges must consider these criteria and weigh them in order of importance in fashioning a sentence. For offenses covered by presumptive sentencing, the Legislature has stated that the seriousness of the offense warrants a certain term of incarceration, although other criteria also should be addressed.

It is a common assumption that incarceration meets most of the goals of sentencing, but that is not necessarily the case. For instance, one might think that the possibility of a prison term would serve as a deterrent to the defendant and others from committing new crimes, but social science researchers have been unable to find that the prospect of incarceration has any demonstrable deterrent effect. Violation of the law calls for a strong reaction by the community, to express community condemnation and to reaffirm the conduct society believes to be proper. While incarceration meets this goal, it does so at tremendous expense to the public. There are many other ways to express strong disapproval and punish the offender without punishing the taxpayer at the same time.

Incarceration certainly isolates the offender from society, but only for the length of the prison term; all but the most serious offenders are eventually released. Unless they have been rehabilitated while in prison, offenders return to the street no better citizens than when they went in. While many people think of prison as a place where offenders should be rehabilitated, and while the Alaska prison system certainly attempts to provide programs that rehabilitate overcrowded conditions and budget cuts make it extremely difficult to operate successful programs. Thus, in the long run, protection of the public and rehabilitation of the offender may be better served in ways other than incarceration.

Even without a fiscal crisis, it makes sense to reduce reliance on incarceration for some offenders and to increase the use of other forms of punishment. For this reason, the commission has recommended that the state develop a system of alternative punishments for many offenders. Depending upon the success of these programs, and the need to further cut the high cost of incarceration, the commission includes recommendations expanding the use of these punishments to include a wide range of offenders.

The commission has given considerable thought to whether or not it is appropriate to expand eligibility for discretionary parole in order to control prison overcrowding. It has also discussed whether overcrowding might be addressed by cutting sentence lengths for some or all offenses. There is some sentiment on the commission to take these steps now; the prevailing sentiment is that they should be postponed until absolutely necessary. All of the commissioners

concur that whatever steps the state takes, it should take them systematically, with proper planning, rather than through a series of ad hoc emergency decisions.

The question of disparity in sentence lengths, particularly with respect to racial minorities, continues to be a concern. If these recommendations are implemented, they need to be carefully monitored and evaluated to make sure that unjustified disparity does not occur. Training for judges, lawyers, and corrections officials can reduce the likelihood of unjustified disparity. Monitoring and evaluation are also important to insure that the goals of sentencing are met by the new policies, particularly with respect to protection of the public.

### **C. Financial Impact of Previous Commission Recommendations**

The commission has made recommendations in seven areas: sentencing structure, probation and parole, rehabilitation programs, alternative punishments, data collection, Alaska Native offenders, and classification. The following is a projection of the costs and savings of these recommendations.

**1) Sentencing structure.** The commission has recommended that an aggravating factor be added for defendants convicted of sex offenses who have a prior conviction for a similar offense. It also has recommended that a mitigating factor be re-established for use when a defendant's prior felony conviction is of a less serious class of offense than the present offense. See 1991 Alaska Sentencing Commission Annual Report at pp. 20-21. The recommendation on the aggravator probably will not have much financial effect, since most judges would aggravate the sentence if possible; the mitigator might have some slight effect, although it would be hard to measure.

**2) Probation and Parole.** The commission has recommended expanded immunity for the state and its employees for ordinary negligence in the release and supervision of offenders. Given the size of the *Neakok* settlement, the potential savings are considerable, but difficult to quantify. See 1991 Report at p. 26.

The commission has recommended that probation revocation proceedings be given priority by court rule and that a letter update may take the place of a complete updated presentence report. This recommendation should save a moderate amount of time for presentence report writers. See 1991 Report at p. 27.

The commission has recommended that DOC study special medical parole for terminally ill offenders, to allow medical expenses to be paid by Medicare or Medicaid. DOC believes this would save a significant amount of money, particularly as the AIDS epidemic worsens. See this report at Section II-C.

The commission has recommended that eligibility for discretionary parole should be extended to some Class A presumptively sentenced first offenders who have completed all court required treatment. The commission decided not to expand parole eligibility for offenders committing manslaughter and sex offenses. Table 1 in Section II-C shows the number of prison months that potentially could be saved by these changes.

**3) Rehabilitation Programs.** The commission has made a number of recommendations in its 1991 report regarding treatment alternatives. The commission strongly recommended a substantial increase in the number of inpatient substance abuse treatment beds. It recommended expansion of education and vocational training programs, anger management programs, batterers programs, and New Start centers. It also recommended that data be gathered on program needs and effectiveness. See 1991 Report at pp. 29-33.

The commission has acknowledged that increased programming would be expensive. It is expected to be cost-effective in the long run, through reduced revocations and recidivism. However, cost savings will occur over a long period of time and will be difficult to document.

**4) Alternative Punishments.** In addition to expansion of treatment programs, the commission has recommended the greatly expanded use of halfway houses, intensive supervised probation, day reporting centers, and other DOC and contractor programs. It has recommended that there be an increase in the number of probation officers and in the amount of contract services. It has noted that net-widening<sup>40</sup> may be a possible effect of this policy, and has recommended that money be set aside for evaluation. While probation and parole violators will not necessarily need to be sent to jail because other options are available, there is likely to be an increase in the overall number of violations. The commission has acknowledged that there will need to be a considerable up-front investment for alternative punishments to be effective. See 1991 Report at pp. 39-41, this report at Section II-A.

On the other hand, a sustained policy of promoting alternative punishments can be expected to result in shorter and fewer prison sentences and greater use of furloughs. The commission has recommended that alternative punishments be used as a matter of good correctional policy, whether or not there are substantial cost savings involved. The commission also has recommended the greater use of fines, forfeitures, restitution, and community work service, alternatives that pay for themselves and return something to the victim or the community. See this report at Section II-A.

**5) Data Collection.** The commission has recommended improved data collection and planning for all justice agencies. See 1991 Report at pp. 47-48, this report at Section II-D. If the various criminal justice agencies follow these recommendations, it would have an incremental effect on the workload of all concerned. The court system and corrections both might need to add data analysts and data entry positions, although both are in the process of stepping up data collection efforts anyway. New positions undoubtedly will be required in other agencies.

The commission has recommended that its research analyst position and database be made permanent, at an annual cost of approximately \$80,000. It also recommended that criminal justice agencies and the University form an ongoing group for the improvement of data coordination and sharing, but this should not be expensive. Improved data collection should result in improved information and planning, but any cost savings will be difficult to quantify.

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<sup>40</sup> "Net-widening" refers to the effect of sentencing offenders to alternative punishments who otherwise would have been sentenced to standard probation, not incarceration. This may result in an appropriate sentence, but it does not save money.

6) **Native Offenders.** The commission has recommended that the state invest in more comprehensive inpatient and outpatient alcohol treatment and aftercare, not just for prisoners but also for probationers. It has recommended that the VPSO program and the behavioral health aide program be maintained. These recommendations are fairly expensive, but the commission believes they will be cost-effective in the long run by reducing new crimes. See this report at Section II-B.

The commission also has recommended that the courts and the Department of Corrections be given considerable flexibility in working out alternative punishments suitable to rural areas, and that state agencies encourage local dispute resolution mechanisms. There may be some small cost savings through doing so.

7) **Inmate Classification.** The commission has recommended that DOC be given sufficient funding to implement its validation study and to automate classification data. See this report at Section II-D. It is unclear how much additional funding this will take.

#### **D. Commission Recommendations for Declining Revenues**

The commission makes the following recommendations in order to help the state face declining revenues in a way which is systematic, carefully planned, and does not compromise public safety. These recommendations recognize that if criminal justice budgets must undergo major cuts, tradeoffs and compromises certainly will be necessary. The first five recommendations are intended for immediate implementation, to reduce current overcrowding and to help plan for the future. The final three recommendations should be implemented only in the event of severe budget constraints. A certain amount of lead time is necessary from the time changes are implemented until the effect on prison population can be felt. Following these recommendations will help keep the system in equilibrium as changes occur. As with all recommendations, they should be reevaluated as new information becomes available.

1. **Beginning immediately, the legislature should support the Department of Corrections in its efforts to reduce the cost of incarceration through improvements in prison design and other efficiencies. The Department of Corrections also should be encouraged to use programs that allow inmates to pay some of the costs of incarceration, such as prison maintenance work, prison industries, and work release programs.**

Improvements in prison design have resulted in lower operating costs in institutions outside the state. Prisons can be designed architecturally to improve surveillance and to operate with fewer personnel. The extra capital cost for design is offset quickly by the long-term reduction in operating costs. The Department of Corrections has hired an efficiency expert to evaluate its plans and programs, which is an excellent idea with or without a budget crisis. However, even with enhanced efficiency, it should be recognized that good prison management is a costly proposition.

Prison work programs are healthy for both inmates and institutions: they allow inmates to contribute to the cost of their own support, provide rehabilitation and job training opportunities, and make prisons easier to manage. Although prison industries often are

criticized for competing with the private sector, they have strong support from the general public. This recommendation was adopted without objection.

2. **Beginning immediately, the legislature should offer support and encouragement to criminal justice agencies in their efforts to reach creative, long-term solutions to budget reductions.**

Innovative ideas are necessary to cope with major budget reductions. The commission recommends that criminal justice agencies be allowed some discretionary funds for planning and for pilot programs. The Legislature also should support internal reallocation of budgets within agencies to achieve long-term budget reductions.

Agencies will need the encouragement of the Legislature and the Governor to try new ideas without the immediate assumption that such changes are unacceptable. If state revenues in fact decline by \$1 billion over the next 10 years, people will need to change their expectations of what government can do. The results of the focus groups indicate that people think the state should take financial considerations into account in devising a suitable system of punishment. All branches of government should work to educate the public on the budget impacts of their programs and to provide information necessary to make difficult choices. This recommendation was adopted without objection.

3. **Beginning immediately, Department of Corrections should establish a plan to allow offenders convicted of driving while intoxicated (DWI) and driving with license suspended or revoked (DWLS/R) to serve their sentences without a long delay (currently nine months in some locations).**

Far and away the most common criminal offense is driving while intoxicated. In 1990, 2544 DWI offenders served time in Department of Corrections facilities. 1629 of these were first-time DWI offenders with an average sentence of five days. Another 2255 people served time in one of the 19 local jails, which are run on contract with the Department of Public Safety, serving an average sentence of three days. As of October 1992, about 960 DWI offenders were on waiting lists with the Department of Corrections, waiting up to nine months to serve their sentences.

In order to clear up the backlog and to provide specific programming appropriate for drunk drivers, the Department of Corrections should investigate the use of low-security facilities to process large numbers of DWI and DWLR/S offenders in the bigger communities. Offenders serving short sentences in halfway houses should not be mixed with offenders being reintegrated into the community at the end of long sentences.

4. **Beginning immediately, the legislature should amend the law providing that DWI first offenders must be sentenced to jail for at least three days. Instead the legislature should investigate other creative alternatives to punish drunk drivers more quickly, cheaply, and effectively.**

The commission recognizes that drunk driving is a serious offense which must be deterred, but believes that the current law does not represent the most cost-effective



approach. The Department of Corrections estimates that housing DWI offenders costs approximately \$6 million per year, even though many DWI offenders are already serving their sentences in halfway houses. This does not represent the full cost of housing drunk drivers, since many first and second offenders are housed in local jails.

Jail time is only one part of the sentence for DWI in Alaska. First time DWI offenders also are required to follow the treatment recommendations made by the state alcohol screening program, pay a fine of at least \$250, and have their driver's license suspended for 90 days. For second offenses, the fine rises to \$500 and the period of suspension to 365 days. AS 28.35.030; AS 28.15.171. In addition, the offender's insurance rates are likely to go up. The commission does not recommend changes in these aspects of the DWI sentence.

While the mandatory jail term may have some added deterrent value, there are many less costly approaches. Other jurisdictions have used a variety of successful programs that publicly identify offenders and require community service from them, like wearing an orange vest to pick up trash along the highway. The commission recommends that the legislature work with representatives of groups like Mothers Against Drunk Drivers to formulate a plan that will deal with this serious problem more effectively. This recommendation passed, nine in favor and four opposed.

5. **The Department of Corrections should increase the use of alternative punishments as part of some presumptive sentences. The commission recommends that the Department of Corrections pursue an active policy for some presumptively sentenced offenders that substitutes time spent in alternative punishment programs for time in prison, within the limits of public safety. High supervision programs such as community residential centers, treatment programs, intensive supervised probation, and day reporting centers can control risk to the public, provide rehabilitative opportunities, and fulfill the goals of presumptive sentencing at lower cost than spending the entire presumptive term in prison.**

The commission believes that its support for presumptive sentencing is compatible with its support for alternative punishments. Alaska case law already provides that time spent in custodial programs such as community residential centers and residential treatment programs must be credited to the offender's time served, just like incarceration. Regardless of whether the correctional budget is reduced, the commission has already recommended that these alternatives be routinely used for presumptively sentenced offenders during the final portion of their sentences, to help them make their transition back to the community. For many offenders, these alternatives may also be safely and effectively used for longer periods of time. The commission recommends strong oversight for these offenders, along with careful monitoring and evaluation of their programs. See Section II-A of this report.

The Department of Corrections currently is seeking a legal opinion on whether it may furlough presumptively sentenced offenders to their homes in order to participate in highly structured programs such as intensive supervised probation and day reporting centers. See AS 33.30.111. If this cannot be done under current statutes, the commission

recommends that the Legislature revise the law to allow the Department to use these options in appropriate cases. This recommendation passed, ten in favor and one opposed.

6. **Even if there is a significant reduction in state funds available to the criminal justice system, the commission believes that presumptive sentencing should be retained. The commission has studied presumptive sentencing in great detail and has concluded that the basic structure serves to balance the many competing considerations in sentencing.**

The commission has concluded that presumptive sentencing as enacted in Alaska has reached an appropriate balance of powers between the legislative, judicial, and executive branches. It does a reasonable job of balancing the need for fairness and uniformity with the need for individualized consideration of particular offenders. The commission has studied the systems of several other states and has concluded that the Alaska system functions relatively well. Changes can be made in sentence length or parole eligibility without changes to the underlying structure of the presumptive sentencing system. This recommendation passed, eleven in favor and two opposed.

7. **In the event of severe budget constraints in the future, the commission recommends that eligibility for discretionary parole be expanded to all presumptively sentenced first offenders. Offenders should be made eligible after they have served one-half the presumptive sentence and have successfully completed all court-required treatment or are being released into an appropriate program.**

As noted in Section II-C above, the commission split on whether eligibility for discretionary parole should be extended to some or all presumptively sentenced first offenders. There was testimony from the Parole Board that there are presumptively sentenced offenders in prison who could safely be released, and that the Parole Board had a good record of screening such offenders before the criminal code was changed in 1980. Expanding eligibility for parole can help reduce prison overcrowding, reward participation in treatment programs, and provide better supervision than offenders currently have with mandatory release. Recidivism rates for first offenders sentenced presumptively are no higher than for first offenders sentenced non-presumptively. Any increase in costs for discretionary parole hearings should be offset somewhat by a decrease in hearings for mandatory parole revocations. The commission agreed by a split vote that eligibility for discretionary parole should be expanded further if serious budget cuts become necessary, to include all presumptively sentenced first offenders. This recommendation passed, eight in favor and five opposed.

8. **In the event of severe budget constraints in the future, the use of incarceration in jails and prisons should be decreased dramatically for less serious offenders. Alternative punishments, including halfway houses, should become the sanction of choice for the majority of nonpresumptively sentenced, nonviolent offenders. This will reserve costly prison space for the most violent and repetitive offenders, and will allow less serious offenders to be punished through cheaper and possibly more effective means.**

Current statutes do not require non-presumptively sentenced felons to serve a term of incarceration; AS 12.55.125(d)(1) provides that first felony offenders convicted of a Class B felony should receive a term of 0 to 10 years. However, case law from the Alaska Court of Appeals requires prison terms of 1 to 4 years for the majority of Class B first offenders. State v. Jackson, 776 P.2d 320, 326-27 (Alaska App. 1989). Class B offenses include non-violent crimes such as first degree burglary, first degree theft, embezzlement, and third degree drug offenses. Rather than respond to these crimes with expensive incarceration, alternative punishments could become the sanction of choice for the majority of these offenders. The commission recognizes that there will always need to be exceptions to this rule, for people with serious misdemeanor histories or with a record of failure in similar programs.

If budgets are to be drastically reduced, the commission also recommends that alternative punishments become the sanction of choice for those violent misdemeanants and Class C felons who are currently sentenced to short terms (under 6 months), including the less serious assaults and domestic violence incidents. The alternative punishment should be designed to address substance abuse problems and to intervene in cycles of violence. Short terms of incarceration still may be imposed in combination with alternatives, but reliance upon incarceration should be reduced. Again, offenders who have failed in similar programs, who have a long history of violent misdemeanors, or who present an acute risk to another person still should be sentenced to prison. It should be noted that alternative punishments have been used successfully in Europe for violent felonies, such as serious assaults. This recommendation passed, nine in favor and four opposed.

9. **In the event of severe budget constraints in the future, there may be no alternative to shortening statutory sentence lengths or changing the definition of what is criminal. To maintain a just and rational system, it is imperative that the state be able to carry out the sentences it imposes by statute. Rather than enact a series of emergency bills which release prisoners on an ad hoc basis, the legislature should consider a permanent reduction in statutory sentence lengths, to reduce the prison population to a financially sustainable level.**

While the commission does not recommend shortening sentences except under severe budget conditions, it prefers this alternative to emergency prison releases, cuts in prison programming, or non-prosecution of offenses. The commission undertook an extensive examination of the seriousness of offenses relative to prison terms, as set by statute, imposed by courts, and carried out by the Department of Corrections. It found that while there was room for minor adjustment, sentence lengths in general were appropriately keyed to the seriousness of the crimes. The commission then compared sentence lengths in Alaska to those in six other states. Accurate comparison was difficult, because in many states what appears to be a long sentence in the statute is a short one in practice due to various early release mechanisms. To the extent that comparison was possible, the commission found that Alaska's actual sentence lengths were in the same general range as several other states. Therefore, the commission in 1991 recommended no changes in sentence length.

However, in the event of a serious budget reduction, significant changes will need to be made. Shortening sentence lengths is not recommended as ideal, but ultimately may be required under a greatly reduced budget. When done with careful attention to public safety, it is better than a series of ad hoc emergency releases, cuts in prison programming, or non-prosecution of offenses.

The commission believes that the state should strive to avoid the need for emergency release mechanisms that undermine "truth in sentencing," the idea the offender should serve the sentence envisioned by the Legislature and imposed by the judge. Sentence lengths should not be so long that they push the total number of prisoners beyond the capacity of the system. In other states, prisons have become so full that offenders have been let out long before their sentences are served. This practice is deceptive to the public and to the victim; it also leads to disrespect for the system on the part of the offender and others. Other states, most notably Washington, Minnesota, and Delaware, deliberately have reduced the length of their sentences, preferring short but sure sentences to the illusion of long sentences that cannot be carried out. This recommendation passed, ten in favor and three opposed.

## **IV. CONCLUSION**

### **A. Review of the Commission's Work 1990 to 1992**

The commission members began meeting during August, 1990, and met four times before the end of 1990. During this time, the commission hired staff, developed a mission statement, received an introduction to alternative punishments, discussed policy planning and analysis with a nationally-recognized consultant on sentencing reform, reviewed a staff report on Alaska sentencing law and practice, and began to develop a procedure for analyzing the seriousness of offenses. In addition, five of the commissioners and the executive director of the Alaska Judicial Council attended a nationwide conference sponsored by the National Institute for Justice, focusing on the use of alternative punishments as a corrections tool.

During 1991, the full commission met eleven times for a total of fourteen days. Subcommittees also held a number of meetings in person and by teleconference to consider rehabilitation issues and probation and parole questions. The commission completed a detailed analysis of the seriousness of offenses in the criminal code. It carefully examined how an offender's criminal history and rehabilitative potential should be taken into account by the judge at sentencing. It reviewed criminal history structure and alternative punishments policy with two nationally recognized consultants on sentencing reform. It discussed the philosophical and practical purposes of sentencing.

The commission studied a number of legal issues pertaining to the court of appeals, including the volume of sentence appeals handled, the use of benchmark sentences, and the creation of a nonstatutory mitigating factor. It looked at emergency overcrowding legislation and other proposals. It took public testimony at most meetings. It studied the current use of alternative punishments such as community residential centers and drug treatment programs. In addition, a number of commissioners and other state officials participated in a nationwide symposium and work session focused on the use of alternative punishments.

From this information, the commission in 1991 made recommendations identifying the policy and budget considerations underlying sentencing law, supporting rehabilitation programs, expanding tort immunity for Department of Corrections employees, streamlining probation revocation proceedings, promoting the use of alternative punishments, adding statutory aggravating and mitigating factors, and improving agency data collection.

The full commission met eight times for a total of fourteen days during 1992. Subcommittees met frequently to discuss non-prison sentencing options. The commission looked at the impact of sentencing practices on Alaska Natives, discussing this subject at length. The commission also spent considerable time discussing mandatory and discretionary parole.

The commission conducted an intensive study of alternative punishments, discussing appropriate target populations, cost comparisons, and the need for statutory and structural changes. The commission conducted focus groups in four locations across the state to see if citizens would approve an expansion of such programs. The commission directed its staff to work with local communities to expand the understanding and use of these alternatives.

The commission discussed inmate classification procedures, Court of Appeals decisions setting benchmarks for felony sentences, changes to the Alaska Rules of Court, and recommendations from the American Bar Association. The commission also confronted the need for system-wide contingency planning in case of drastic budget reductions.

From this information, the commission in 1992 made recommendations that specify how the state should expand and evaluate the use of alternative punishments, respond to problems faced by Native Alaskans in the criminal justice system, increase the pool of inmates eligible for parole, improve classification procedures, and promote widespread data collection efforts. The commission also recommended cost-saving measures and contingency planning in light of long-term budget reductions.

The commission staff continued work on a computer database incorporating information from databases operated by the Departments of Law, Public Safety, and Corrections. Commission staff undertook a statewide study of presentence reports and judgment forms, to gain information on offender characteristics, criminal history, and judicial sentencing recommendations. The staff compiled data on crime type and criminal history by race, re-arrest rates for released offenders, crime rates in Alaska and nationwide, and probation and parole revocations. Staff members also worked closely with other state agencies to improve data collection methods and to help implement commission recommendations.

## **B. Recommendations for Future Directions in Sentencing Policy**

The Alaska Sentencing Commission concludes its work at the end of FY'93, having addressed a number of serious problems in the sentencing system and made multiple recommendations for improvement. However, some aspects of the commission's work are never really done. Sentencing is an area in which all three branches of government play a role, with tremendous effect upon the lives of individuals and a substantial effect on the state budget. Money for ongoing coordination of sentencing issues is money well-spent. For that reason, the commission unanimously made the following recommendations:

- 1. Statewide coordination and monitoring of the criminal justice system will be needed after the sentencing commission sunsets at the end of FY'93. Criminal justice agencies should set aside the time and a small amount of travel money to continue to work out problems and improve the system.**

The commission does not recommend making itself permanent, although its decisions have been improved by the diversity of opinion represented on the commission. However, there are so many overlapping interests and responsibilities within the criminal justice system that state agencies can waste a tremendous amount of money and effort unless they set aside time to talk to each other. The commission recommends that the state provide for internal policy coordination between the branches of government and within the executive branch. The Governor should convene an ongoing group of criminal justice agencies, similar to the former criminal justice working group, and invite the court system to attend. This group would address the myriad practical problems that arise between agencies, keep pace with changes in the budget and prison population, continue

data collection and evaluation, and monitor and review the performance of alternative punishments and prison sentences.

2. **The state should provide funding to the Alaska Judicial Council to produce a guide to criminal sentencing geared to the general public. After studying sentencing in detail for several years, the commission has concluded that the sentencing system is extremely difficult to decipher. An explanatory guide is necessary to help members of the public understand this important area of government.**

Alaska's sentencing system affects more than 30,000 offenders every year, along with their families and victims. Legislators and policy makers struggle to improve the criminal law, although many are not specialists in the field. Press coverage often demonstrates significant misunderstandings of the options available to the sentencing judge or to the Department of Corrections. The commission has heard cries of frustration from all of these groups, of their difficulties in understanding how sentences are imposed and how long they are likely to be. Even commission members with considerable experience in one aspect of criminal justice have been surprised to learn how other agencies reach their decisions.

To answer these questions, and to take advantage of the information assembled by the commission during its existence, the commission recommends that the state should fund an explanatory guide to help members of the public understand this important area of government. The non-attorney members of the commission particularly urge that this guide be developed. The project should be supervised by the Alaska Judicial Council.

3. **Commission staff have created a comprehensive criminal justice database over the past 2-1/2 years incorporating information from the Departments of Law, Public Safety, and Corrections. The commission recommends that the state maintain this database in the Alaska Judicial Council after the commission goes out of existence at the end of FY'93. This database will allow the legislative, executive, and judicial branches to review existing sentencing practices, forecast prison population, and analyze costs and benefits related to policy changes.**

The database should be housed in an existing neutral state agency such as the Judicial Council, with sufficient funding for one staff person to compile and analyze data. It is estimated that the yearly cost would be about \$80,000. The position fits well with the Judicial Council's constitutional mandate to conduct research and with its extensive experience in sentencing analysis. Letting the Judicial Council administer the work of the research analyst substantially reduces administrative costs otherwise associated with the position.

Although the commission is scheduled to sunset, it would be a tremendous waste to allow the comprehensive database to go out of existence. Reliable data will continue to be necessary for the planning and monitoring of Alaska's criminal justice system.

## **PUBLIC COMMENT**

The commission will hold at least one more meeting, in February 1993, to present its recommendations to the Legislature and the Governor. Interested persons are encouraged to contact the members and staff of the commission with their comments and ideas on the commission's recommendations at any time.

## **STAFF**

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## **Data Appendix**

Appendix A: Offender and Offense Profile from a Study of Presentence Reports

Appendix B: Crime Type and Criminal History by Race

Appendix C: Parole Violations

Appendix D: Alaska Crime Rate Compared to US Crime Rate

Appendix E: Recidivism: Number and Timing of Rearrests

This data appendix represents a new approach to collecting criminal justice system information. Commission staff have combined data from existing computer databases with information from paper case files, agency information, and national studies. It is presented as an example of how systematic data collection can provide useful information for planning and policy decisions.

While this is the best information available, it is far from complete. Where paper files were relied upon, budget constraints made it impossible to look at more than a sample of cases. Where computer databases were used, information often varied depending on the database, and numerous inconsistencies were found. Commission staff are working with agencies to improve the databases.

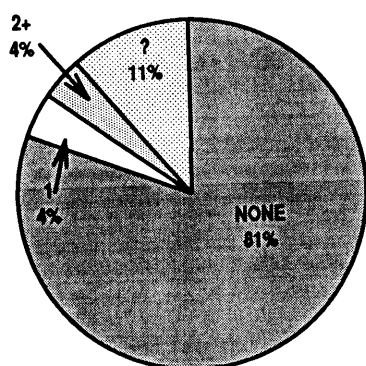
The state of criminal justice data collection is not very advanced. There are many gaps in the available information, as well as limits on its application. While certain caveats have been noted, readers are cautioned to contact the Alaska Sentencing Commission or the Alaska Judicial Council for a full understanding of how this information can be used most accurately for planning and policy purposes. The commission recommends increased support for data collection efforts to improve the information available.

## Appendix A: Offender and Offense Profile

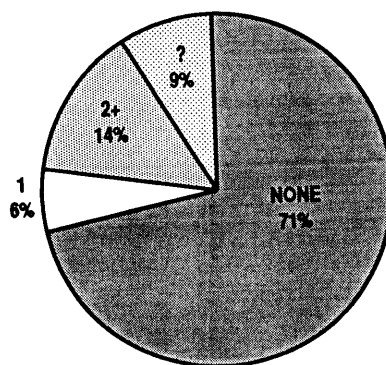
### Statewide Study of Presentence Reports:

Presentence reports are written by Department of Corrections probation officers in most felony cases. These reports are designed to give the judge information about the crime and the criminal to use at sentencing. Presentence reports generally include information about the nature of the crime and allegations of other similar offenses. They include discussion of the defendant's criminal record, substance abuse problems, education and work history, background and family ties. Presentence report writers generally make recommendations on the length of incarceration and probation and the need for treatment programs. Presentence reports are the most reliable information available on offender characteristics, and are relied upon by judges and correctional officers in making sentencing decisions.

The commission studied a 10% sample of presentence reports written during the five-year period 1986-1991. With the cooperation of the Department of Corrections, the commission collected 761 presentence reports from 12 court locations. With the help of the court system, the commission also looked at the judgment forms for 654 of the same cases (judgment forms from Kotzebue were unavailable due to technical difficulties). These files, all felonies, were selected randomly in Anchorage, Palmer, and Kodiak; elsewhere they were selected to get a mix of offenses that would allow the commission to study each of the most common offenses. The sample may have been weighted somewhat toward more serious offenses, because first offenders committing less serious felonies often are sentenced under plea agreements that do not require preparation of a presentence report.



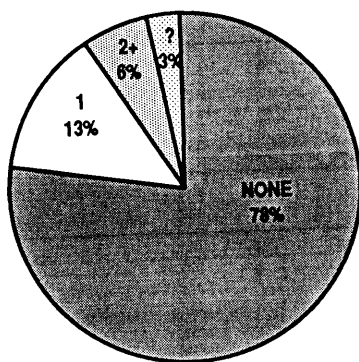
Prior Juvenile Felonies



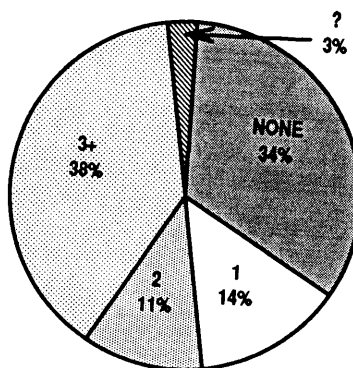
Prior Juvenile Misdemeanors

Most offenders do not have a juvenile record

? means that information from the presentence report was not clear enough to categorize.

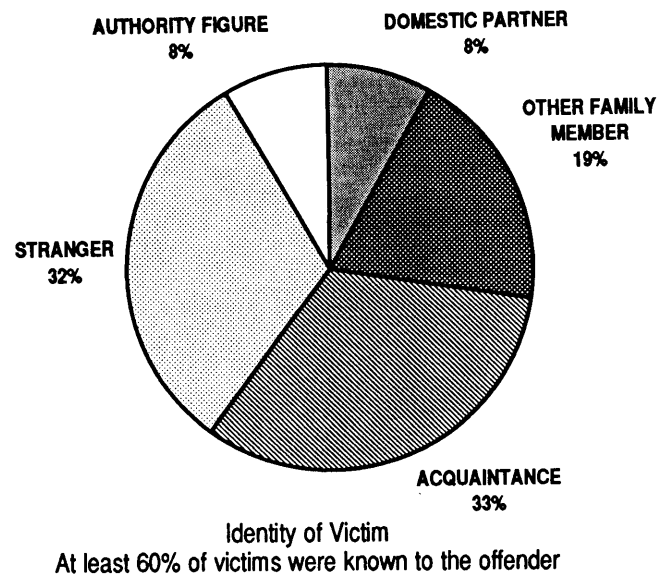
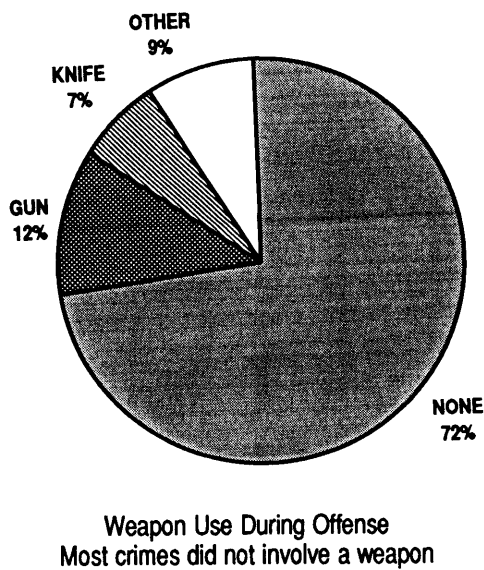
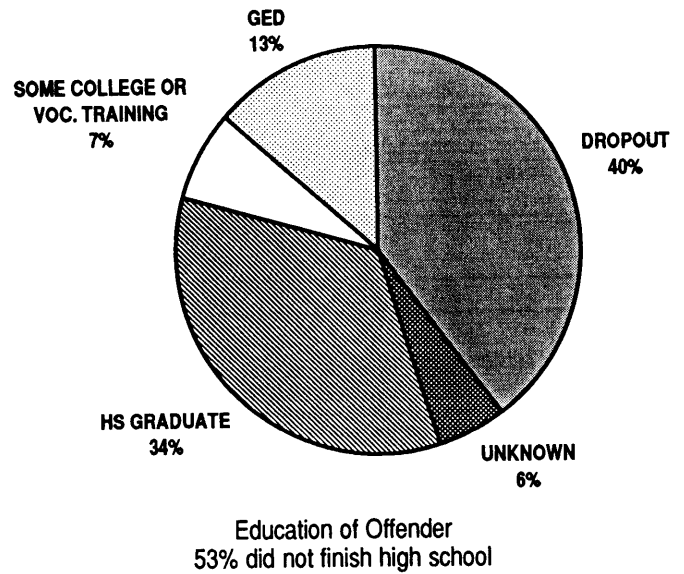
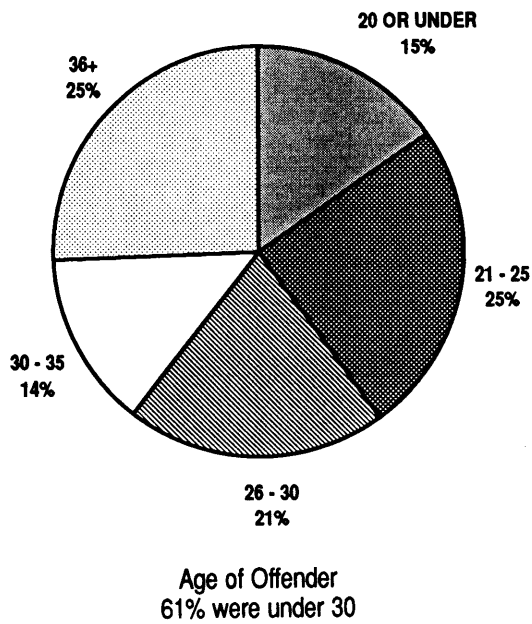


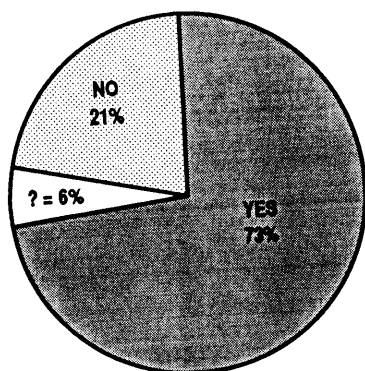
Prior Adult Felonies



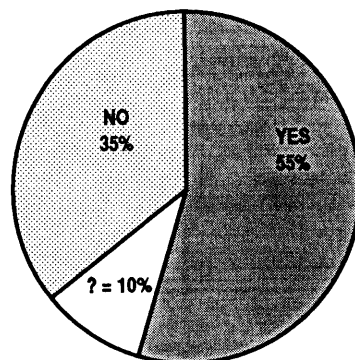
Prior Adult Misdemeanors

Only 22% of offenders have a prior adult felony record. However, 63% have one or more prior adult misdemeanors.

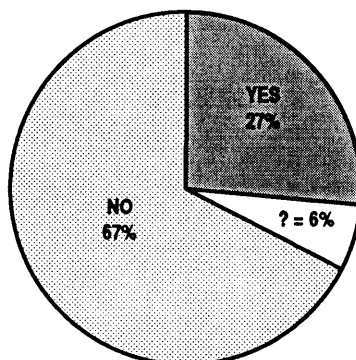




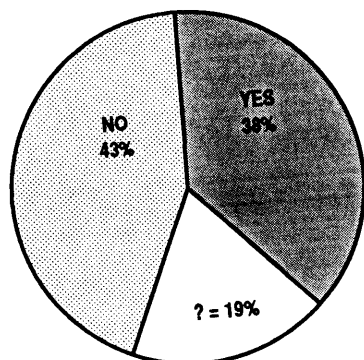
Chronic Alcohol Use



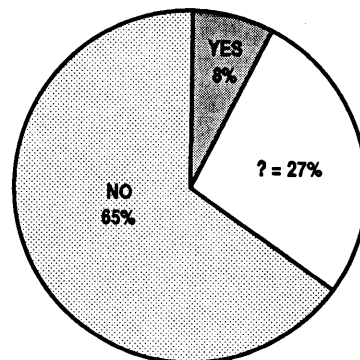
Chronic Drug Use



Prior Substance Abuse Treatment



Under Influence of Alcohol  
at Time of the Crime



Under Influence of Drugs  
at Time of the Crime

### Highlights of the Offender/Offense Profile:

The presentence report study found that felony offenders studied tended to be youthful: 61% were under 30 at the time they committed the crime, and 15% were 20 or under (not including juvenile offenders who were not tried as adults). Their education tended to be incomplete: 53% did not finish high school, although some completed their GED later. Drop-out rates were higher in rural Alaska.

The study confirmed what criminal justice workers have frequently observed, a strong connection between substance abuse and crime. At least 73% of the offenders studied had a chronic problem with alcohol use, as reflected by a prior history of alcohol-related offenses, participation in treatment programs or Alcoholics Anonymous, or identification by an alcohol screening program. From the study, it appeared that fewer people actually were under the influence of alcohol at the time of the crime, although presentence reports were less reliable in recording this information. Intoxication at the time of the offense was more common in rural Alaska. The commission believed that the study probably understated both the rate of chronic alcoholism and the rate of intoxication at the time of the offense.

The study found that chronic drug use among offenders was less prevalent than chronic alcohol use, although the figures it found were higher than those in other studies. The study noted that marijuana was used in combination with alcohol by a number of offenders. Again, the presentence reports were less reliable in collecting information on whether the offender was under the influence of drugs at the time of the crime.

Finally, the study found that only one-quarter of the offenders had been treated previously for substance abuse problems. People were counted as receiving treatment if they went some way through an in-patient or out-patient program, without necessarily completing it, or if they attended Alcoholics Anonymous for more than a few meetings. Given the fact that most of the offenders had some prior criminal history, they may well have had other opportunities to begin treatment, but failed to do so.

## Prior Criminal History of Alaska Felony Offenders<sup>1</sup>

Prior Adult Felony Record of Felony Offenders			
Current Offense (and # of offenders)	Number of Prior Felonies		
	0	1	2+
Murder I (14)	86%	14%	
Manslaughter (10)	90%	10%	
Assault I (10)	80%	10%	10%
Assault II (30)	70%	23%	7%
Assault III (64)	84%	11%	5%
Sex Assault I (10)	90%	10%	
Sex Assault II (24)	83%	13%	4%
Sex Abuse Minor I (28)	89%	4%	7%
Sex Abuse Minor II (61)	92%	7%	2%
Robbery I (10)	80%	10%	10%
Theft II (67)	79%	15%	6%
Burglary I (39)	76%	11%	13%
Burglary II (37)	84%	11%	5%
Crim Mischief II (11)	82%		18%
Forgery II (21)	67%	10%	24%
Drugs III (63)	78%	21%	2%
Drugs IV (42)	86%	12%	2%
Total (549)	82%	12%	6%

Prior Adult Misdemeanor Record of Felony Offenders				
Current Offense	Number of Prior Misdemeanors			
	0	1	2	3+
Murder I	36%	7%	7%	50%
Manslaughter	20%	20%	30%	30%
Assault I	30%		30%	40%
Assault II	23%		10%	67%
Assault III	22%	9%	11%	58%
Sex Assault I	10%	40%	20%	30%
Sex Assault II	38%	13%		50%
Sex Abuse Minor I	61%	18%	11%	11%
Sex Abuse Minor II	62%	5%	11%	21%
Robbery I	30%	30%		40%
Theft II	23%	17%	13%	34%
Burglary I	37%	11%	13%	39%
Burglary II	30%	14%	14%	43%
Crim Mischief II	27%	9%	9%	55%
Forgery II	48%	5%	14%	33%
Drugs III	43%	22%	10%	25%
Drugs IV	29%	21%	17%	33%
Total (549)	36%	14%	12%	38%

<sup>1</sup> Where the number of cases in a particular crime category is small (n<25), percentages are not necessarily representative of the population and should not be used to make statements about murderers or rapists in general. The information should be used only as a rough estimate of what characteristics the actual population might have.

<b>Felony Offenders with No Prior Adult or Juvenile Record</b>		
<b>Current Offense</b>	<b>No Record</b>	<b>Prior Record of Some Kind</b>
Murder I	21%	79%
Manslaughter	20%	80%
Assault I	30%	70%
Assault II	17%	83%
Assault III	22%	78%
Sex Assault I	10%	90%
Sex Assault II	25%	75%
Sex Abuse Minor I	61%	39%
Sex Abuse Minor II	59%	41%
Robbery I	20%	80%
Theft II	21%	79%
Burglary I	21%	79%
Burglary II	14%	86%
Crim Misch II	9%	91%
Forgery II	43%	57%
Drugs III	32%	68%
Drugs IV	21%	79%
<b>Total (549)</b>	<b>28%</b>	<b>72%</b>

### **Prior Criminal History:**

The presentence report study found that roughly three-quarters of the adult felons studied did not have a prior juvenile history, nor did their record include a prior adult felony. However, the majority (64%) had been convicted of at least one adult misdemeanor. Overall, only 28% of felons were completely new to the criminal justice system.

Prior criminal history varied widely by the type of offense. Offenders committing sexual abuse of a minor were most likely to have no criminal record (around 60%). A record of multiple misdemeanors was particularly common among those committing assault offenses.

## Appendix B: Crime Type and Criminal History by Race

Criminal History of Felons by Race <sup>1</sup>					
Prior Record	White	Alaska Native	African-American	Other	All Races
No Prior Record	50%	34%	48%	58%	45%
Misdemeanor Record	21%	20%	19%	15%	20%
Felony Record	21%	36%	23%	9%	25%
Unknown Record	8%	11%	11%	9%	9%
Offenders by Race	62%	28%	10%	1%	100%
Number of Offenders	2719	1222	417	34	4392

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<sup>1</sup> Alaska Judicial Council/ISER, "Alaska's Plea Bargaining Ban Re-evaluated" (January 1991), PROMIS cases 1984-1987.

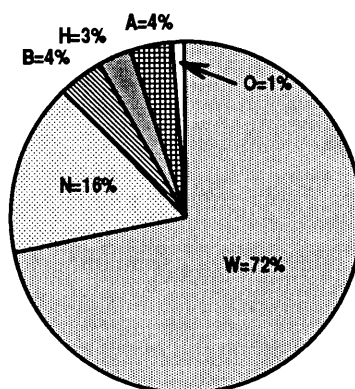
### Crime Types and Criminal History by Race:

The commission studied data from the Department of Corrections OBSCIS database on the race of incarcerated offenders. Overall, Alaska Natives and Black/African-Americans make up a higher percentage of the prison population than they do of the general population; non-Hispanic Caucasians and Asian-Americans make up a smaller percentage. Alaska Natives represent a high proportion of those incarcerated for misdemeanors and a small proportion of those incarcerated for drug offenses. Black offenders represent a high proportion of those in prison for drug and property offenses.

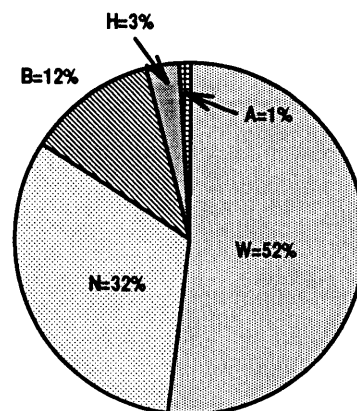
For serious crimes where the prosecutor must prove specific intent to commit the crime to establish a first degree offense (crimes such as murder, assault, and sexual assault), Alaska Natives frequently were convicted of the second degree version of the offense. This may be due to a greater rate of intoxication among Natives at the time of the offense, making it hard for the prosecution to prove specific intent, and/or a greater incidence of charge bargaining for these offenders.

The commission also looked at data from a 1991 study on plea bargaining by the Alaska Judicial Council. This study showed that among the felons studied, Alaska Natives were more likely to have a prior felony record than either white or black offenders. A prior felony record of course would affect the likelihood of imprisonment and the length of sentence for a new offense.

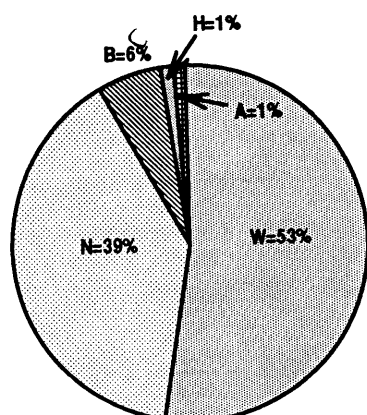
**W = White**  
**N = Alaska Native**  
**B = Black/African American**  
**H = Hispanic**  
**A = Asian American**  
**O = Other**



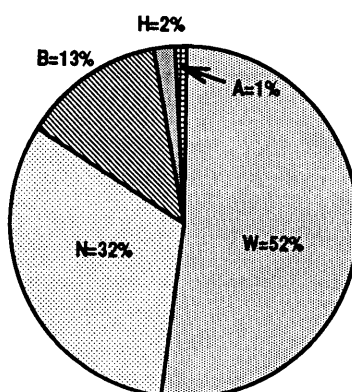
Alaska General Population<sup>1</sup>



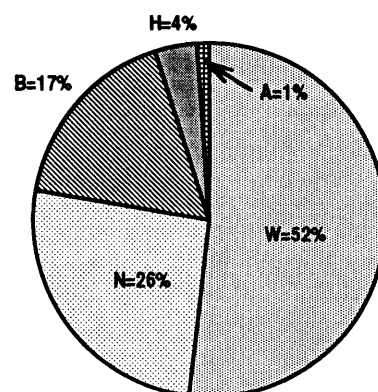
Alaska Prison Population<sup>2</sup>



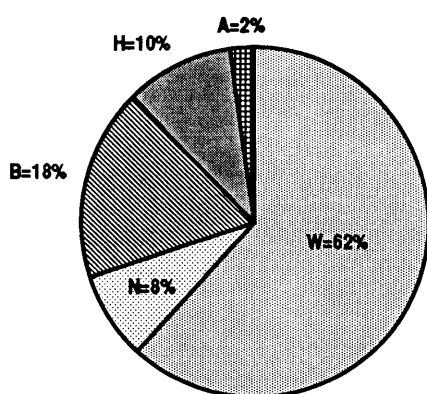
492 Sex Offenders -  
Rape and Sexual Abuse of a Minor



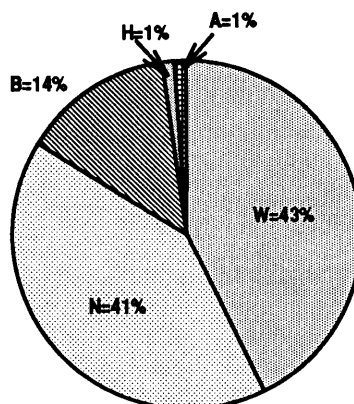
731 Other Violent Crimes -  
murder, robbery, assault,  
manslaughter



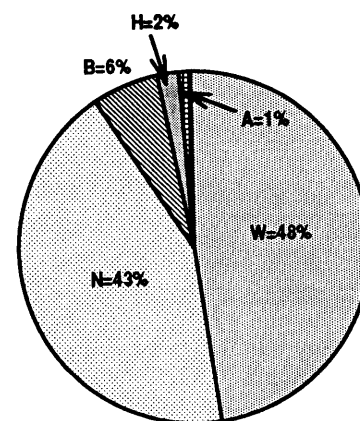
382 Property Offenders -  
burglary, theft, criminal mischief



153 Drug Offenders



412 Probation and Parole  
Revocations<sup>3</sup>



462 Misdemeanants

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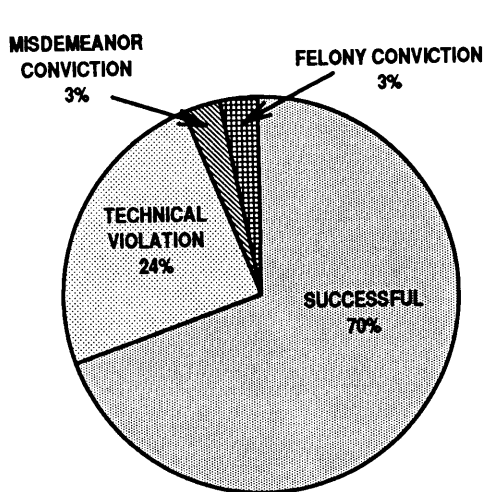
<sup>1</sup> Alaska Department of Labor, 1990 Population Overview at 47.

<sup>2</sup> Alaska Department of Corrections, OBSCIS Database, population profile taken February 22, 1992, for offenders in prisons and community residential centers.

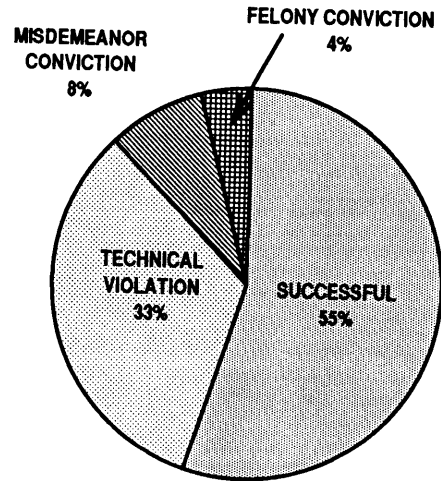
<sup>3</sup> Offenders returned to prison for violating probation or parole conditions or committing new crimes.



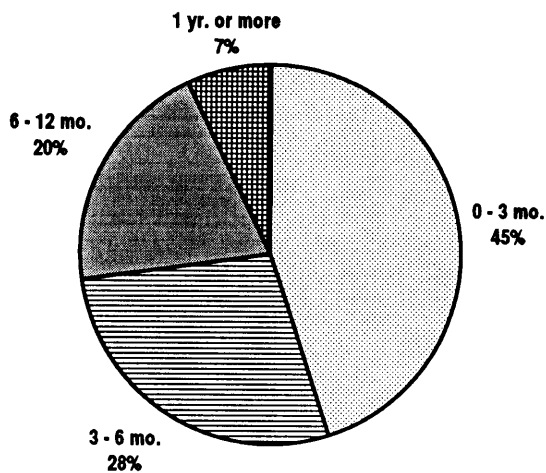
## Appendix C: Parole Violations



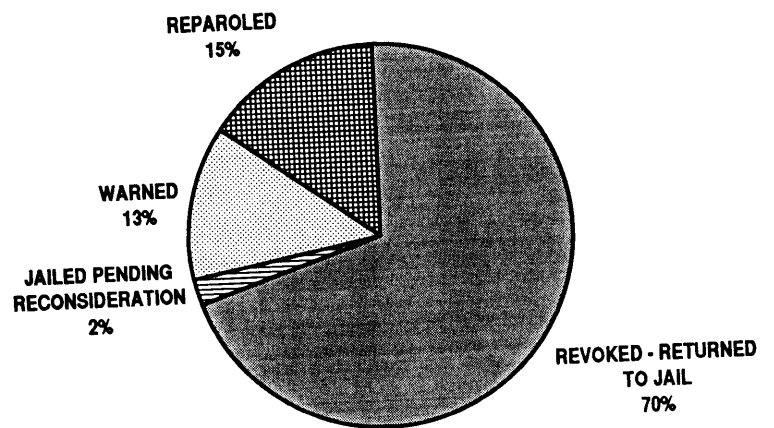
**Discretionary Parole<sup>1</sup>**  
70% successful completion, 6% new crimes



**Mandatory Parole<sup>2</sup>**  
55% successful completion, 12% new crimes



**Time to Parole Violation<sup>3</sup>**  
93% of those who are going to fail,  
fail within the first year



**Outcome of Revocation Hearing<sup>3</sup>**  
Most violations result in a return to jail

<sup>1</sup> Alaska Department of Corrections, Parole Board, discretionary parolees 1988-90.

<sup>2</sup> Alaska Department of Corrections, Parole Board, mandatory parolees 1989-90.

<sup>3</sup> Alaska Department of Corrections, Parole Board, "Alaska Parole Violators," published in Alaska Justice Forum, Spring 1992, for discretionary and mandatory parolees combined, based on revocation hearings from summer 1990.

### **Parole Violations:**

The Alaska Parole Board provided the commission with information on parole violations by discretionary and mandatory parolees. Discretionary parolees are prisoners who apply for early release after serving one-third of their sentence and are evaluated by the Parole Board on their suitability for release. Mandatory parolees are prisoners who have served all of their sentences except for the credit they have earned for good time while in prison. For both types, the Parole Board sets the conditions under which offenders will be supervised after they are released. However, the Parole Board is able to set more stringent conditions for discretionary parolees than for mandatory parolees.

From 1988-1990, 154 offenders were granted discretionary parole. As of January, 1992, 70% of these were successfully complying with their conditions of parole. Three percent were convicted of a new felony, and three percent were convicted of a new misdemeanor. Another 24% came back before the board on technical violations of their probation conditions. Despite the name, technical violations can be fairly serious. They include failed alcohol and drug tests, failure to stay employed, and failure to report to the parole officer. Prosecutors and parole officers sometimes seek to revoke parole for technical violations, rather than prosecute for new crimes.

From 1989-1990, approximately 945 offenders were released on mandatory parole. As of May, 1992, 55% of these were successfully complying with their conditions of release. Four percent were convicted of a new felony, and eight percent of a new misdemeanor. Thirty-three percent were brought back before the Parole Board on technical violations. The higher success rate among discretionary parolees may be because they are more carefully screened for release, because they have more suitable supervision conditions, or because the non-presumptively sentenced offenders eligible for parole committed less serious offenses to begin with.

Of those discretionary and mandatory parolees who failed on parole, almost all of them failed within the first year. Nearly half (45%) failed within the first three months, and nearly three-quarters (73%) failed within the first six months. This would suggest that in terms of enforcing compliance with conditions and preventing new crimes, parole supervision dollars are best spent in the first year after release. The majority of offenders who come back for a hearing before the Parole Board for violation of technical conditions have their parole revoked, and are returned to prison to serve the balance of their sentences.

## Appendix D:

Alaska Crime Rate Compared to US Crime Rate For Selected Crimes <sup>1</sup>								
	AK Large Cities	US Large Cities	AK Small Cities	US Small Cities	AK Rural Areas	US Rural Areas	AK Total	US Total
Total Crime Index <sup>2</sup>	5746.7	6547.2	6528.6	5302.6	3311.1	2022.1	5152.7	5820.3
Violent Crimes	586.7	856.9	574.3	457.6	405.6	206.7	524.5	731.8
Property Crimes	5159.1	5691.3	5174.5	4845.0	2905.4	1815.4	4628.2	5088.5
Murder	4.4	10.6	9.1	5.2	9.9	5.7	7.5	9.4
Rape	89.7	45.6	75.3	32.6	49.9	22.4	72.9	41.2
Robbery	154.6	322.0	37.0	62.5	10.5	15.7	76.9	257.0
Agg. Assault	338.9	477.8	453.0	357.3	335.2	162.8	376.4	424.1
Burglary	910.1	1356.4	958.0	1053.3	824.0	670.6	894.3	1235.9
Theft	3571.2	3533.4	4315.0	3559.3	1750.1	1023.8	3168.5	3194.8
Vehicle Theft	677.7	801.4	682.3	232.4	331.3	121.1	565.4	657.8
Total Population	226,338	195,523,468	143,491	22,894,945	180,214	33,791,460	550,043	248,523,873

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<sup>1</sup> U.S. Department of Justice, Federal Bureau of Investigation, 1990 Uniform Crime Reports, Crime in the United States at 50, 60 (August 11, 1991).

<sup>2</sup> Crimes reported per 100,000 population.

### Crime Rate Comparison:

The U.S. Department of Justice requires states to participate in collection of information for the Uniform Crime Reports to obtain comparative data for selected crimes. UCR keeps track of crimes according to the size of the locality: metropolitan statistical areas with a population of at least 50,000 (in Alaska, only Anchorage), other cities, which are smaller, mostly incorporated jurisdictions, and rural areas. The numbers in this chart are based on the number of crimes reported per 100,000 population of the area. Federally required UCR data does not cover all crimes, most notably omitting sexual abuse of a minor, drug offenses, and driving while intoxicated.

A comparison of the Uniform Crime Reporting Index for Alaska and the United States shows that Alaska as a whole has a lower crime rate (5152.7 reported crimes per 100,000 population) than the United States as a whole (5820.3 reported crimes). The crime rate in Anchorage also is lower, while the crime rate for small Alaska cities and rural areas is higher than similar areas Outside. This pattern holds true for both violent crimes (murder, rape, robbery, and aggravated assault) and property crimes (burglary, theft, and motor vehicle theft).

Three crime patterns emerge from this chart: the rape (sexual assault) rate in Alaska is almost twice as high in all areas of the state as it is in other parts of the country. The robbery rate is lower all across the state. For all other crimes, large cities in other parts of the country have a higher crime rate than Anchorage, while small cities and rural areas Outside have a lower crime rate than small Alaska cities and the Bush.

## **Appendix E:**

### **Recidivism: Number and Timing of Rearrests**

#### **Recidivism - Number and Timing of Rearrests:**

The commission analyzed information from the Department of Corrections OBSCIS database to find out when and how often offenders were rearrested after their release from custody. It studied felons and misdemeanants who were released from DOC custody during the years 1984-1987, following them from their date of release until April, 1990. The study noted the number and timing of arrests for new arrests (not new convictions) that appeared in the database. There may be some additional arrests that did not appear in OBSCIS because the defendant was not booked at a Department of Corrections facility.

Just under half of the felons (46%) and misdemeanants (45%) studied were not rearrested for any crime in the 3-7 years following release. About one-fourth of felons (21%) and misdemeanants (23%) were rearrested once, one-fourth (23%) were rearrested two to four times, and a few offenders (2%) were arrested 10 or more times following release. Rearrest rates were lowest for felony drug offenders and misdemeanor alcohol offenders (mostly driving offenses). Multiple rearrests were most common for property and public order offenders (mostly burglary, shoplifting, disorderly conduct, and criminal trespass).

Of those offenders who were rearrested, over half were rearrested within the first year following release. Fifty-eight percent of the felons and 52% of the misdemeanants who were rearrested at all were rearrested during this time. Fewer and fewer rearrests occurred as time went on. This fits with other studies finding that offenders are generally at highest risk for reoffense during the first year following release.

These charts give some indication of the large number of misdemeanants processed by the criminal justice system. Of the 46,360 people released during the five-year study period, 77% were misdemeanants. A full one-third of the total (34%) were convicted of driving while intoxicated.

**Number of Rearrests for Offenders  
Released from Custody 1984-87<sup>1</sup>**

Felony Offenders							
	Number of Rearrests					Percent of Total	Number of Offenders
	None	1	2-4	5-9	10+		
Crimes Against Person	50%	20%	22%	6%	2%	29%	3050
Property Offenses	40%	20%	25%	11%	4%	36%	3764
Public Order	40%	19%	27%	12%	2%	1%	98
Drug Offenses	59%	20%	15%	4%	2%	12%	1215
Other	41%	23%	25%	9%	2%	22%	2253
Total Rearrests	46%	21%	23%	8%	2%	100%	10380

Misdemeanor Offenders							
	Number of Rearrests					Percent of Total	Number of Offenders
	None	1	2-4	5-9	10+		
Crimes Against Person	37%	23%	28%	10%	2%	6%	2243
Property Offenses	26%	22%	31%	15%	6%	4%	1584
Public Order	26%	23%	32%	14%	5%	4%	1366
Drug Offenses	34%	22%	27%	12%	5%	--	128
Alcohol <sup>2</sup>	52%	25%	19%	3%	1%	48%	17123
Other <sup>3</sup>	42%	21%	25%	9%	3%	38%	13536
Total Rearrests	45%	23%	23%	7%	2%	100%	35980

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<sup>1</sup> Alaska Department of Corrections, OBSCIS Movement File, offender tracking data from January 1984 - April 1990.

<sup>2</sup> Offenses in this category consist primarily of driving while intoxicated (92%), with some bootlegging, refusal to be tested for intoxication, and minor consuming alcohol.

<sup>3</sup> Common other misdemeanor offenses include resisting arrest, fish and game offenses, failure to satisfy a judgment, failure to appear in court, reckless driving, and driving with license suspended or revoked.

## Time to First Rearrest for Offenders Released from Custody 1984-87<sup>1</sup>

Felony Offenders									
	Date of First Rearrest							Percent of Total	Number of Offenders
	Not Rearrested	by First Year	by Second Year	by Third Year	by Fourth Year	After Fourth Year	Time Unknown <sup>2</sup>		
Crimes Against Person	50%	21%	8%	6%	4%	3%	8%	29%	3050
Property Offenses	40%	32%	9%	5%	3%	2%	9%	36%	3764
Public Order	40%	33%	6%	7%	0%	3%	11%	1%	98
Drug Offenses	59%	17%	8%	4%	2%	2%	8%	12%	1215
Other	41%	28%	9%	4%	3%	2%	13%	22%	2253
Total - Time to First Reoffense	46%	26%	9%	5%	3%	2%	9%	100%	10380

Misdemeanor Offenders									
	Date of First Rearrest							Percent of Total	Number of Offenders
	Not Rearrested	by First Year	by Second Year	by Third Year	by Fourth Year	After Fourth Year	Time Unknown		
Crimes Against Person	37%	28%	10%	6%	3%	3%	13%	6%	2243
Property Offenses	27%	39%	10%	6%	2%	3%	13%	4%	1584
Public Order	26%	35%	10%	5%	3%	3%	18%	4%	1366
Drug Offenses	34%	34%	6%	6%	2%	2%	16%	--	128
Alcohol <sup>3</sup>	52%	15%	7%	5%	3%	3%	15%	48%	17123
Other <sup>4</sup>	42%	28%	11%	6%	4%	2%	7%	38%	13536
Total - Time to First Reoffense	45%	22%	9%	6%	3%	3%	12%	100%	35980

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<sup>1</sup> Alaska Department of Corrections, OBSCIS Movement File, offender tracking data from January 1984 - April 1990.

<sup>2</sup> The database shows that the offender was rearrested but does not indicate the date of rearrest.

<sup>3</sup> Offenses in this category consist primarily of driving while intoxicated (92%), with some bootlegging, refusal to be tested for intoxication, and minor consuming alcohol.

<sup>4</sup> Common other misdemeanor offenses include resisting arrest, fish and game offenses, failure to satisfy a judgment, failure to appear in court, reckless driving, and driving with license suspended or revoked.

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