ALASKA SENTENCING COMMISSION

1991 ANNUAL REPORT TO THE GOVERNOR AND THE ALASKA LEGISLATURE

December 1991

ALASKA SENTENCING COMMISSION

1991 Annual Report to the Governor

and the Alaska Legislature

December 1991

Alaska Sentencing Commission
1029 West Third Avenue, Suite 201
Anchorage, AK 99501
(907) 279-2526

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 annual report of its proceedings for the 1991 calendar year, as required by AS 44.19.561-.577.

The following 14 Alaskans served on the commission during 1991:

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
Warren W. Matthews, Anchorage, Supreme Court Justice
Gigi Pilcher, Ketchikan, Crime Victim Advocate
Frank Prewitt, Anchorage, Deputy Commissioner of Corrections, representing Commissioner Lloyd Hames
John Salemi, Anchorage, Public Defender
Duane S. Udland, Anchorage Deputy Chief of Police, Law Enforcement Representative
Fran Ulmer, Juneau, Alaska House of Representatives

The commission would like to recognize the contributions of the many state employees who have generously assisted in the commission's work during 1991. In particular, the commission would like to acknowledge the assistance of Emma Byrd, Director of Community Corrections, for her work on intermediate sanctions and data collection, and the assistance of Sam Trivette, Executive Director of the Parole Board, for his consistent help and dedication.

The commission would also like to thank the Alaska Judicial Council staff for its assistance with commission staffing.

Table of Contents

Executive Summary

Alaska's prison population has more than tripled since 1980, growing at a much faster rate than the population or the crime rate, while the operating budget for the Department of Corrections has quadrupled and continues to increase. Concern about prison overcrowding and costs, as well as general concern about the efficacy of sentencing practices, prompted the Alaska State Legislature to establish the Alaska Sentencing Commission in 1990.

During the first half of its three-year term, 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. Commission staff did a comparative analysis of sentence lengths and criminal procedures in six other states. The commission's research analyst worked to create a comprehensive criminal justice database to consolidate and improve existing information collection. The commission reviewed criminal history structure and intermediate sanctions policy with two nationally recognized consultants on sentencing reform. It discussed the philosophical and practical purposes of sentencing.

The commission also consulted local and national experts on substance abuse treatment and sex offender treatment, asking about rehabilitation and recidivism. The commission studied a number of legal issues pertaining to the court of appeals and its decisions. It took public testimony at most meetings, from victims, families of offenders, criminal justice and rehabilitation professionals, and others. It studied the current use of intermediate sanctions such as community residential centers and drug treatment programs, learning about new programs and policies at work across the country. In addition, a number of commissioners and other state officials participated in a nationwide symposium and work session focused on the use of intermediate sanctions as alternatives to incarceration. Its staff conducted interviews with Alaska judges, prosecutors and defense attorneys about their views on the current system and on potential changes.

The commission has been working to fulfill its legislative mandate to evaluate sentencing laws and practices and to make recommendations for improvement. This report contains both general policy statements and specific recommendations for action by all branches of state government, including:

* policy and budget considerations for evaluating sentencing legislation
* proposals for one new aggravating factor and one new mitigating factor
* expanded immunity for probation and parole officers
* streamlined probation revocation procedures
* greater support for rehabilitation programs
* increased availability and use of intermediate sanctions by corrections officials and judges
* improvements in state data collection

Much of the commission's work is still ongoing and will be the subject of further recommendations in 1992 and early 1993. Public comment is encouraged.

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.

- ★ Criminal sentencing legislation is a complex area which should be approached with care. Whenever sentencing legislation is proposed, the following policy issues should be considered: constitutional requirements including the principle of reformation and the need for protection of the public, the societal goals of sentencing, the relative seriousness of offenses, the need for uniformity as balanced against the need for judicial discretion, the effect on victims, the fiscal impact and cost-effectiveness of the proposal, alternatives to imprisonment, the effect on recidivism, procedural implications, and whether the changes are just and fair. (page 8)

- ★ The full fiscal impact of proposed sentencing changes should be faced realistically, including the need for additional prison space and the need for adequate enforcement of probation conditions. Prison overcrowding and the availability of alternatives to imprisonment should be considered when recommending changes. (page 9)

- ★ The commission recommends that a statutory aggravating factor be established to permit longer sentences for repetitive sex offenders. (page 20)

- ★ The commission recommends that a statutory mitigating factor be re-established for use when a defendant's prior offense was of a less serious class than the present offense. (page 21)

- ★ The commission recommends that state immunity from liability for the release and supervision of criminal offenders be expanded. (page 26)

- ★ The commission recommends that the Alaska Rules of Court be revised to give priority to probation revocation proceedings. (page 27)

- ★ The commission recommends that rehabilitation programs for adult and juvenile offenders be strongly and consistently supported. The commission believes that rehabilitation of the offender is an important goal of sentencing and may reduce recidivism. The commission strongly recommends increasing the number of inpatient substance abuse treatment beds available statewide. (page 30)

- ★ The commission recommends that the Department of Corrections conduct a rigorous evaluation of its existing treatment programs and work to encourage inmate participation. The commission recommends that current rehabilitative programs continue to be fully funded pending the results of these evaluations. (page 31)

- ★ The commission believes that the use of intermediate sanctions in appropriate cases is both sound correctional practice and an opportunity to control prison overcrowding. The commission encourages the Department of Corrections to expand its use of intermediate sanctions such as treatment, work release, community residential centers, and intensive supervised probation. The commission encourages the Department of Corrections to review its classification system to allow for quicker and more extensive use of intermediate sanctions and rehabilitative programming. (page 39)

- ★ The commission recommends that the Department of Corrections use community residential centers to aid felons serving long sentences in making a gradual transition back to the community, and to identify low risk offenders who can safely serve their entire sentence in a community residential center. The commission recommends that if community residential centers are used to house both furloughees and offenders whose probation or parole has been revoked, there should be separate management of the programs for each group. The commission supports additional funding for community residential centers as a less costly alternative to imprisonment. (page 39)

- ★ The commission recommends that the Department of Corrections and the court system educate judges about rehabilitation and intermediate sanction programs. It encourages judges to make recommendations to the Department of Corrections about which offenders should or should not be included in these programs. (page 40)

- ★ The commission recommends that the state develop policies which would encourage judges to make greater use of intermediate sanctions for appropriate felony offenders and misdemeanants. The commission also encourages both judges and probation officers to expand the use of intermediate sanctions for probation and parole revocations rather than returning an offender to incarceration. (page 40)

- ★ The commission recommends that all criminal justice agencies contribute to the comprehensive criminal justice database which the commission is currently creating. The state should maintain this database after the commission goes out of existence at the end of FY'93. The database should be housed within an existing neutral state agency such as the Alaska Judicial Council, with sufficient funding for one person to compile and analyze data. (page 47)

- ★ The commission recommends that the current databases maintained by the three executive departments should be continued. The commission supports current efforts to develop a case tracking number to follow each case through these systems; it also recommends development of a common offender tracking number to allow for analysis of criminal history. The commission recommends that each department review its system to fix current shortcomings and to identify key information which is not being gathered. A small amount of additional executive department funding may be necessary for this purpose. (page 47)

- ★ The commission encourages the Department of Corrections to maintain and improve its system for prison population forecasting and to make use of the commission's combined database. The commission recommends adequate funding for technical support for forecasting. (page 48)

- ★ The commission recommends that the court system's efforts to automate its information system include the collection of sentencing data and that the legislature devote adequate funds to this effort. The commission recommends that the court system database be coordinated with the combined criminal justice database and the executive branch automatic tracking number. (page 48)

- ★ The commission is ready to work with all other parts of the criminal justice system to carry out these improvements.

I. 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 18 months, the commission has provided a forum through which legislators, judges, prosecutors and defense attorneys, law enforcement, corrections officials, and members of the public have discussed 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.

A. Prison Overcrowding as an Impetus for Sentencing Reform

Alaska's prison population tripled during the early 1980s, from 770 in 1980 to 2245 in 1986. The prison population grew at a much faster rate than the increase in general population or any changes in the crime rate could account for. Some of the increase was attributable to a larger state budget, which increased the number of police officers, prosecutors, public defense attorneys, and correctional officers, making possible a higher level of professionalism in law enforcement agencies. A number of laws were more vigorously enforced, particularly for sexual offenses and violent crimes. The 1980 Criminal Code Revision was also significant, requiring incarceration for crimes subject to presumptive or minimum sentences.[1] Alaska's prison population leveled off during the last half of the decade, rising gradually to 2483 at the end of 1991.[2] Figure 1 shows the comparative growth of the general population, the crime rate, the number of crimes committed, and the prison population.

Alaska's prisons are now full. In 1991 the daily number of prisoners fluctuated just above and below prison capacity, as it has for the last five years. The Department of Corrections transferred a number of inmates between institutions to stay in compliance with population caps set by the settlement in the lawsuit Cleary v. Smith. Offenders occasionally waited to serve their sentences because prison space was not currently available. The Hickel administration reintroduced previous legislation (SB

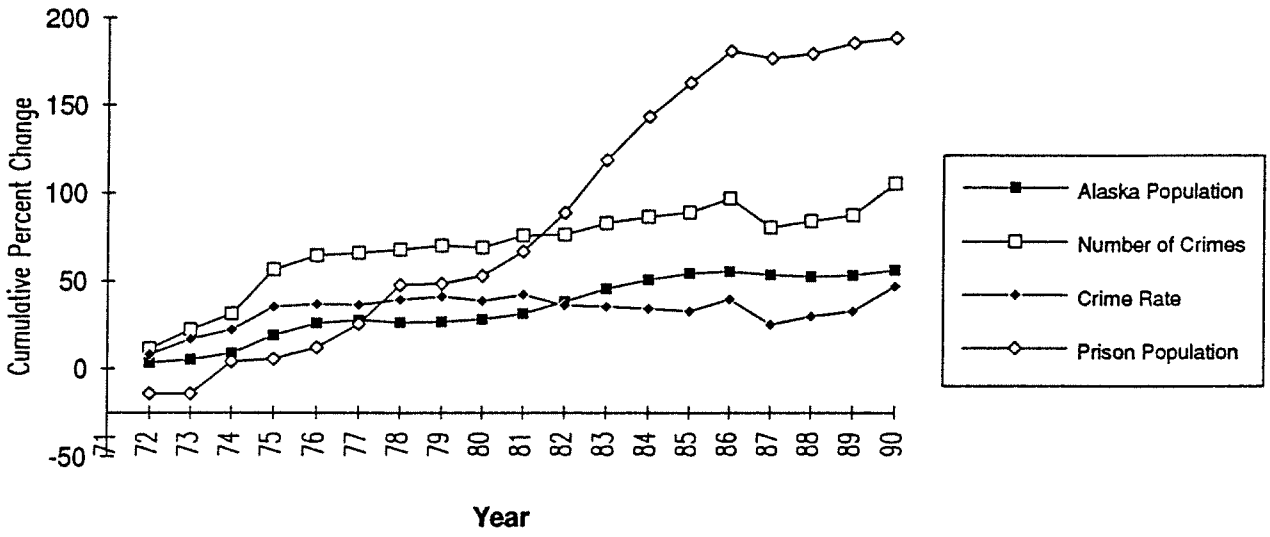
---

[1] A 1987 Alaska Judicial Council study showed that presumptive sentencing, especially the legislative changes to presumptive sentencing in 1982 and 1983, accounted for an estimated 41.6 percent of the 100 percent increase in total prison time sentenced between 1980 and 1984. Alaska Judicial Council, Alaska Felony Sentences: 1984 at III (March 1987). Presumptive sentencing also decreased the number of felons who were eligible for discretionary parole.

[2] Figures provided by the Alaska Department of Corrections. Prison population figures do not include prisoners housed in community residential centers or those in the custody of local jails administered on contract through the Department of Public Safety. For a more extensive discussion of Alaska's prison population growth through the 1980s, see Alaska Sentencing Commission, 1990 Annual Report at 22-26 (hereafter cited as 1990 Annual Report).

(SB 215/HB 224) to allow early release of certain prisoners by executive order if necessary to relieve overcrowding. The Department of Corrections initiated an extensive internal review of its policies and procedures, including alternatives to incarceration which might relieve overcrowding.

Figure 1
Population Trends
1972 - 1990*



Alaska Sentencing Commission 1991 Annual Report

* 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.

The growth in Alaska's prison population has been accompanied by the growth of its corrections budget. The operating budget for the Department of Corrections increased over fourfold during the last ten years, from $21.6 million in FY 1980 (2% of the entire state operating budget) to $98.7 million in FY 1990 (4.6% of the entire operating budget). Alaska spent $127.4 million for prison construction, renovation and repair during the same period. By FY 1992, the operating budget was $102.7 million, plus a supplemental budget request of $10.8 million.[3] Further increases are expected for FY 1993.

[3] Information provided by Department of Corrections, December 1991.

Throughout the 1980s, Alaska used its oil wealth to build new correctional facilities. Prison construction has now slowed substantially, due to budget constraints and growing questions about whether it makes sense to devote so much money to prisons. Corrections expenditures have been one of the fastest rising components of the state operating budget, increasing faster during the 1980s than spending for education, hospitals and health care, highways, and police protection. Despite this spending, Alaska corrections officials are still struggling to keep the number of prisoners within the capacity of each institution.

The experience of other states suggests that the system breaks 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 in the way of rehabilitation. Eventually the overcrowding of jails and prisons results in the inappropriate use of parole, good time and early release simply to relieve overcrowding.[4] Respect for the system is diminished when the public and offenders realize that the court-imposed sentence bears little relation to the sentence the state can afford to enforce. While Alaska has not reached the crisis stage of some other states, the problems caused by overcrowding underline the importance of keeping sentencing practices and prison capacity in balance.

B. Policy Reasons for Sentencing Reform

In response to mounting policy and budgetary concerns, a number of state legislatures have appointed sentencing commissions to consider a structured approach to reform. The most common and most important goals of sentencing reform are to:

- ★ Insure uniformity in sentencing and eliminate insupportable disparities based on race, gender, or socio-economic factors.
- ★ Increase the severity of correctional sanctions in direct proportion to the seriousness of the offense and the criminal history of the offender.
- ★ Guide judicial decision-making while allowing for judicial discretion in cases where compelling circumstances exist.

---

[4] In Texas, for instance, felony defendants serve an average of two months in jail for every year of their sentence. In North Carolina, the average misdemeanant serves 10 percent of the court imposed sentence, non-violent felons serve an average of 15 percent, and violent felons serve an average of 40 percent. Offenders refuse to be put on probation because they can be completely released from state custody sooner by waiting for early release. Information provided by the Criminal Justice Policy Council, Austin, Texas, and the Criminal Justice Analysis Center, Raleigh, North Carolina, November 1990.

- ★ Reassert legislative control over sentencing policy in a coordinated and comprehensive way, as opposed to a piecemeal approach.

- ★ Coordinate the full range of criminal sanctions from fines and probation to total confinement.

- ★ Coordinate sentencing policies with correctional policies and resources.[5]

Sentencing policy requires coordination among branches of government, built on appreciation for the unique role that each branch plays in sentencing. Constitutionally and practically speaking, statewide sentencing policy is established by the legislature. Judges have the most experience and direct involvement with the day-to-day application of sentencing policy to individual cases. The Department of Corrections is responsible for implementing the decisions of the other two branches and is the first to feel the pinch of overcrowded conditions. Prosecutors and defense lawyers, law enforcement officers and the public also have real and vital interests in sentencing and in the commission process. Over the past 18 months, representatives of all of these interests have actively participated in the commission's wide-ranging discussions of the policy considerations behind sentencing reform.

C. The Work of the Alaska Sentencing Commission

The purpose of the Alaska Sentencing Commission 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 legislature has 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;

---

[5] National Conference of State Legislatures, A Legislator's Blueprint to Achieving Structured Sentencing at 2 (August 1989).

(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. In 1991, the commission considered most of these factors in great detail. It continues to gather the data necessary to project the financial effect of changes in sentencing laws and practices.

The legislature also required the commission to solicit and consider information and views from a broad spectrum of interested constituencies, basing its recommendations upon the following factors:

(1) the seriousness of each offense in relation to 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. In 1991, the commission examined most of these factors in great detail. It found that information on deterrence is difficult to collect and quantify, and that little

useful research has been done. The commission intends to make further inquiry into the question of unjustified disparity in sentencing during 1992.[6]

The full commission met eleven times for a total of 15 days during 1991. 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 intermediate sanctions policy with two nationally recognized consultants on sentencing reform. It discussed the philosophical and practical purposes of sentencing.

The commission also consulted local and national experts on substance abuse treatment and sex offender treatment, discussing these subjects at length. Its staff conducted interviews with Alaska judges, prosecutors and defense attorneys to learn their views on the current system and on potential changes. Staff surveyed six other jurisdictions about sentence lengths and criminal procedures to see how common offenses are handled elsewhere. It studied the available Alaska data on sentence length, offense type, case handling, and offender characteristics.

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 intermediate sanctions 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

---

[6] The commission developed a mission statement after review of the enabling legislation. It provides:

> The purpose of the Sentencing Commission is to review sentencing practices in Alaska to see if any changes are appropriate. The commission plans to analyze the existing system and evaluate possible changes. The commission will attempt to answer the following questions:
>
> 1. Are there Alaska sentences which are inappropriate and in need of change, as authorized, actually imposed or carried out?
> 2. Should Alaska adopt sentencing guidelines? For all offenses or only for certain offenses?
> 3. What intermediate sanctions (alternatives to traditional incarceration) should exist in Alaska?
> 4. What costs or cost savings result from any of the above?

on the use of intermediate sanctions. Much of this work is still ongoing and will be the subject of further recommendations in 1992.[7]

D. The Practical Necessity for Data Collection

Across the country, substantial resources have been directed toward criminal justice information systems, yet significant problems remain. The data gathered have generally proven inadequate to answer such basic questions as: how many assault convictions during a year involved use of a weapon? how many involved a domestic dispute? how many offenders are required to pay restitution as part of their sentence? how much restitution is actually collected? Alaska is no different from most states in its inability to compile basic information.

In the past, Alaska has given little attention to the collection of information for developing state criminal justice policy. Yet with declining revenues and increasing prison populations, there is a compelling need for information to aid legislators in making difficult resource allocation decisions. The commission's research analyst has been working to collect this information from existing databases and other sources. This has been a frustrating task, as discussed later in this report, but the commission continues to believe it is a vital one. Appropriate data are essential to planning and policy development in the complicated areas of sentencing and correctional policy.

Much of the necessary information is not consistently recorded in any of the state databases currently available. The commission will do further work in 1992 to collect data on case processing, nature of the offense, offender characteristics, conditions of probation, and information about recidivism. It will also make recommendations to improve data collection systems in all parts of the criminal justice system.

---

[7] The commission's staff consists of a half-time attorney, a full-time research analyst, and a full-time secretary. The staff works 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. Its budget for FY 1992 is $224,700, divided as follows:

Personnel	$126,800
Commission and Staff Travel	$ 18,500
Contractual	$ 73,900
Commodities	$ 5,000
Equipment	$ 500
Total	$224,700

II. The Work of the Alaska Sentencing Commission

The following topics are those which the Alaska Sentencing Commission discussed in some detail during 1991.[8] Included are the commission's findings and recommendations for action by the executive, legislative, and judicial branches.[9] Formal recommendations appear in bold type. In some instances, the commission has specifically recommended that no action be taken. Where appropriate, there is a description of the discussion process behind the commission's conclusions. Because the commission is only halfway through its three-year span, inquiry into almost all subjects remains ongoing during 1992 and early 1993.

A. General Considerations for Sentencing Legislation

The commission makes the following general recommendations applicable to all policy and budgetary questions related to sentencing:

1. Policy Considerations

Criminal sentencing legislation should be approached with care, since sentencing is a very complex area. Apparently simple proposals may have significant unintended consequences, and new policies should be established only after thoroughly considering all of their implications. The commission believes that the following questions should be examined each time criminal sentencing legislation is considered:

1. **Does the proposal meet the constitutional requirement that penal administration be based on the principles of reformation and protection of the public?**

2. **How does the proposal carry out the societal goals of protection of the public, rehabilitation, isolation, community condemnation, reaffirmation of societal norms, and general and specific deterrence?**

---

[8] The commission's minutes and materials are available upon request for further background information.

[9] According to the commission's bylaws, eight out of 14 commissioners must approve the commission's formal recommendations. Where this report refers to a commission recommendation, it was approved by at least eight votes. Dissenting votes are noted. While a quorum was always present, not all members were present for all votes.

3. Does the proposal appropriately rate the seriousness of the offense relative to other offenses?

4. Does the proposal advance uniformity in sentencing and the elimination of insupportable disparities based on race, gender, or socio-economic factors?

5. What effect on victims does the proposal have?

6. What is the full fiscal impact of the proposal, including the effect on enforcement, prosecution, public defense, the judiciary, the Department of Corrections, including prison population, and victims?

7. Are the benefits of the change worth the cost? Are less expensive alternatives available?

8. Would sanctions other than simple imprisonment be more appropriate for an offense, because they meet the goals of sentencing either more effectively or at a lower cost?

9. Do the changes take into account whether recidivism can be minimized through rehabilitation?

10. What procedural implications do the changes have for the criminal justice system?

11. Do the changes balance the need for judicial discretion necessary to address individual cases with the need for common standards to promote uniformity?

12. Are the changes just and fair?

These recommendations were passed by the commission 9-0.

2. Budgetary Considerations

1. The state will face decreasing oil revenues in coming years, which will certainly result in increasing pressure to cut back the resources available to the criminal justice system. Because criminal sentencing involves complex and controversial policy considerations, the commission believes that the implications of any budget cuts must be fully considered before they are implemented. If new crimes are created or statutory sentence

lengths increased, the full fiscal impact of these changes should be faced realistically, including the possibility that new prisons may have to be built to accommodate these offenders. The list of policy questions set out above is equally relevant in the budgetary context.

2. The commission believes that any budget constraints must be fairly apportioned among the various parts of the criminal justice system. A well funded public safety department is undercut unless adequate prosecutor, public defender and judicial resources are available to process the people arrested. Similarly, the Department of Corrections must be funded at a level corresponding to the other criminal justice agencies if there is to be a meaningful social response to conviction. When offenders are placed on probation, it is important that sanctions imposed (such as monitoring, drug testing, fines, community work service, and restitution) be adequately enforced. When offenders are sentenced to prison, it is important that prison space be quickly available and be available for the entire length of the appropriate term.

3. The commission believes that the state should strive to avoid the need for emergency release mechanisms which undermine "truth in sentencing," the idea that offenders should serve the sentence envisioned by the legislature and imposed by the judge. Realistically, the political tendency to increase sentence lengths is stronger than the tendency to decrease them. While the increases may be justifiable on an individual basis, the overall effect is to push the total number of prisoners beyond the capacity of the system. In other more overcrowded 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. While Alaska has not reached this stage, the state should be sensitive to this tendency and its implications. It should also take a serious look at alternatives to incarceration for less serious offenders, to assure itself that space will always be available for those more serious offenders posing a greater risk to public safety.

These recommendations were passed by the commission 8-1.

B. Revision of the Statutory Sentencing Structure

The legislature asked the Alaska Sentencing Commission to address a broad range of policy issues relating to sentencing reform. Working with nationally recognized sentencing consultant Kay Knapp,[10] the commission began its inquiry by building on the work of other state commissions receiving similar mandates. It structured many of its discussions around ranking the seriousness of different offenses and the role of criminal history and offender characteristics. Other states have used these factors to restructure their sentencing systems, creating two-dimensional grids on which sentencing policy is based. The commission compared these grids to the underlying structure of the Alaska system.

The commission has not yet decided whether to recommend some restructuring of the Alaska sentencing system; it will consider this question further during 1992. The detailed discussions yielded a great deal of information and debate, resulting in the recommendations included here.

1. Ranking the Seriousness of Offenses

Sentencing in Alaska starts with the offense of which the defendant is convicted. Each offense in the criminal code falls into one of eight classifications, from most to least serious: Murder I; other unclassified felonies; unclassified sexual offenses; Class A, B, and C felonies; and Class A and B misdemeanors. The legislature has imposed minimum and maximum terms for all of these offenses. The current classification structure dates from the 1980 Criminal Code revision, which was based upon the structure suggested by the national Model Penal Code.[11]

The 1990 legislature charged the commission with re-examining the seriousness of each offense in relation to other offenses. AS 44.19.571(1). As part of its mission statement, the commission asked whether there were Alaska sentences which were inappropriate and in need of change, as authorized, actually imposed, or carried out. It also asked whether Alaska should adopt sentencing guidelines, and if so, for all offenses or only for certain offenses.

---

[10] Kay Knapp is the director of the Institute for Rational Public Policy, Takoma Park, Maryland. She serves as consultant to sentencing commissions across the country.

[11] Although presumptive sentencing was enacted at the same time as the revised criminal code, they were policies of completely different origins. It has been argued in states with similar codes that there is a mismatch between the offense classifications of the criminal code and the presumptive sentences of the sentencing code. To some extent this incongruity forms the basis for the current trend toward imposition of more specific sentencing guidelines. See 1990 Annual Report at 13.

a. The Process Followed by the Commission

The commission considered 174 separate offense definitions found in Title 11, the criminal code, skipping a few of the more obscure offenses. The commission gave separate consideration to various subsections of the statute where there was some question whether different ways of committing the offense were of equal seriousness. The commission has not yet been able to consider the seriousness of offenses found outside Title 11, such as the DWI and DWLS provisions of Title 28 or the fish and game offenses found in Title 16. The commission also has not considered violations.

In ranking the seriousness of these offenses, the commission's underlying premise was that of proportionality: the idea that while all criminal offenses are important, they vary in discernible ways in their impact upon their victims and upon society as a whole. Offenses also vary in the degree of the offender's culpability or mental state (e.g., intentional, knowing, reckless, or criminally negligent behavior), and these differences were taken into account. The process of doing this seriousness ranking was laborious, but it proved to be a useful tool. Ultimately, it helped the commission pool its collective experience and address the basic question: does the punishment fit the crime?

b. Typical Offense Analysis

The commission first had to address how to define the conduct which would be used to represent each offense. Statutory definitions often cover many different kinds of behavior, and it is important to know which kind is being discussed. For instance, first-degree robbery can be committed a number of ways: with a semiautomatic weapon or by pretending to have a knife; with or without serious physical injury to someone; in a bank at noon or in an alley at night; taking thousands of dollars or a six-pack of beer; by someone who does it for a living or someone who does it on a drunken impulse. Each variable affects the experience and degree of threat to the victim as well as the threat to social order and well-being. All first-degree robbery is bad, but all first-degree robberies are not equally bad.

In keeping with the work of other sentencing commissions, the commission focussed its discussions on the "typical offense," the conduct most commonly seen when a particular offense is charged. Typical offense analysis includes the experience or totality of the offense, not just the legal elements of it, including conduct, weapon, location, victim, degree of injury or harm, and characteristics of the offender. The commission took care to distinguish the typical offense from the most serious offense, the horrible grisly events that grab the headlines, and the most mitigated offense, the pathetic events which may even inspire some feeling of sympathy for the offender.

The importance of typical offense analysis lies in its relationship to presumptive sentences. In addition to a maximum and minimum sentence, for certain offenses the legislature also has chosen a presumptive sentence, the sentence an offender will ordinarily receive unless certain aggravating or mitigating factors are applicable. The presumptive sentence is the one applicable to the ordinary or typical case. Even for non-presumptive sentences, typical offense analysis is useful for determining where a case should fall within the statutory range. Typical offense analysis is also useful with respect to intermediate sanctions, to help determine which offenders and offenses are appropriately sentenced using non-incarcerative sanctions.

c. Achieving a Consensus

To make the task of ranking the 174 offenses more manageable, the commission divided them up into the categories which form the basis of the criminal code: offenses against the person, property, family, public administration, public order, public health and decency, controlled substances, and miscellaneous offenses. The commission ranked the offenses within each of the categories from most to least serious. For instance, in the category of offenses against the person, the offenses ranged from first-degree murder as the most serious to indecent exposure to an adult as the least serious. In the category of offenses against property, crimes ranged from arson as the most serious to removing identification from a piece of stolen property worth less than $50 as the least serious.[12]

The commission next combined the rankings from the various categories, a task which proved fairly difficult. The commission's rankings in general reflect the principle that offenses against the person are more serious than property or public order offenses. However, some property offenses, such as arson or burglary, may also pose a physical risk to others at the time the offense is taking place; the same is true for escape from prison (a public administration offense) and inducing a minor into prostitution (a public health offense). Even where no physical risk to others is involved, some crimes (such as embezzlement or perjury) have enough impact on victims or on society to be considered more serious than a minor assault. After extended discussion, the commissioners were able to reach a general consensus on a combined ranking covering most of the offenses under discussion.

---

[12] To make sure that the discussions did not consist of just pooling common assumptions, the commission used a scoring system which assessed each offense by the type of harm inflicted, the level of the offense, and the degree of the offender's culpability. These numbers were useful for promoting discussion and for allowing the staff to rank some offenses in between commission meetings. Although the numbers served as a springboard for discussion, they were not important in themselves and the commission used them less and less as the discussion went on.

To test its initial results, the commission compared its combined seriousness ranking to the current classification system (unclassified, A, B, and C felonies, A and B misdemeanors) to see where it varied from the legislative judgment of seriousness. For those offenses where data was available, the commission compared mean sentence length (the average length of time imposed by Alaska judges for a particular offense), to see where the commission's seriousness ranking differed from current judicial sentencing practices.

The commission also conducted a comparative analysis of sentences of some of Alaska's most commonly charged crimes, looking at sentencing practices in several other states to find out where Alaska stands in relation to the norm.[13] Using the commission's description of typical conduct and typical offender characteristics for these offenses, the commission surveyed six other states to find out what sentence would ordinarily be given under these circumstances.[14] Questions included the amount of time generally imposed by the judge, the use of plea bargaining, intermediate sanctions, parole and early release provisions, and appeals. For the most part, the survey found that Alaska's sentences are within the range of sentences imposed in other states. While these states achieve a fair degree of internal consistency in their handling of assaults, robbery, property crimes, and drug offenses, there is wide variability in the handling of sexual assaults, sexual abuse of a minor, and vehicular manslaughter, in part due to a prevalence of plea bargaining in these areas.

d. Potential Changes to the Criminal Code

Based on its discussions, the commission identified a relatively small number of offenses which seemed to be more or less serious than their present classification in the code, and it discussed these offenses in detail. For some offenses, the discussion led the commission to change its own seriousness ranking; for others, it led to a vote on whether statutory reclassification should be recommended to the legislature. At this time, the commission has no reclassifications to recommend.

---

[13] The commission looked at second- and third-degree assault, first-degree robbery, first-degree burglary, second-degree theft, second-degree forgery, first-degree sexual assault, first- and second-degree sexual abuse of a minor, third- and fourth-degree misconduct involving controlled substances, vehicular manslaughter and driving while intoxicated.

[14] The states surveyed were Minnesota, Oregon, and Washington, which have undergone structured sentencing reform; Delaware, which has a different type of structured system with a continuum of correctional control; and North Carolina and Arizona, which have presumptive sentencing systems and criminal code structures similar to Alaska's. While there may be other states which have more in common with Alaska, it is much harder than it would appear to get useful and consistent information on actual state sentencing practices. The states chosen were distinguishable for the fact that good sentencing information was readily available.

The commission considered the following questions, but did not recommend action on them.[15] A more detailed description of the commission's discussion on these questions is found in Appendix 2.

1. Should criminally negligent homicide be raised from a Class C to a Class B felony?

2. Should manslaughter be raised from a five-year presumptive to a seven-year presumptive?

3. Should assisting suicide (now a form of manslaughter) be lowered from a Class A to a Class C felony?

4. Should custodial interference be reclassified upward?

5. Should unlawful exploitation of a minor be raised from a Class B offense to an unclassified sexual offense?

6. Should the penalty for statutory rape be lowered?

7. Should the age spread on statutory rape be widened?

A number of issues arising from the commission's seriousness ranking remain to be addressed. In 1992, the commission intends to consider the following questions. A more detailed discussion of these issues appears in Appendix 2.

1. Should the penalty for second-degree sexual abuse of a minor be raised?

2. Should there be a new offense definition and penalty for multiple first-degree sexual abuse of a minor offenses?

3. Should theft offenses be divided at different levels?

4. Should theft offenses be consolidated?

5. Should cocaine and crack be considered as serious as heroin?

6. Should the penalties for drug offenses be entirely restructured?

---

[15] The commission consists of 14 voting members. Its bylaws provide that a majority vote of the full commission (8 votes) is required to make a recommendation to the legislature. While a quorum was always present, not all members were present for all votes.

7. Should the definition of first-degree robbery be changed?

8. Should the assault statutes be rewritten?

9. Should criminal offenses outside of Title 11, the criminal code, be considered?

With respect to all of these proposed questions, the commission welcomes input from all branches of government and private citizens. It also welcomes suggestions for other areas of appropriate study in relation to seriousness.

2. Criminal History and Offender Characteristics

a. Assessing Criminal History and Offender Characteristics

The second step in sentencing is for the judge to determine the extent of the offender's prior criminal record. For certain offenses (murder, other unclassified felonies, and Class A and B misdemeanors), the legislature has set a statutory range of years for the sentence, leaving it up to the judge to determine the effect of prior convictions on an appropriate sentence length within the range. For other offenses (unclassified sexual offenses, all Class A felonies, and repeat B and C felonies), the legislature has set different ranges and specific presumptive sentences depending on the number of the offender's prior felony convictions.[16] The judge is required to apply the presumptive sentence to a typical case committed by an average offender. Table 1 illustrates Alaska's statutory felony sentencing structure.[17]

---

[16] Alaska does not use prior misdemeanor or juvenile convictions in setting the presumptive sentence. It also does not use prior felony convictions for certain less serious offenses if more than 10 years have elapsed from the time the defendant was last discharged from correctional control. Two or more convictions arising out of a single, continuous criminal episode for which a concurrent sentence was given are considered a single prior conviction. AS 12.55.145.

[17] Table derived from T. Carns and J. Kruse, A Re-Evaluation of Alaska's Ban on Plea Bargaining (January 1991).

Table 1
Statutory Felony Sentencing Structure in Alaska

Offense	Sentence Length (Years)		
	First Felony Conviction	Second Felony Conviction	Subsequent Conviction
Murder I	20 - 99	20 - 99	20 - 99
Other Unclassified Felonies[c]	5 - 99	5 - 99	5 - 99
Unclassified Sexual Offenses[d]	4 [8] 30	7.5 [15] 30	12.5 [25] 30
Unclassified Sexual Offenses[a,d]	5 [10] 30	7.5 [15] 30	12.5 [25] 30
Class A[e]	2.5 [5] 20	5 [10] 20	7.5 [15] 20
Class A[a,b,e]	3.5 [7] 20	5 [10] 20	7.5 [15] 20
Class B[f]	0 - 10	0 [4] 10	3 [6] 10
Class B[b,f]	0 [2] 10	0 [4] 10	3 [6] 10
Class C[g]	0 - 5	0 [2] 5	0 [3] 5
Class C[b,g]	0 [1] 5	0 [2] 5	0 [3] 5

Alaska Sentencing Commission 1991 Annual Report

Mandatory minimum terms are underlined and presumptive terms are in brackets. Statutory minimums and maximums have no underline or bracket. Under certain circumstances, a three-judge panel may reduce a term below the statutory minimum.

All incarcerated offenders are eligible for good time credit for good behavior, one day off for each two days served, which reduces most sentences by one-third. Offenders are not eligible for parole on the presumptive portions of their sentences; parole eligibility is restricted for offenders convicted of Murder I and other unclassified felonies.

[a] Applies when a defendant possessed a firearm, used a dangerous instrument or caused serious physical injury, except for manslaughter.

[b] Applies when a defendant knowingly directed the conduct (crime) at a peace officer, correctional officer, or emergency medical responder engaged in the performance of official duties at time of offense.

[c] Other unclassified felonies include second-degree murder, attempted first-degree murder, selling hard drugs to minors, and kidnapping where the victim is not released safely.

[d] Unclassified sexual offenses include first-degree sexual assault (forcible rape) and first-degree sexual abuse or assault of a minor (sexual penetration with anyone under 13, daughter or son under 18).

[e] Class A felonies include manslaughter, robbery using a deadly weapon, selling heroin to an adult, arson with risk of physical injury, kidnapping where the victim is released safely, and first-degree assault.

[f] Class B felonies include robbery not using a deadly weapon, theft over $25,000, selling cocaine or marijuana to minors, burglary in a dwelling, arson with no risk of injury, bribery or perjury, second-degree assault, sexual penetration with a person aged 13, 14 or 15, and sexual contact with anyone under 13, daughter or son under 18.

[g] Class C felonies include negligent homicide, burglary not in a dwelling, second-degree assault, theft over $500, check forgery, possessing heroin or cocaine, and bootlegging.

The third step in sentencing is to determine when a case is not typical or an offender is not average. The legislature has established a system of aggravating and mitigating factors which allow a judge to increase a sentence when the facts of the case are more serious than is typical for a similar crime, or when the offender's criminal history is more extensive or more dangerous. Similarly, the judge may decrease a sentence if it can be shown that the conduct involved or the offender's criminal history is less serious than average. AS 12.55.155. The trial judge may find that the statutory factors are not enough to avoid "manifest injustice" from failure to consider relevant aggravating or mitigating factors not specifically included in AS 12.55.155, or from imposition of the presumptive term. In that instance, the case may be referred to a three-judge panel to impose any sentence from no jail time up to the statutory maximum. AS 12.55.165, .175.

In addition to the statutory structure, a sentencing judge must consider relevant opinions of the court of appeals and supreme court. The court of appeals has held that although there is no statutory mitigating factor which specifically addresses the offender's potential for rehabilitation, this should not preclude individualized consideration of the potential for rehabilitation for first felony offenders. The court has allowed referral of cases to the three-judge panel on this basis. See Smith and King v. State, 711 P.2d 561, 570-71 (Alaska App. 1987). The sentencing judge also must take into account opinions by the court of appeals and supreme court regarding judicial "benchmarks," ranges set by the appellate courts to guide sentencing courts as to appropriate sentences in certain cases. The benchmark system has come under some question in recent supreme court opinions. The commission has discussed these opinions and intends to devote further attention to them in the future.

The sentencing judge takes numerous other sources of information into account: police reports, psychological reports, victim statements, testimony by family and friends of the victim and defendant, probation officer recommendations, prior misdemeanors, prior juvenile offenses, testimony by other alleged victims, etc. This information is applied through the structure outlined above to arrive at the appropriate sentence.

b. Possible Changes to the Criminal History Scoring Systems

As part of its review of the advantages and disadvantages of statutory restructuring, the commission examined in some detail the criminal history scoring systems used in four other jurisdictions. The commission consulted with Professor David Boerner, University of Puget Sound Law School, who was highly instrumental in the Washington Sentencing Reform Act and well informed about sentencing reform efforts in other states. He assisted the commission in understanding the very different

and very complicated systems used by Washington, Minnesota, Oregon, and the United States Sentencing Commission.

These systems differ from Alaska in their attempt to quantify criminal history and offender characteristics and to establish sentencing ranges accordingly. The perceived advantage of these systems is that they shift discretion from the judiciary to the legislature and thus increase uniformity in how this information is considered. Alaska's statutory sentencing structure, as illustrated by Table 1, makes mechanical distinctions only between first felony offenders, second offenders, and multiple offenders. Beyond that, the judge uses aggravating and mitigating factors to reach an appropriate sentence within the statutory or benchmark range. The perceived advantage of Alaska's system is that it gives the judge a great deal of flexibility in considering prior criminal history.

After examining these systems, the commission recommended no major changes to the Alaska system for considering criminal history and offender characteristics. While in theory the flexibility of the current system may make it more difficult to reach the legislative goal of sentencing uniformity, it appears to the commission that no major problems have arisen in practice. In reaching this conclusion, the commission considered the following questions:

1. Should prior felony convictions be weighted in different ways to determine the offender's criminal history score?

2. With respect to the present crime, should sentencing be based only on the elements of the crime of which the offender is convicted, or may the court take evidence of a more serious crime into account?

3. With respect to past crimes, should an offender's criminal history score be based only on convictions, or may all of the offender's past behavior be discussed at sentencing?

4. Should past misdemeanor history be used to help determine the presumptive sentencing range?

5. Should juvenile offenses be used to help determine the presumptive sentencing range?

6. Should an offender's custody status at the time the offense was committed (such as on parole or probation) be used to help determine the sentencing range?

7. How should multiple prior convictions be handled when they arise from the same episode?

8. Should a mitigating factor be added for cases where the offender has had multiple felony convictions punished by concurrent or consecutive sentences with no separate opportunity for rehabilitation on each offense?

9. Should juvenile adjudications not be used for sentencing purposes after a certain period of time has passed?

10. Should adult convictions not be used for sentencing purposes after a certain period of time has passed?

11. When should the time period begin to run for determining whether a conviction is too old to be used for sentencing purposes?

12. Should a previously repealed mitigating factor be re-established for use when a prior offense was of a less serious class than the present offense?

13. Should a mitigating factor be added for extraordinary potential for rehabilitation?

14. Should a mitigating factor be added for minimizing trauma to the victim through cooperation with the authorities?

15. How should multiple current convictions be handled when they arise from the same criminal episode? When are consecutive sentences appropriate?

With respect to most of these questions, the commission concluded that current Alaska practice was relatively satisfactory. The commission recommends establishment of one additional aggravating factor for repetitive sex offenders, and one additional mitigating factor for prior offenses of a less serious class than the present offense. These recommendations follow.

1. Should an aggravating factor be established for repetitive sex offenders? **The commission recommends that an aggravating factor be added to the list in AS 12.55.155(c), to the following effect: "(26) the defendant is convicted of an offense specified in AS 11.41.410-460 and the defendant's criminal history includes a prior conviction for conduct also covered by these sections."**

This question generated very strong feelings, pro and con, on the part of the commissioners. The majority of commissioners felt that repetitive sex offenders present such a high risk to the public that more prison time is necessary than current

presumptive sentences would impose. The majority argued that sex offenders usually offend multiple times and/or against multiple victims and are rarely caught the first time they offend. They often escape conviction or are allowed to plead to lesser conduct because sex offenses are difficult to prove, especially when the victims are children. With Class B offenses in particular, commissioners felt there was a need to impose sentences long enough to allow completion of a two-year sex offender treatment program.

Dissenting commissioners felt that the present system already has a heavy impact, both for sex offenses and for repeat offenses. These commissioners felt that insufficient time to complete treatment was more of a problem for first-time Class B sex offenders, who typically get one- to three-year sentences, rather than second-time Class B offenders, who face a presumptive four-year term, or second-time unclassified offenders, who face a presumptive 15 years. This question also generated a discussion of plea bargaining practices, including a discussion of why unclassified sex offenses are often pled down to Class B. The motion to recommend this aggravating factor passed, eight in favor and four opposed.

2. Should a mitigating factor be re-established for use when a defendant's prior offense was of a less serious class than the present offense? **The commission recommends that the mitigating factor repealed from AS 12.55.155 in 1982 be reinstated: "(8) a prior felony conviction considered for the purpose of invoking the presumptive terms of this chapter was of a less serious class of offense than the present offense."**

The legislature's rationale for eliminating this mitigating factor was that it could reward criminals who in fact were developing an escalating pattern of seriousness in their criminal behavior. However, most commissioners felt that there are times when such a mitigating factor is necessary to remove rigidity from the system.[18] For example, a person might be convicted of a minor felony, such as theft of a snowmachine or bootlegging, as a young adult. If that person is convicted of a first-degree assault 10 years later, he or she will serve the same term as an offender with a recent manslaughter conviction. A large number of young adults commit low-level property offenses, and most of the commissioners felt that these offenses should not be treated as the equivalent of serious felonies committed by a more mature individual. To answer the concern expressed by the legislature in repealing this mitigating factor originally, the legislative history should note that this factor should not be applied if it would reward an

[18] This mitigating factor has a corresponding aggravating factor, AS 11.55.155(c)(7), which allows aggravation of a sentence when the prior felony was of a more serious class than the present offense, and some commissioners felt that it was appropriate to have a corresponding mitigating factor.

escalating pattern of behavior or criminal career. The motion to recommend this mitigating factor passed, 11 in favor and one opposed.

The commission considered whether to recommend codification of the nonstatutory mitigating factor "extraordinary potential for rehabilitation" set out by the court of appeals. The commission studied those cases which had been referred to the three-judge panel on this basis; it recommended no change. The commission began to study consecutive and concurrent sentencing law, but deferred resolution of this complex question until 1992. These two issues are described in greater detail in Appendix 2. Public comment on these issues is welcome.

3. Restructuring the Statutory Sentencing System

a. Switching to a More Extensive Grid System

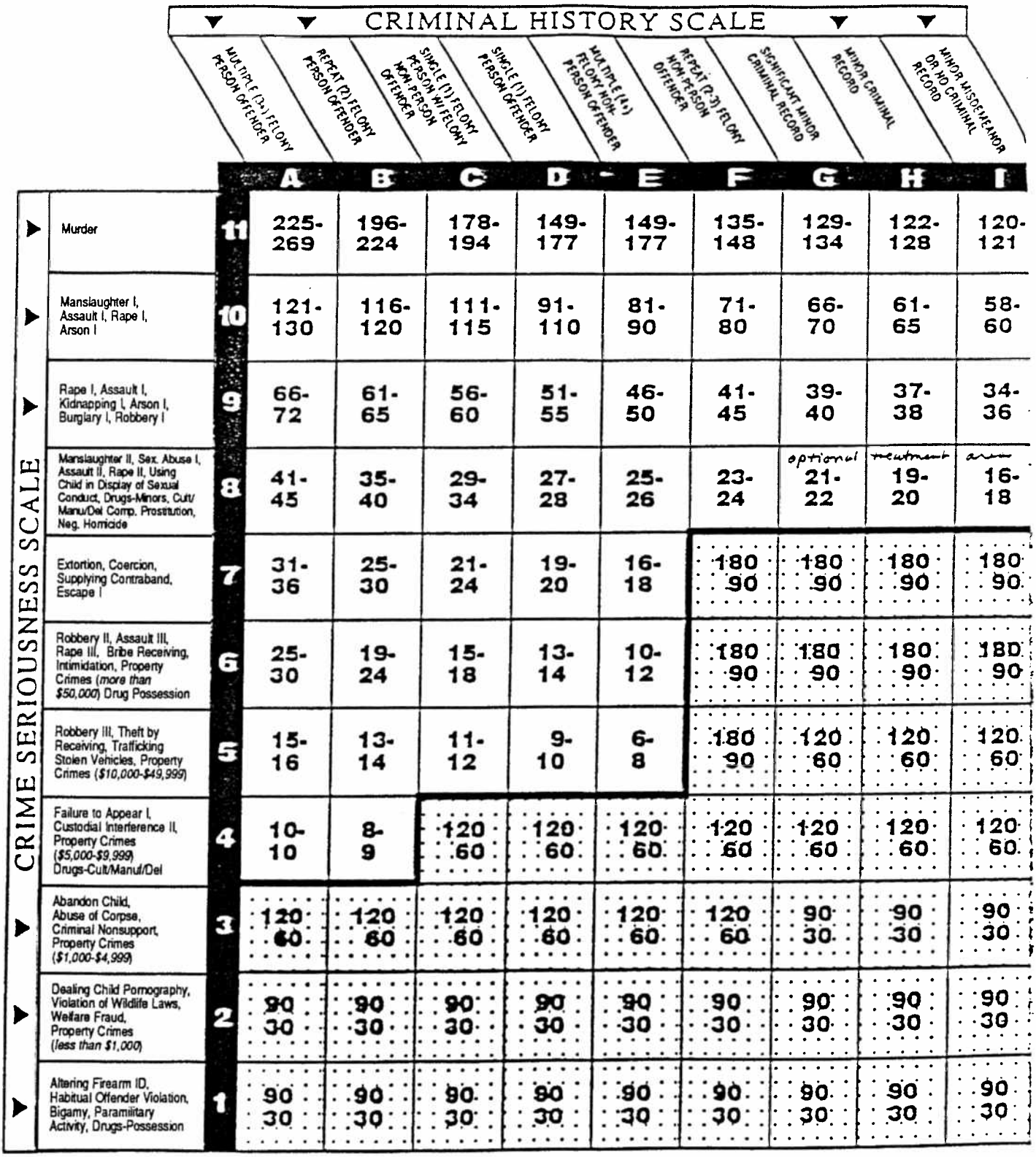
Like Alaska, other sentencing commissions have undergone extensive analysis of offense seriousness and criminal history and offender characteristics. Of these, Washington, Minnesota, and Oregon used the results to restructure their sentencing systems. These states used a greater number of offense classifications, from 11 to 15, to produce a more narrow range of conduct for each classification. In Washington and Oregon, this allowed the legislature to correspondingly narrow the statutory maximum and minimum for each classification, giving it more control in tailoring the sentence for the various offenses. In Minnesota, the restructuring took the form of legislatively-approved judicial guidelines following the same format. Among the other goals of reform, these three jurisdictions sought a reduction in disparity among the sentences imposed on similar offenders and among the sentences imposed by different judges. These states also used a greater number of offender classifications, from six to nine, to systematize the use of factors such as misdemeanor and juvenile history, the nature of prior offenses, and other information for which Alaska uses aggravating and mitigating factors.

In each of these states, the result took the form of a grid, similar to the Alaska grid but with a far greater number of cells. The Alaska grid provides 20 different ranges for felonies. In contrast, Minnesota has 60, Oregon 99, and Washington 135. The Minnesota and Oregon grids also distinguish between those offenses where prison terms are preferred or mandated and those where intermediate sanctions are the preferred sentencing option. Figure 2 is the Oregon Sentencing Guidelines Grid, an example of what a restructured sentencing system looks like when presented graphically.[19]

---

[19] Grid provided by the Oregon Criminal Justice Council, Portland, Oregon, November 1991.

Figure 2
Oregon Sentencing Guidelines Grid



- In white blocks, numbers are presumptive prison santances expressed as a range of months.
- In gray blocks, upper number is the maximum number of custody units which may be imposed; lower number is the maximum number of jail days which may be imposed.

While the commission has determined that it should not change Alaska's way of dealing with criminal history and offender characteristics, it has left open the possibility of reworking Alaska's seriousness levels. If it does so, it will also need to recommend sentencing ranges, and presumptive terms where appropriate, for the reclassified offenses. Depending upon its conclusions with respect to intermediate sanctions, the commission may also recommend when incarceration is required and when intermediate sanctions should be the punishment of choice.

If the commission does not undertake a major restructuring of seriousness levels, it may still consider whether more minor changes are appropriate, such as a proposal to add a new level of offense between a Class A misdemeanor and a Class C felony. The commission would need to determine which offenses would fall into that classification, whether it would be a misdemeanor or a felony, the appropriate sentencing range, procedural aspects of the new offense level, whether presumptive sentencing should apply, and the effect of the change on prison population.

b. Reaction of Judges and Criminal Practitioners

To gauge the reaction of criminal justice practitioners to the restructuring proposal and other issues, the commission directed its staff to interview a number of judges, prosecutors, and defense attorneys from across the state who handle a large volume of criminal cases. The staff interviewed one district court judge, three superior court judges, an appellate judge, three prosecutors, and three defense attorneys.

Most of the people interviewed were fairly satisfied with presumptive sentencing and with current sentencing practices. Several of the judges (with one dissenter) favored presumptive sentencing because it made their jobs easier in those cases where it applied. However, they wanted to keep what discretion they had with first-time B and C felony offenders. The judges did not want to comment on appropriate sentence lengths, believing that this was the legislature's concern and that it was not appropriate for them to make suggestions. Prosecutors were satisfied with current sentence lengths, while defense attorneys felt they were generally too long, at least for first offenders. Many of those interviewed spoke favorably of the guidelines and benchmarks set out by the court of appeals, feeling that they helped to make sentencing more uniform. However, several respondents felt that the court of appeals reviews trial court decisions too closely, engaging in sentencing rather than reviewing it.

Most of the judges and attorneys felt that the commission should not recommend a more detailed seriousness ranking of offenses or a more structured use of criminal histories. They found the current system workable and were opposed to major change.

Some noted that substantial amounts of time had been invested in learning how to work with the present code and sentencing structure, and any major changes would require an equal investment. There was also the possibility that any new system might not work any better. Two judges suggested that if more structure was needed, there should be an attempt to structure prosecutorial discretion rather than judicial discretion. On the whole, these practitioners did not see any particular advantage in a move toward greater structure or legislative control.

C. Issues in Probation and Parole

A subcommittee of the commission was assisted in its work on probation and parole issues by Sam Trivette, executive director of the Alaska Parole Board, and Emma Byrd, director of the Division of Community Corrections. After reviewing the subcommittee's work, the commission made the following two recommendations.

1. State immunity from liability for the release and supervision of criminal offenders should be expanded. **The commission supports expanded immunity from liability for the State of Alaska and state employees for the release and supervision of persons in state custody who are on parole, probation, furlough, work release, or similar conditional release.**

Representatives from the Department of Corrections felt strongly that immunity for the state and state employees should be expanded. While the policy of the Department is to encourage the use of conditional release programs where appropriate, individual officers are taking an unnecessarily conservative approach to release because of concerns about personal liability. In the wake of a $5 million dollar settlement in Division of Corrections v. Neakok, 721 P.2d 1121 (Alaska 1986), the Department has been hampered in its ability to make full use of programs which all agree could be appropriately applied to more offenders.

Some commissioners agreed with the Department's representatives, saying that with 3,000 to 4,000 offenders on probation or parole at any given time, there was a high likelihood that one was going to commit a crime and cause injuries which a state officer might in theory have been able to prevent. While these employees should not necessarily be immune if they have grossly neglected their duty, they should be protected from liability for ordinary mistakes made in the course of their jobs. Appropriate probation and parole supervision often involves judgment calls which should not be second guessed. It was also pointed out how difficult it is to provide adequate probation and parole supervision when an offender lives in a remote village. For that reason, probation and parole officers try to keep offenders in larger towns, whether or not this is really the best thing for the offender.

Some commissioners felt that the problem was more perceived than real, and that employees were more worried about their personal liability than they realistically needed to be. Some felt that the current law was hard for state employees to understand and apply, regardless of whether they might ultimately be held liable under it. Other commissioners felt that it was good for Department employees to be as conservative as possible, and that the public would not want the Department to be immune for

negligence in making its release and supervision decisions. Still other commissioners thought that money was an important consideration; while the public wants protection from inappropriate release of prisoners, it also does not want to pay large judgments to individual plaintiffs for the ordinary negligence of Department employees acting within the scope of their employment.

The motion to support expanded immunity was adopted, eight in favor, four opposed, and one abstention. While the commission supports the concept of expanded immunity, it did not wish to give its support specifically to the current language of SB 214, addressing this same topic. Commissioners noted that proper drafting of such a bill was a complicated matter, involving a number of technical legal questions which the commission has not addressed.

2. Should probation revocation proceedings be streamlined by court rule? **The commission recommends that the Alaska Rules of Court be revised to give priority to probation revocation proceedings. The revised court rules should specify that a letter update may take the place of a complete updated presentence report, as long as the letter contains information on the circumstances of the violation, the offender's performance on probation, and the probation officer's recommended disposition. The commission further recommends that the probation office be immediately notified when the report is due, to allow adequate time for preparation.**

Petitions to revoke probation now move through the court system unnecessarily slowly. This delay undermines the threat of revocation, which like any punishment works best if it is both swift and certain. Expedited revocation also improves the chances of an offender getting into necessary treatment programs in the time left to serve. Part of the current problem is that probation officers are often required to prepare extensive updates to the original presentence report. An extensive report is generally unnecessary; it is usually adequate for the probation officer to present a short letter detailing the circumstances of the violation, a description of how the person performed on probation, and a recommendation for disposition. The commission has concluded that expedited probation revocation proceedings are both desirable and feasible.[20] The

---

[20] For petitions to revoke based on technical violations or other good cause, AS 12.55.110, the rules should require a completed arraignment before the original sentencing court, by telephone or in person, within three working days of arrest. An adjudication hearing should follow within 15 days of the completed arraignment and the disposition hearing within 15 days of that. The letter update should be submitted 48 working hours before the hearing. No continuance of these deadlines should be granted except for extremely good cause.

For petitions to revoke based on new charges only, the rules should require a completed arraignment within three working days of arrest, as above. Where new charges are brought in a different

motion to approve expedited probation revocation proceedings passed, eleven in favor and none opposed.

The commission reserved the following three issues for further study in 1992:

1. Should mandatory parole terms be lengthened?

2. Should discretionary parole release be available to any presumptively sentenced offenders?

3. Should the maximum term of available probation be lengthened from 5 to 10 years?

These issues are described in more detail in Appendix 2. Public comment on these issues is welcome.

---

court, the arraignment on the petition to revoke should be done telephonically in front of the original sentencing court unless otherwise ordered. Adjudication should be set within 15 days after expected trial of new charges. The disposition hearing and letter update should be handled same as above, unless the original sentencing court consolidates the sentencing with the new charges, if a conviction is obtained, or if the court wishes to wait until 15 days afterward.

For petitions to revoke based on a combination of new charges and technical violations, the arraignment should be as described above. The rules should require adjudication and disposition on the technical violations within 15 days each unless the new charges are of the same or a more serious class of offense. In that case, both parties may stipulate with the judge's approval, or the judge may rule on the court's own motion, that adjudication and disposition on the technical violations should await trial of the new charges.

D. Rehabilitation as a Sentencing Goal

1. Investigation into Treatment Alternatives

The commission spent much of its April and May meetings addressing treatment alternatives for sex offenders. It heard from Dr. Bruce Smith of Langdon Clinic, one of the originators of the Hiland Mountain Sex Offender Program, who described the Hiland Mountain program and the limited resources available in Alaska for sex offender treatment on an outpatient basis. The commission also heard from Robert Freeman-Longo, a consultant to the Department of Corrections and nationally recognized expert on sex offender treatment and relapse prevention. Mr. Freeman-Longo spoke to the commission about research findings and program trends in sex offender treatment across the country.

At its August and September meetings, the commission spent a great deal of time learning about substance abuse treatment. It heard from a number of local experts: Emily McKenzie, who described the ASAP alcohol screening program; Sheila Burke of Clitheroe Center, who served as interim director of substance abuse treatment programs for the Department of Corrections; Chip Ames of the Breakthrough Program at Providence Hospital, who described options available in the private sector; Dr. John Middaugh, state epidemiologist, who talked about his work on the epidemiology of drunk driving offenses; and Dr. Loren Jones, director of the State Office of Alcohol and Drug Abuse, who outlined existing state programs outside the prisons and emphasized the importance of rehabilitative programs. In the context of substance abuse treatment, the commission discussed the relationship between the imposition of criminal sanctions and the deterrence of criminal behavior. It also discussed the value of rehabilitation not only for the offender, but also for the good of the victim and for society as a whole.

2. Commission Recommendations

On the basis of its discussions, the commission adopted the following policy statement on rehabilitation:

The Alaska constitution states that "penal administration shall be based upon the principle of reformation and upon the need for protecting the public." The Alaska Sentencing Commission agrees that rehabilitation of the offender is an important goal of sentencing which deserves more emphasis from the criminal justice system. When properly employed, rehabilitative efforts can be an effective use of limited resources in the criminal justice system. However, to ensure that effectiveness, current programs need to be rigorously evaluated to determine whether they are designed to

meet the numerical and geographical needs that exist. Data must also be collected which will allow evaluation of program effects on repeat offenses.

a. Rehabilitation is an Important Goal of Sentencing

While some people regard the prospects for rehabilitation of criminals with a great deal of cynicism, the Sentencing Commission believes that the concept is vital to proper criminal justice administration. Not all rehabilitation programs succeed, and not all offenders can be rehabilitated, but in those instances where rehabilitation does occur it is of tremendous benefit to society. The Sentencing Commission supports rehabilitation, not only because it improves the life of the offender, but also because it is in the interests of public safety. The twin goals of the constitution are both met where rehabilitation efforts are successful.

For offenders committing relatively less serious crimes, prolonged incarceration is generally not necessary and may be counterproductive. In combination with other sanctions, the Sentencing Commission supports the use of rehabilitative alternatives to enable offenders to conquer their drug or alcohol problems, restrain their anger, finish their education, pay restitution, and find productive work.

b. Rehabilitation is an Appropriate Goal in Prison

For offenders committing serious violent crimes, a certain period of incarceration is almost always needed for protection of the public and to reaffirm community values. However, most serious offenders will eventually leave prison, and the public will be far better off if these offenders have been given some skills to deal with life outside the prison walls. Rehabilitative efforts will minimize future harm to society.

Rehabilitation programs within the Department of Corrections should be strongly and consistently supported. State prisons and local jails have not been consistent over the years in their commitment to rehabilitation efforts. Inmate programming is often the first casualty of budget reductions or overcrowded conditions, but reducing the opportunity for inmates to improve themselves is a short-sighted savings.

Rehabilitation programs should also be supported as they relate to individual inmates. Overcrowded conditions in state prisons have led to frequent inmate transfers between facilities in order to meet court-imposed population caps. The Sentencing Commission recommends that the Department of Corrections limit such

interfacility or interstate transfers if they are disruptive to individual rehabilitative programming.

Education and vocational training programs make it possible for inmates to earn an honest living after release. Counseling, anger management programs, substance abuse treatment and batterers' programs help inmates better deal with the stresses in their lives. The Sentencing Commission strongly recommends increasing the number of substance abuse treatment beds available statewide from the few inpatient beds currently available to the Department of Corrections. Sex offender treatment is a new field and is more controversial, and the commission has not reached any conclusion on whether or not it works. In theory, it can be successful in preventing multiple repeat offenses once the offender is released from prison, and its potential should not be ignored.

Early and effective intervention for juvenile offenders is critical to reduction of adult crime. Programs for young offenders need greater development, both within the juvenile correctional system and in the community. There is also no specific programming geared to juveniles who are waived into the adult correctional system.

Several rehabilitative programs have already been eliminated because of budget considerations, including the Homer Men's Project, the New Start Centers in Fairbanks and Juneau, parenting programs for inmates in Ketchikan, and Camp Sivuniigvik for Native offenders in Kotzebue. Budgetary steps such as these are counterproductive in the long run when the program is worthwhile.

In addition to prevention of future crime, rehabilitative programming is an effective tool for prison management, keeping inmates occupied and giving them incentives to cooperate. Prison industries and work release programs provide earnings which can be used for victim restitution and child support. These programs serve an important function in the correctional system in addition to any rehabilitative effect on the offender.

c. Rehabilitation Programs Should be Rigorously Evaluated

Unfortunately, the state of knowledge about the success of current Alaska programs is fairly poor. There are a number of state-funded programs offered to unincarcerated offenders as a condition of probation, and others offered by DOC's Division of Statewide services. All these programs need to be evaluated in two respects. First, existing programs must be evaluated to see if they meet the needs that exist: are there enough openings in the programs? is the waiting period reasonable?

are programs offered at the right locations? are enough programs tailored to specific groups of offenders, such as Natives and women? do the programs have a good enough reputation among offenders that they are willing to try them? do bureaucratic roadblocks stand in the way? The Sentencing Commission recommends that the Department of Corrections work to answer these questions and to encourage inmate participation in treatment programs.

Second, existing programs must be evaluated to see if they actually accomplish anything in terms of reducing recidivism (subsequent offenses by the same offender). Such evaluations cannot be done now because record-keeping in all parts of the criminal justice system leaves much to be desired. For instance, neither the court system nor the probation office keeps data on how many felons are required to complete substance abuse treatment as a condition of probation or how many actually complete the treatment successfully, let alone whether those people offend again. The ASAP program follows most misdemeanor offenders to the end of their treatment, but makes no evaluation of their subsequent behavior. Sex offender treatment programs also have not yet been evaluated with respect to recidivism. The Department of Corrections is now beginning to collect the data necessary to evaluate the long-term success of its in-house sex offender programs.

The Sentencing Commission recommends that the Division of Community Corrections and the court system devote considerable staff resources to monitoring imposition and compliance of rehabilitative sanctions as a condition of probation; it also recommends evaluation of larger programs as outlined above. The commission also recommends that the Division of Statewide Services begin the comprehensive data collection and analysis necessary for similar evaluations of prison and post-prison programs. The Department of Health and Social Services should do the same for juvenile programs. The Sentencing Commission recommends that current rehabilitative programs continue to be fully funded pending the results of these evaluations.

d. Rehabilitation Programs are Only One Part of the Crime Prevention Effort

Crime is a complex social problem which is part of other social ills: inadequate education, poverty, drug and alcohol addiction, deteriorating family structure, and lack of community involvement. Greater attention must be paid to helping people, especially children, combat these conditions. The crime problem cannot be solved by the criminal justice system alone; it is the responsibility of the whole community.

These recommendations were unanimously passed by the commission.

E. Increased Use of Intermediate Sanctions

1. New Solutions to Old Problems

Prison overcrowding points out the need to take a balanced approach to management of the corrections system. Offenders who present the most serious threat to public safety--the violent criminal and serious recidivist--clearly should be under the most intensive supervision. While the cost of imprisonment is high, these offenders may actually cost the state and public more in terms of new crimes and new victims if they are released.[21]

On the other hand, prison is not the only means by which offenders can be punished and public safety protected. There are a number of non-prison corrections programs which also hold promise. Although some of these alternatives are already in use in Alaska (alternatives such as fines and forfeitures, alcohol screening, required education and vocational training, work furloughs and restitution centers), they are usually combined with a term of imprisonment and are seldom used by themselves. The commission is investigating these "intermediate sanctions" as a way to make more efficient use of limited resources and arrive at an appropriate punishment for a given crime.

While it is easy to agree in principle that alternatives to prison should be explored, it is much more difficult to agree where to start. A number of intermediate sanctions are geared either to low risk offenders, who are the least likely to commit a new offense, or to non-violent offenders, who pose little physical risk to the public. However, very few people go to prison for life, and even most very serious offenders are eventually released. For that reason, it is important also to consider programs which reduce the likelihood that these offenders will commit new crimes upon release. Programs such as intensive supervised probation may be used either following incarceration or in lieu of incarceration to intervene in what would otherwise be an ongoing criminal career. It is as important to have in-house and aftercare programs aimed at sex offenders as it is to have vocational and restitution programs for young first-time burglars.

Expectations for cost savings from intermediate sanctions should remain realistic. Apart from fines and community work service, which are relatively inexpensive to administer, intermediate sanctions involve costs of their own and must be adequately

---

[21] The relative cost-effectiveness of extended imprisonment for serious criminals is the subject of national study and debate. The Sentencing Commission has been collecting these studies, and intends to review this issue in 1992.

funded if they are to have any chance of success. Successful monitoring and rehabilitation programs can only be run by probation and parole officers with small caseloads and adequate support and referral programs. More intensive monitoring makes it likely that more probation violations will be detected, resulting in more revocations. While different levels of intermediate sanctions can be imposed in response to probation violations as well, there must always be a back-up sanction available to give teeth to each program.

Intermediate sanctions also pose the problem of "net-widening," the idea that more intensive (and therefore more expensive) sanctions may be applied to offenders who are currently being placed on simple probation. This phenomenon can be offset by judicial training and entrance criteria for each program so that only the targeted offenders are admitted. Some people feel while net-widening may be expensive, it is not necessarily bad if it results in the level of punishment, restriction and rehabilitation opportunity appropriate for individual offenders. In the long run, avoiding the capital cost of new prisons is a worthwhile goal even if operating costs for the Department of Corrections do not go down.[22]

Through the efforts of the commission, the state of Alaska was invited to participate in a joint project of the National Institute of Corrections and the State Justice Institute to facilitate the use of intermediate sanctions. The project invited a team of judges, probation officers, prosecutors, and other key officials to help Alaska build a more credible, effective range of intermediate sanctions. Several members of the commission were joined by other state officials and commission staff at a four-day symposium in October, 1991. This team, chaired by Representative Fran Ulmer, will continue to work on the state's needs and problems related to intermediate sanctions and to receive technical assistance from the project in 1992. The team hopes to assist the commission and its staff in developing a long-term policy for use of intermediate sanctions.

The commission has not evaluated individual programs with respect to level of supervision, opportunity for rehabilitation, risk to public safety, recidivism, and cost-effectiveness. The Department of Corrections is currently evaluating several pilot programs and working to make more effective use of programs it already has in place.

---

[22] Prison operating costs are to some extent a fixed cost; each facility requires a certain budget for staff and physical plant unless an entire wing is shut down. For that reason, intermediate sanctions programs may result in budget increases if only a few people are diverted from prison. However, as long as Alaska's prison system is operating right at the margin of its capacity, every offender diverted into a non-prison program is making a space available for a more serious offender and saving the need for new prison construction.

Similar evaluation is needed with respect to current judicial use of fines and conditions of probation. Over the next year, the commission will look at what it will take to build a credible program of intermediate sanctions in Alaska.

2. Public Acceptance of Intermediate Sanctions

To evaluate the reaction of judges and practitioners to the expansion of intermediate sanction options, the commission interviewed a number of judges, prosecutors, and defense attorneys. Nearly everyone interviewed believed that intermediate sanctions should be more widely available and used. There was virtually unanimous support for increased availability of alcohol treatment facilities in prisons, in halfway houses, and on an outpatient basis. One prosecutor and one defense attorney suggested that substance abuse problems are so prevalent that most rural jails and many urban jails could be devoted entirely to alcohol and/or drug rehabilitation. Many of those interviewed thought that judges should be able to directly order the use of rehabilitation programs and halfway houses. They also suggested that the Department of Corrections revise its classification system to permit short-term sentences to be better used for alcohol treatment and other rehabilitation. In general, they were quite open to the increased use of intermediate sanctions.

No move toward expanded use of intermediate sanctions is likely to succeed without the support of the public. Other states have found that the initial public reaction to alternatives to incarceration is more positive than one might suspect. When the public has good information on how programs are structured, how offenders are monitored, and the cost relative to incarceration, public support is further increased.[23] It is important that the public be actively involved in the debate over which intermediate sanctions are suitable for which offenders in Alaska.

---

[23] For instance, the states of Delaware and Alabama did extensive work with public opinion surveys and focus groups to find out how wide a range of criminal sanctions the public would support. Both studies found that "the public will support sentences for nonviolent offenders that do not involve prison once the options are revealed." Doble, Punishing Criminals: The People of Delaware Consider the Options at 8 (1991).

> Several important themes emerge from both surveys. Like the survey of Alabama citizens, the representative sample of 432 Delaware citizens found them favoring of a range of punishments supporting a central objective - helping the offender become law-abiding. Prison, they feel, while necessary for violent criminals and for lesser offenders who are unable to succeed in alternatives, should improve the offender. They feel incarceration, in many cases, is not doing the job. They want offenders to work and to give something back to the community as part of their sentence. Cost is also important to the public, but it is secondary to effective programs.

3. Increasing the Use of Program Options

Because there are so many different kinds of criminal behavior, a wide range of intermediate sanction options have been developed to deal with them. Options include monetary responses, offender monitoring and restrictions on liberty, rehabilitation, and sanctions undertaken mostly for their shock value. Such sanctions may be used in several contexts: as an original sentence imposed in lieu of incarceration; as a transitional period at the end of a prison term; and as an alternative to incarceration when an offender violates probation or parole. Probation or parole may be revoked for commission of a new crime or for a technical violation of probation or parole conditions. Rather than return these offenders directly to prison, intermediate sanctions may be used to tailor a response to the nature of the violation. A number of these program options are reviewed below.

a. Monetary Options

Alaska already uses monetary options such as fines, forfeiture, and restitution in response to criminal behavior. Other jurisdictions have added a system of "day fines," fines which are tailored to the income of the offender and which are generally quite a bit higher than the fines Alaska currently imposes.[24] While Alaska currently uses fines primarily for traffic offenses, it is possible to apply them to a wider range of crimes. In some countries of western Europe, for example, high fines are used as the only punishment for many assaults.

Monetary sanctions have a number of advantages. They are often enough by themselves to constitute adequate punishment for minor offenses. Offenders do not lose their jobs or have the opportunity to become involved with other criminals while incarcerated. If restitution is paid, it provides a great deal of satisfaction for the victims of crime and benefits society by helping repair the damage caused by the offender.

While monetary sanctions bring the state some money, they also require a certain level of investment. A system of monetary penalties must be accompanied by a good collection system, along with backup sanctions, so that these penalties have the bite that is intended. To make extensive use of monetary penalties in Alaska, special provision would need to be made for people living on the subsistence economy.

---

[24] Day fines are described in more detail in 1990 Annual Report at 37.

b. Offender Monitoring and Restrictions on Liberty

Restrictive and monitoring alternatives provide for public protection and rehabilitation opportunities while still allowing an offender to remain outside an institution. These options include probation and parole, intensive supervised probation, day reporting centers, home confinement with electronic monitoring, and community residential centers or halfway houses.

The most common options in Alaska and elsewhere are probation and parole. These involve regular reporting to a probation or parole officer, combined with drug monitoring, restrictions on movement and activities, monitoring of employment and living conditions, a prohibition on weapon possession, and other conditions. Intensive supervised probation and day reporting centers subject offenders to strict and frequent reporting requirements, combined with employment and psychological counseling, restitution, and the conditions of regular probation. These programs are currently under investigation by the Department of Corrections as an alternative to incarceration and as a management tool for high risk probationers and parolees.[25] Home confinement with electronic monitoring is another restrictive option, confining offenders to their own residences except to go to work, which is also under investigation by the Department of Corrections.[26] Finally, the Department of Corrections currently contracts for the operation of community residential centers, also known as halfway houses, which provide a combination of limited incarceration and limited movement within the community. The Department of Corrections currently uses community residential centers for furloughees in transition between prison and release to the community, for placement of offenders who need to provide restitution, for placement of non-violent misdemeanor offenders, and for temporary placement of revoked probationers or parolees in need of increased supervision.[27]

Restrictive and monitoring options have a number of advantages. They are flexible enough to include treatment, drug monitoring, skill training, employment, and restitution opportunities. They allow some offenders to make the adjustment between prison and the community, and allow other less dangerous offenders not to be incarcerated at all. They provide structure for offenders who have had difficulty managing their own lives. In addition, their punitive value should not be

---

[25] Intensive supervised probation is described in further detail in 1990 Annual Report at 35.

[26] Home confinement is described in further detail in 1990 Annual Report at 36.

[27] Community residential centers are described in greater detail in 1990 Annual Report at 34.

underestimated. For many offenders, it is more difficult to accept the demands of a drug treatment program or a vocational training course than it is to serve time in prison.

However, programs such as these are most successful when carefully thought out, well-staffed, and adequately funded. Probation officers cannot provide intensive supervision unless their caseloads are small; day reporting centers cannot provide specialized services like employment and psychological counseling without an adequate investment in training and staff. Furthermore, while intensive monitoring of offenders provides greater public protection, it also makes it more likely that probation officers will detect and pursue probation violations, resulting in more revocations. For these reasons, the most intensive programs may not be significantly less expensive than imprisonment.

c. Rehabilitative Options

Rehabilitative options are often combined with the restrictive and monitoring options listed above. Substance abuse treatment, sex offender treatment, anger management, batterers' programs, and educational and vocational training are useful tools both in prison and out. When successful, these programs reduce recidivism among released offenders and make it possible for them to avoid a return to crime. An offender's enrollment in these programs is often strongly supported by his or her victims, either because they are family members who may need to live near the offender again or because they want to reduce the risk that the offender will harm someone else after release. Again, it is important not to underestimate the difficulty of these programs for the offender; many people would rather serve substantially more time in custody than attempt to confront their problems and change their behavior. However, like monitoring and restrictive options, the cost for good programs and aftercare can be high. The investment is repaid if recidivism is ultimately reduced.

One sanction which fits in all of the above categories is community work service, a popular option in Alaska. Community work service is a form of restitution to the community, restricts the offender for the number of hours it takes to perform the service, and often aids in the offender's rehabilitation as well. Supervision is often provided by a member of the community, and costs are generally minimal.

d. Options with Shock Value

Finally, there are options whose function is to shock offenders into realizing that their conduct is unacceptable to society and that there are repercussions for such behavior. Shock incarceration involves a brief prison or jail experience to deter an

offender from returning to crime. Boot camps are facilities in which young first-time offenders are confined for short periods under rigid standards and strict military discipline. Substantial debate exists about the merits of boot camps in the states that have them.[28]

4. Commission Recommendations

a. Use of Intermediate Sanctions by the DOC

1. **The commission encourages the Department of Corrections to expand the use of intermediate sanctions for appropriate offenders under the Department's care, subject to its responsibility to protect the public. The increased use of programs such as treatment, work release, halfway houses, intensive supervised probation, and day reporting centers should be considered. The commission believes that a system of intermediate sanctions is both sound correctional practice and an opportunity to control prison overcrowding. The commission encourages the legislature to support the Department's efforts.** This recommendation was adopted by the commission, eight in favor and one opposed.

2. **The commission encourages the Department of Corrections to review its classification system for determining which offenders are eligible for treatment programs, community residential centers, and other intermediate sanctions. It encourages the Department of Corrections to develop quicker methods of classifying short term offenders and those whose probation or parole has been revoked. Expedited classification will enable these offenders to begin treatment, work, education, and other programs as soon as possible, so the amount of dead time is kept to a minimum.** This recommendation was adopted by the commission, eight in favor and one opposed.

3. **The commission encourages the Department of Corrections to make full and effective use of community residential centers, in order to encourage treatment opportunities, employment, payment of restitution, etc. In many cases both society and the offender will benefit if felons who have served long sentences spend some time in community residential centers in order to make a gradual transition back to the community. The Department of Corrections should also identify those low risk offenders who can safely serve their entire sentence in a community residential center.** This recommendation was adopted by the commission, ten in favor and none opposed.

---

[28] Shock incarceration and boot camps are described in further detail in 1990 Annual Report at 37.

4. **The commission encourages judges to make recommendations to the Department of Corrections about which offenders should or should not be included in rehabilitation and intermediate sanctions programs. The Department of Corrections should work with the court system to educate judges about the classification system and other information necessary to make these recommendations. The Department of Corrections in turn should consider these recommendations.** This recommendation was adopted by the commission, nine in favor and none opposed.

5. **Since more offenders are likely to be made eligible for intermediate sanctions because of the above recommendations, the commission supports additional funding for the Department of Corrections for community residential centers and treatment programs.** This recommendation was adopted by the commission, nine in favor and one opposed.

6. **Community residential centers are currently used both for offenders on furlough, as a transitional period on their way out of prison, and offenders whose probation or parole has been revoked, as an intermediate step short of being returned to prison. The commission recommends that if these two populations must be housed at the same facility, there should be separate management of the programs for each group. The Department of Corrections should develop standards which are appropriate for each population.** This recommendation was adopted by the commission without objection.

b. Use of Intermediate Sanctions by the Judiciary

1. **The commission believes the state should develop policies which encourage judges to use intermediate sanctions for more felony offenders and misdemeanants. The intermediate sanctions may include sanctions which are considered by the courts to be the equivalent of custody, such as halfway houses and inpatient treatment, as well as other programs which are not yet available as sentencing options, such as home confinement with electronic monitoring and intensive supervised probation.** This recommendation was adopted by the commission, eight in favor and three opposed.

2. **The commission encourages both judges and probation officers to expand the use of intermediate sanctions for revocation of probation and parole rather than returning an offender to incarceration. To the extent possible, the sanctions chosen should be tied to the reason for the revocation. For example, an offender who fails a drug test should be considered for a substance abuse program; an offender who violates curfew or fails to report to the probation officer might be an appropriate**

candidate for home confinement with electronic monitoring. This recommendation was adopted by the commission, 11 in favor and none opposed.

The commission considered whether the state should develop a system which would allow judges to make direct use of intermediate sanctions such as halfway houses and inpatient treatment programs. This motion failed, six in favor, three opposed, and two abstentions, but the commission agreed to reconsider the question later.

The commission will be doing further work on intermediate sanctions in 1992. An intermediate sanctions task force within the Department of Corrections will be issuing its own recommendations, and the commission will be evaluating those and otherwise coordinating its efforts with the Department of Corrections.

F. Assessing the Changes Necessary for Adequate Data Collection

The commission is charged with evaluating criminal sentencing practices and determining the projected financial effect of any recommended changes. In order to make reasonable recommendations, access to reliable data is an absolute prerequisite. Good data will not make the value choices any easier, but it is essential in laying out the choices, in establishing what it will take to implement the policies chosen, and in anticipating unintended consequences which might accompany specific choices.

Consequently, the commission has directed its staff to develop a database which will track offenders and events through the entire criminal justice process. Currently, different parts of the criminal justice system maintain separate computer databases which focus on the particular needs of the department which administers them. The commission's research analyst is attempting to cross-index and merge selected information from these three databases into a single relational database, to allow the commission to look at the data in a number of different ways. Because not all the necessary information is available in these databases, the research analyst is adding sample information from original paper files such as presentence reports and court judgment documents. The use of paper files also helps validate the accuracy of the computer data. When all of this information is combined, the resulting database should allow rapid and relatively accurate answers to policy questions from the commission, the legislature, and the executive branch.

1. Existing Databases

The Department of Public Safety maintains a database called the Alaska Public Safety Information Network (APSIN) to provide public safety officers with the information necessary to do their jobs. APSIN is both a case-based system and an offender-based system. It tracks events ranging from traffic violations to mass murder, listing case number, violation codes and descriptions, and disposition. It also contains offender data such as name and aliases, date of birth, sex, race, drivers license number, prior arrests, and convictions. APSIN is the access point into the criminal justice information system and the first stage in establishing a statistical model of the process.

The Department of Law operates the Prosecutor's Management Information System (PROMIS) to gather information for case management by prosecutors. This system is case-based, starting with police charge records and following case events through appeal. Case data include charges, disposition, sentence duration, fine, and name of judge. Defendant data includes name, date of birth, and driver's license

number. For the commission's research purposes, there are noticeable gaps in the data collected which are not filled elsewhere in the criminal justice system.[29]

The Department of Corrections maintains the Offender-Based State Corrections Information System (OBSCIS), an offender-based system which follows individuals rather than cases. The system is primarily a tool for tracking current offenders through the various locations and procedures within corrections, rather than for tracking offenders through time.[30] There are enough inaccuracies in the OBSCIS database that sentencing policy issues cannot be reliably resolved without reference to other sources. For instance, the charge of which the offender was convicted is frequently inaccurate, which throws all other conclusions into question. Until recently, participation in sex offender and substance abuse treatment programs was not recorded, making it impossible to do computer research to track successful completion or recidivism.

Despite the weaknesses discussed above, the existing databases function fairly well in providing each department with the information necessary to accomplish its own mission. The real shortcoming in the current structure is not the individual computer systems, but the fact that these systems are not interrelated to provide an overall picture of the criminal justice process in Alaska. While all three databases are kept on the state mainframe, they differ widely in the language in which they are written, the formats in which they were recorded, and the types of information kept. The Department of Public Safety is currently spearheading an effort among the three executive departments to develop a case tracking number following each case from beginning to end, which will help to interrelate information among the systems as well as within each department. The basic idea is to assign a number to a case and to carry that number forward from agency to agency as the offender moves through the system. However, since the proposed arrest tracking number (ATN) system is strictly case-based, it will be of limited use for research purposes, where offender-based information is more commonly required.

---

[29] For instance, PROMIS does not record whether a sentence is consecutive or non-consecutive, presumptive or non-presumptive, affected by aggravating or mitigating factors, or subject to conditions of probation. This important information is not gathered by the court system either. Defendant information is not extensive enough to determine the number of prior convictions or to answer questions on disparity issues. PROMIS also contains no follow-up information on the amount of time actually served by an offender or subsequent revocations.

[30] Working with OBSCIS has consumed a great deal of the research analyst's time. Since records are overwritten with new information when the status of the offender changes, historical events can only be extracted from the offender's movement file. The movement file contains 600,000 plus records consisting of movement dates, reasons for movement and destinations. To be useful for commission purposes, it must be combined with the sentence file, containing sentence dates and lengths. The sheer volume of these records has made it a major and time-consuming challenge to use OBSCIS for research purposes.

Data currently are shared between the various agencies only on a limited basis, and information once entered from another system is seldom updated. The resulting disparities mean that answers to questions may depend upon which agency provided the information. For instance, APSIN is not updated based on prosecutorial records. Once an arrest occurs, APSIN cannot be used to tell whether certain crimes or groups are subsequently handled differently, whether prosecutorial policies differ by region, or what impact the arrests have on the sentencing system. PROMIS records sentence length data as imposed by the court, but it contains no information on the actual time served or the manner in which it is served. PROMIS cannot be used to answer a question about racial disparity because its missing information count for race is much too high. OBSCIS data are frequently entered under the original police charge, which often does not reflect the charge of which the offender is later convicted. If one wants to know the average sentence length for a certain offense, the answer is biased to the low side because OBSCIS frequently shows a charge more serious than the actual charge of conviction.

Despite the central role the courts play in criminal justice processing, they conduct relatively little data collection and analysis. The Alaska Court system does not currently have a centralized computer information system. It maintains a loosely connected database designed to help each court manage its caseload, but the system is not capable of producing much aggregate information. Information from presentence reports and judgment forms now exist only in individual paper files. The court system is currently working to improve its information systems, but for the time being its database is not useful for commission purposes.

2. Creating a Comprehensive Criminal Justice Database

Current practice relegates the answering of key questions to special research projects which are expensive and slow. These projects generally require more than a year and several thousand dollars to complete, depending upon their scope. The state needs an ongoing data collection system to insure that basic information is collected for the important stages of every case. If the data collection is done routinely and consistently, policy questions can be answered in a matter of weeks and at minimal cost. Such information is particularly useful in the preparation of accurate fiscal notes for proposed legislation.

For these reasons, the commission's research analyst is attempting to create a comprehensive criminal justice database to use for research purposes. The research analyst consulted with individuals in the agencies who work with the data in the field, as well as national experts who have studied data collection practices in other states.

Based on this information, a list of variables was established and matched with information actually being collected by each department.

The research analyst has been working to interrelate the information from each system. In other words, is the "John Smith" in one system the same as the "John A. Smith" or "John Smith, Jr." in another system? Is the DWI conviction against Mr. Smith in OBSCIS the same as the DWI conviction in APSIN, or are there two convictions? This is far more difficult task than is obvious. Since there is no common key relating information in the three data sets, information must be matched for selected variables. Multiple steps are necessary to match the information and validate the match. Since there are over one million records in the composite data set, considerable time is involved in the process.[31]

The third step in creating a comprehensive criminal justice database has been to design a system capable of holding the compiled information. Some data is relatively static, such as the offender's sex and race, and only needs to be entered once. Other information changes frequently, so audit information is required. Many cases or events have multiple counts, so detailed records must be available. In addition, the database has to be able to accept information from the existing databases in their very different formats and computer languages. After a great deal of work, the research analyst has been able to write a program which meets these needs.

The new criminal justice information system will be composed of three primary files. The event information file contains information about the offense, disposition, and sanction, tracking an individual from arrest until release. It also contains information about criminal history, NCIC and FBI reports, presentence report data, and revocations. The offender file contains static demographic information such as sex and race. The case file contains multiple charge records for individual cases, providing detailed information to augment the file. The research analyst is currently working to extract the necessary information from OBSCIS, PROMIS and APSIN and to place it in the new database.

3. Uses for the Combined Database

Once the comprehensive database system is in place and currently uncollected data are filled in, it should allow policy makers to reach more informed choices in criminal sentencing. For instance, some people believe that a small group of repeat property offenders occupy a disproportionately high percentage of costly bed space, and the question arises whether alternate, less costly sanctions may be appropriate for this

[31] The proposed automatic tracking number (ATN) will greatly simplify the task of correlating data, but an offender-based number will still be needed to simplify the tracking of criminal history information.

group. At this time, because no information is available on repeat offenders, this opinion cannot be easily verified or disproved. With more information, it will be possible to determine if such a group exists and evaluate it according to recidivism rate, average length of sentence, performance in treatment programs, and effectiveness of intermediate sanctions.

There are several state-of-the-art software packages for examining the criminal justice system, geared to answering "what if?" questions. For instance, a bill may be introduced which would create a new class of felony. Given typical crimes within the class, one could ask what impact this change would have on the prison population, and therefore on the budget. While software exists to help answer these types of questions, it cannot be done without maintenance of a database to provide the underlying information.

In addition, the system can be used to update the computer systems at the individual departments. Although APSIN currently has incomplete data regarding case disposition, this information could be returned to APSIN from the comprehensive database without the problems now associated with attempting to match cases across the different systems. As another example, the Department of Corrections has spent an inordinate amount of time looking into questions regarding permanent fund dividend checks, which by law are forfeited by incarcerated felons. Since OBSCIS often contains inaccurate information about the charge for which an offender is convicted, it takes time to determine who is a felon and who is not, a question which updated PROMIS information can easily answer.

Further work is needed to fill the gaps in information collected by the three primary computer systems. There are several pieces of key information which are not currently being collected which are highly relevant to sentencing policy decisions. As the commission works with the database over the next year and a half, it intends to identify the information which is not being recorded and to enlist the cooperation of the three executive departments in making sure that someone takes the responsibility for entering it consistently and accurately. Further work needs to be done within the court system to improve its data systems and to convey the necessary information to the criminal justice database.

The Sentencing Commission is scheduled to sunset at the end of FY'93. However, it would be a tremendous waste to allow the criminal justice information system to go out of existence at the same time. It will continue to be necessary for the planning and monitoring of Alaska's criminal justice system by the legislature and the executive

branch, and provisions should be made to maintain the system for use by all three branches of government.

4. Commission Recommendations

1. Creation of Comprehensive Criminal Justice Database. **The commission recommends that all criminal justice agencies, including the court system and the Departments of Law, Public Safety and Corrections, should contribute to the comprehensive database which commission staff is currently creating with existing funding. Current databases maintained by the three executive departments should also be continued.**

2. Maintaining a Comprehensive Criminal Justice Database. **The commission recommends that the state maintain this database 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. The commission projects that the yearly cost would be about $80,000.**

3. Case and Offender Tracking Numbers. **The current state databases used by the Departments of Public Safety, Law and Corrections should use common case and offender tracking numbers. The Department of Public Safety is currently spearheading an effort to develop a case tracking number to follow each case from beginning to end, which will be an excellent start. The commission recommends that the executive branch also develop a common offender tracking number which will allow for analysis of criminal history information. The commission recognizes that development of such a number can be a surprisingly difficult and expensive proposition, but feels that criminal history information is of sufficient importance to merit the effort.**

4. Improvement of Current Systems. **While the commission believes it is more efficient to retain current databases (APSIN, PROMIS, and OBSCIS) than to try to combine them for all purposes, it is imperative that each department review its system in order to fix significant current shortcomings and to identify key information which is not being gathered. A small amount of additional department funding may be necessary to collect information not currently being recorded. The commission staff is ready to work with each department in this review.**

5. Prison Population Forecasting. **The commission encourages the Department of Corrections to maintain and improve its system for prison population forecasting. The commission will make its combined database available in order to help with these projections. The commission recommends that the Department of Corrections be given adequate funding to obtain the technical support necessary for this effort.**

6. Court System Improvements. **The commission recommends that the court system continue its current efforts to automate its information systems, and that the legislature devote adequate funds to this effort. The commission recommends that in developing its system, the court system do so in a way which will allow its information to be easily integrated into the combined criminal justice database and to coordinate with the automatic tracking number now being developed by the Department of Public Safety. The commission further recommends that the court system keep track of sentencing information that will help the criminal justice system generally. Again, the commission staff is ready to work with the court system in this effort.**

These recommendations were adopted by the Commission with no objection.

Conclusion

The legislature has asked the Alaska Sentencing Commission to address a broad range of policy issues relating to sentencing reform. In 1991, the commission studied the relative seriousness of offenses, possible changes in sentence length, the role of criminal history as a factor in sentencing, the use of aggravating and mitigating factors, probation and parole issues, and treatment alternatives and rehabilitation programs. Based on these inquiries, the commission has forwarded the above recommendations to the legislature and governor for consideration. The commission staff has also worked to create a comprehensive criminal justice database from the three existing state information systems.

Much work remains to be done in the next 18 months. The commission intends to further investigate statutory restructuring, changes in sentence length, possible expansion of parole opportunities, and the increased use of intermediate sanctions. The commission intends to make two more sets of recommendations, in December 1992 and June 1993. The commission staff will continue its work on the criminal justice database and the coordination of information collection.

Input from all branches of government is an important component of the commission's work and is greatly encouraged. Input from members of the public and various interest groups is also vital. The commission will be available to work with the legislature and governor to support its recommendations. People interested in sentencing issues are encouraged to contact the members and staff of the commission with their comments and ideas for the commission's work in 1992 and early 1993.

Staff

The staff of the Alaska Sentencing Commission is:

Marcia Vandercook, Staff Attorney
Alan R. McKelvie, Research Analyst
Peggy Skeers, Executive Secretary

The staff of the Alaska Judicial Council is:

William T. Cotton, Executive Director
Teresa W. Carns, Senior Staff Associate
Susanne Di Pietro, Staff Attorney
Joan F. Connors, Rural Project Evaluator
Josefa M. Zywna, Fiscal Officer
Judy Whittaker, Secretary

The Alaska Sentencing Commission can be reached at 1029 W. Third Avenue, Suite 201, Anchorage, Alaska 99501. Phone Number (907)279-2526, Fax Number (907) 276-5046.

Appendix 1:

Prison Population and Community Corrections Statistics

Appendix 1: Prison Population and Community Corrections Statistics

A. Prison Population Statistics

1. **Number of Inmates**. The total number of inmates incarcerated in Alaska institutions has hovered in the vicinity of prison capacity for the five-year period from 1986 to 1991. The Department of Corrections Fact Sheet for November 1991 shows that 2,478 inmates were filling 2,516 prison beds. The Department of Corrections at that time had jurisdiction over 6,075 persons, held as follows:

Alaska Institutions	2,478
Federal Bureau of Prisons	59
Minnesota/North Dakota State Prison	10
Furloughees in CRCs	190
Probation/Parolees in CRCs	36
On Parole	907
On Probation	2,395
Total	6,075

As of November 1991, the average daily number of prisoners for each Alaska institution was just under or over the institution's capacity, as shown by Table 2.[1]

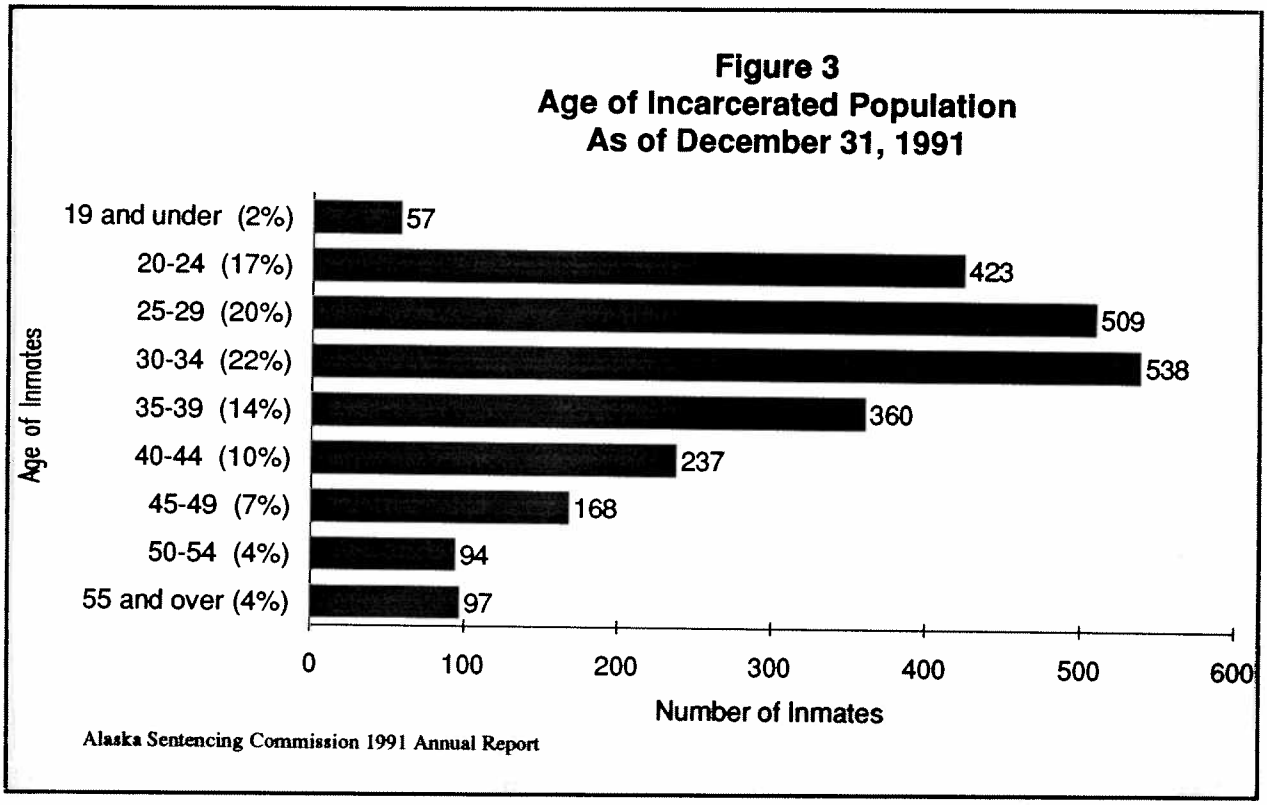
Table 2
Average Daily Number of Prisoners Compared to Prison Capacity
As of November 1991

	Capacity	Average Number Per Day
Spring Creek Correctional Center	412	420
Fairbanks Correctional Center	200	200
Anvil Mountain Correctional Center	102	94
Yukon-Kuskokwim Correctional Center	88	79
Cook Inlet Pretrial Facility	397	397
Anchorage - Sixth Avenue	116	97
Hiland Mountain Correctional Center	229	224
Meadow Creek Correctional Center	56	50
Palmer Minimum Correctional Center	130	162
Palmer Medium Correctional Center	165	166
Mat-Su Pretrial Facility	74	75
Wildwood Correctional Center	204	204
Wildwood Pretrial Facility	106	98
Lemon Creek Correctional Center	174	165
Ketchikan Correctional Center	63	57
Total	**2516**	**2478**

Alaska Sentencing Commission 1991 Annual Report

[1] Department of Corrections, Fact Sheet for November 1991.

2. **Offender Demographics.**[2] Department of Corrections figures show that of the 2,483 people incarcerated in Alaska institutions at the end of 1991, 2,367 (95%) were male and 116 (5%) were female. By race, 52% of the offenders were white (compared to 75% of the general Alaska population) 32% were Alaska native (compared to 16% of the general population), 12% were black (compared to 3% of the general population), and 3% were other races (compared to 5% of the general population). Almost 60% of these inmates were between ages 20 and 34, another 24% between 35 and 44. Few offenders were over the age of 45, and very few under the age of 20.[3] Figure 3 shows this age distribution.[4]



3. **Nature of the Offenses.** Ninety percent of those incarcerated in Alaska institutions were felons and 10% were misdemeanants. State charges accounted for 94% of the cases, city charges accounted for 3%, and 3% of the offenders were being held pending federal charges. Seventy-two percent (1,796) of those in Alaska institutions

---

[2] Department of Corrections, 1990 Inmate Profile.

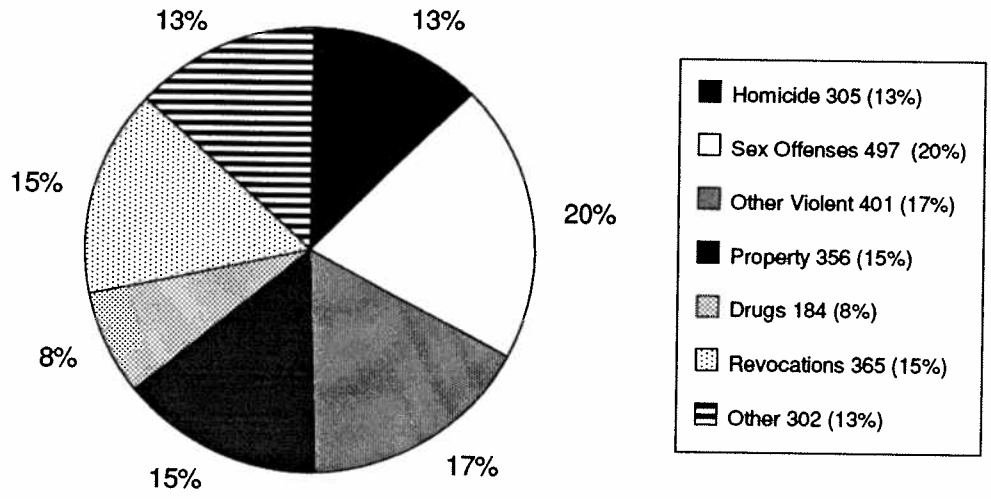
[3] Offenders under the age of 18 are generally tried as juveniles and housed in juvenile facilities. Even where a juvenile is tried as an adult, he or she must be housed separately from adult offenders.

[4] Information provided by the Department of Corrections, January 1992.

had already been sentenced, but 28% (687) were awaiting trial. Most of these offenders were held in close custody (36%) or medium custody (32%). Maximum custody held 4%, minimum custody held 17%, community custody held 4%, and 7% of offenders were unclassified.[5]

4. **Types of Offenses**. At least half of Alaska's prison population is incarcerated due to commission of a violent offense against a person, such as homicide, sexual assault or abuse, assault, or robbery. Other major offense groupings include theft offenses (13%) and drug offenses (11%), and probation and parole violations (15%). Figure 4 demonstrates this distribution.[6] However, these percentages somewhat understate the number of offenders who have committed violent crimes. The OBSCIS database reflects only the most serious charge against the offender, so that an offender who committed both a first-degree burglary (a Class B offense) and a third-degree assault (a Class C offense) will appear here as a property offender. Many probation and parole violators are also on release for violent crimes, as are some of those charged with failure to appear.

Figure 4
Crime Category Comparison for Active Prisoners on 12/31/90



Alaska Sentencing Commission 1991 Annual Report

[5] Id.

[6] Department of Corrections, Inmate Profile for 1990.

Prison population has held relatively steady for the last five years, and for the most part so has the distribution of offenses. Table 3 shows an increase in the number of people incarcerated for drug offenses, murder and manslaughter, probation violations and parole violations. Numbers have substantially declined for those convicted of robbery. Over this five-year period, the number of offenders incarcerated for sexual offenses peaked in 1988 and then declined.[7]

Table 3
Inmate Offense Comparison 1986-1991
As of December 31, Each Year

	1986	1987	1988	1989	1990	1991
Assault	228	221	207	275	234	240
Attempt to Commit a Felony	30	30	24	27	26	27
Burglary	200	187	195	207	187	194
Criminal Mischief	36	29	36	31	2	36
Driving While Intoxicated	77	70	60	49	78	82
Controlled Substances	115	127	163	198	184	164
Failure to Appear	27	32	38	52	42	34
Kidnapping	32	33	37	33	33	31
Misconduct w/Weapons	27	22	31	25	23	29
Murder/Manslaughter	260	271	275	290	299	319
Parole Violation	54	69	89	117	162	176
Probation Violation	138	170	183	209	203	217
Robbery	171	167	155	146	133	137
Sexual Assault/Sexual Abuse	564	605	628	595	497	500
Theft	85	58	88	96	83	79
Other	201	234	196	206	241	218
Total	**2245**	**2325**	**2405**	**2556**	**2427**	**2483**

Alaska Sentencing Commission 1991 Annual Report

A detailed 1990 prisoner profile, by offense is shown in Table 4.[8]

---

[7] Id.

[8] Data provided by Department of Corrections, as of December 31, 1990.

Table 4
Prisoner Profile by Offense
As of December 31, 1990

Offense Type	Class[1]	Number of Offenders	Subtotal
Offenses Against the Person			
Murder, 1st degree	U	183	
Murder, 2nd degree	U	86	
Manslaughter	A	29	
Criminal negligent homicide	C	6	
Multiple deaths		1	
			305 homicides
Assault, 1st degree	A	69	
Assault, 2nd degree	B	51	
Assault, 3rd degree	C	70	
Assault, 4th degree	Am	44	
Reckless endangerment	Am	--	
			234 assaults
Kidnapping	U	33	
Custodial Interference, 1st degree	C	1	
Custodial Interference, 2nd degree	Am	--	
			34 kidnapping
Sexual assault, 1st degree	US	197	
Sexual assault, 2nd degree	B	31	
Sexual assault, 3rd degree	C	1	
Sexual abuse of minor, 1st degree	US	184	
Sexual abuse of minor, 2nd degree	B	72	
Sexual abuse of minor, 3rd degree	C	2	
Sexual abuse of minor, 4th degree	Am	7	
Incest	C	2	
Unlawful exploitation of minor	B	1	
Indecent exposure	Bm	--	
			497 sex offenses
Robbery, 1st degree	A	116	
Robbery, 2nd degree	B	17	
Extortion	B	--	
Coercion	C	--	
			133 robberies
Total Offenses Against the Person			1,203
Offenses Against Property			
Theft, 1st degree	B	7	
Theft, 2nd degree	C	68	
Theft, 3rd degree	Am	8	
Theft, 4th degree	Bm	2	
Theft of services		1	
Theft by deception		--	
Theft by receiving		--	
Scheme to defraud		5	
Concealment of merchandise	Am	6	
Issuing a bad check		2	
Fraudulent use of a credit card	Am	--	
Obtaining credit card fraudulently	C	--	
			99 theft offenses

[1] U = Unclassified offense
US = Unclassified sexual
Am = Class A misdemeanor
Bm = Class B misdemeanor
A = Class A
B = Class B
C = Class C

Offense Type	Class[1]	Number of Offenders	Subtotal
Burglary, 1st degree	B	109	
Burglary, 2nd degree	C	78	
Criminal trespass, 1st degree	Am	4	
Criminal trespass, 2nd degree	Bm	8	
			199 burglaries
Arson, 1st degree	A	7	
Arson, 2nd degree	B	4	
			11 arson
Criminal mischief, 1st degree	B	2	
Criminal mischief, 2nd degree	C	15	
Criminal mischief, 3rd degree	Am	16	
Criminal mischief, 4th degree	Bm	2	
			35 crim. mischief
Forgery, 1st degree	B	6	
Forgery, 2nd degree	C	6	
Forgery, 3rd degree	Am	--	
			12 forgery
Total Offenses Against Property			356
Offenses Against Public Administration			
Perjury	B	3	
Failure to appear		42	
Contempt of court		7	
Unsworn falsification		1	
Failure to satisfy judgment		13	
Hindering prosecution, 1st degree		--	
Resisting/interfering with arrest		--	
			66 judicial offenses
Bribery	B	--	
Escape, 1st degree	A	4	
Escape, 2nd degree	B	10	
Escape, 3rd degree	C	--	
Escape, 4th degree	Am	1	
Unlawful evasion, 1st degree	Am	3	
Unlawful evasion, 2nd degree	Bm	1	
Fugitive from justice		12	
			31 escape
Promoting contraband, 1st degree	C	3	
Promoting contraband, 2nd degree	Am	1	
Interference with official proceedings	B	4	
Terroristic threatening	C	1	
			9 other
Total Offenses Against Public Administration			106
Offenses Against Public Order			
Disorderly conduct	Bm	2	
Harassment	Bm	4	
Misconduct involving weapons, 1st degree	C	19	
Misconduct involving weapons, 2nd degree	Am	3	
Misconduct involving weapons, 3rd degree	Bm	1	
Total Offenses Against Public Order			29 public order
Traffic Offenses			
Joyriding		1	
Driving with revoked/suspended license		13	
Hit and run		1	
Driving while intoxicated		78	
Reckless driving		1	
Traffic - Other		1	
Total Traffic Offenses			95 traffic

Offense Type	Class[1]	Number of Offenders	Subtotal
Controlled Substances			
Controlled substance, 1st degree	U	15	
Controlled substance, 2nd degree	A	21	
Controlled substance, 3rd degree	B	97	
Controlled substance, 4th degree	C	45	
Controlled substance, 5th degree	Am	3	
Controlled substance, 6th degree	Bm	1	
Imitation controlled substance	C	2	
Imitation controlled substance to minor		--	
Total Controlled Substances			184 controlled substances
Alcohol Beverage Laws			
Illegal liquor		4	
Furnishing alcohol to a minor		1	
Importation		2	
Minor consuming		--	
Minor in possession		7	
Refuse chemical test		--	
Alcohol - other		1	
Total Alcoholic Beverage Laws			15 alcohol
Technical Violations			
Parole violation		162	
Probation violation		203	
Total Technical Violations			365 tech. violations
Miscellaneous Charges			
Non-criminal hold (Title 47)		2	
Federal offense		22	
Fish and game violation		1	
Prostitution		--	
City ordinance		3	
Contributing to the delinquency of a minor	C	2	
Total Miscellaneous Charges			30 miscellaneous
Attempt and Solicitation			
Attempt to commit felony		26	
Solicitation to commit crime		1	
Total Attempt and Solicitation			27 attempt

Alaska Sentencing Commission 1991 Annual Report

5. **Community Residential Centers.** As of November 1991, 190 inmates on furlough and 16 probationers and parolees were placed in 273 available beds in community residential centers.[9]

6. **Sex Offender Treatment.** As of October 1991, 157 offenders were participating in Department of Corrections sex offender treatment programs, 107 on an inpatient (incarcerated) basis and 50 on an outpatient (probation or parole) basis.[10]

B. Community Corrections Statistics

1. **Number of Probationers and Parolees.** As of December 31, 1991, 3,744 offenders were being supervised by the Division of Community Corrections. These numbers represent a 30% increase over the five-year period from 1986, when 2,885 offenders were on probation and parole.[11]

2. **Offender Demographics.** By race, 62% of probationers and parolees are white, 25% are Alaska Native, 9% are black and 4% are other races. The percentage of white probationers and parolees is higher than the percentage of inmates who are white; the percentage of Alaska Natives and blacks who are probationers and parolees is lower than the percentage of inmates of those races. By gender, 87% of probationers and parolees are male and 14% are female.

3. **Nature of the Offenses.** Most offenders on probation and parole were felons convicted of state charges. Probation and parole procedures provide for three supervision levels: 31% of probationers and parolees receive the maximum level of supervision, 47% a medium level, 14% a minimum level, and 8% are unclassified or unknown.[12]

4. **Types of Offenses.** The number of offenders on probation and parole rose 30% from 1986 to 1991. During this time, there were relative increases in the number of offenders on probation and parole for theft, sexual assault and sexual abuse, and drug offenses. There was a slight relative decrease in the number of offenders on probation or parole for murder or manslaughter.

---

[9] Fact Sheet for November 1991.

[10] Information provided by Department of Corrections, December 1991.

[11] Inmate Profile for 1990.

[12] Information provided by Department of Corrections, January 1992. Misdemeanants are generally placed under supervision of the court or of the Alcohol Safety Action Program.

Appendix 2:

Description of Commission Discussions

Appendix 2: Description of Commission Discussions

The commission's recommendations for action are contained in the body of this report. This appendix contains descriptions of those questions considered by the commission in 1991 where no action was recommended. Eight votes were required to recommend action, and although a quorum was always present, not all members were present for all votes.

This appendix also contains descriptions of those questions which were deferred by the commission until 1992. These descriptions are intended to give an idea of the issues under discussion, but they do not necessarily reflect the full range of possible debate.

With respect to all of these proposed questions, the commission welcomes input from all branches of government and private citizens. It also welcomes suggestions for other areas of appropriate study in relation to sentencing.

A. Ranking the Seriousness of Offenses

The commission in 1991 considered the following questions relating to the seriousness of offenses. It did not recommend action on them.

1. Should criminally negligent homicide be raised from a Class C to a Class B felony? Manslaughter (a Class A offense), is a homicide requiring recklessness, defined as conscious disregard of a known risk. AS 11.41.120. Criminally negligent homicide (currently a Class C offense) is a homicide requiring criminal negligence, defined as failure to perceive a substantial and unjustifiable risk; such failure must constitute a "gross deviation from the standard of care that a reasonable person would use in the situation." AS 11.41.130. Civil negligence is simply the deviation (rather than the gross deviation) from the standard of care that a reasonable person would have used. Many cases of criminally negligent homicide are committed through drunk driving, requiring the state to show that the driver was intoxicated at the time of a fatal crash and that the driver would have perceived a certain risk if sober.

Some commissioners felt that the gap between the classification of manslaughter (with a five-year presumptive term for a first offense) and criminally negligent homicide (with a range of 0-5 years for a first offense) was too great for offenses where the conduct was actually very similar. It was suggested that criminally negligent homicide be reclassified as a B felony, to give the court a wider range (0-10 years) of available sentences. Those in favor of the change felt that the result of this crime, death, is

extremely serious. Those opposed felt that greater punishment was inappropriate where the mental state required was just above civil negligence. Eight votes were required to approve the motion to raise criminally negligent homicide to a Class B offense. The motion failed, seven in favor to three opposed.

2. Should the penalty for manslaughter be raised from a five-year presumptive to a seven-year presumptive? Most manslaughter is defined as intentionally, knowingly, or recklessly causing a death under circumstances not amounting to murder in the first or second degree. AS 11.41.120(1). Many cases are committed through reckless drunk driving, and drunk driving cases were apparently considered to be the typical offense for manslaughter when the code was revised. However, manslaughter may also be committed in other ways, such as reckless use of a gun.

Some commissioners felt that the presumptive term should be raised to eliminate inconsistency with the first-degree assault statute, which calls for a seven-year presumptive sentence where serious physical injury is inflicted. See New v. State, 714 P.2d 378, 382-84 (Alaska App. 1986). Some commissioners felt that because manslaughter involves death, it is always a serious enough crime to justify a seven-year presumptive. Others felt that while seven years might be acceptable for manslaughter involving the use of dangerous instruments other than vehicles, it was too harsh for vehicular manslaughter. It was suggested that the manslaughter statute be broken into two parts, to allow a lower sentence for vehicular homicide, but this suggestion was not pursued. Because the vote to raise criminally negligent homicide failed, no motion was made to raise the presumptive sentence for manslaughter.

3. Should assisting suicide (now a form of manslaughter) be lowered from a Class A to a Class C felony? In its seriousness rankings, the commission rated a rare form of manslaughter, assisting another to commit suicide, at about the same level as a number of Class C felonies. AS 11.41.120(2). Some commissioners felt that assisting suicide should be recategorized as a Class C offense; one felt that it should not be a felony at all. Other commissioners felt that this was a difficult ethical area and no change was needed at this time. The motion to lower assisting suicide to a Class C offense failed, with seven votes in favor.

4. Should custodial interference be reclassified upward? The commission's seriousness rankings suggested that custodial interference might currently be classified too low. Some commissioners proposed that unlawfully removing a child from the state in violation of court order should be raised from a Class C to a Class B offense, while in-state custodial interference should be raised from a Class A misdemeanor to a Class

C felony. AS 11.41.320, .330. The commissioners generally agreed that this was a serious offense. However, there was a great deal of disagreement as to whether raising the classification would have a desirable affect. Some commissioners felt that this was usually a highly emotional situation following divorce, and increasing criminal penalties could only make matters more volatile and open to legal manipulation. Some commissioners pointed out that the original motivation for making out-of-state custodial interference a felony at all was simply to be able to enter it on the NCIC computer to gain the cooperation of other states. Other commissioners felt that despite the fact that two parents are involved, some cases of custodial interference are indistinguishable from kidnapping. The motion to reclassify out-of-state custodial interference to Class B failed, with two in favor. No motion was made to raise the classification for in-state custodial interference.

5. Should unlawful exploitation of a minor be raised from a Class B offense to an unclassified sexual offense? The commission's seriousness rankings indicated that unlawful exploitation of a minor, AS 11.41.455, might be misclassified as a B felony. Unlawful exploitation of a minor involves using a child under 18 years of age to engage in actual or simulated sexual conduct for the purpose of producing pornography; it also permits prosecution of parents and guardians who allow their children to be so used. Some commissioners felt that this conduct was as serious as an unclassified sexual offense. No motion was made to change the classification of unlawful exploitation of a minor.

6. Should the penalty for statutory rape be lowered? Alaska sees many cases of sexual abuse of a minor in the second-degree, a Class B offense involving sexual penetration with a person who is 13, 14, or 15 years of age and at least three years younger than the offender. AS 11.41.436(a)(1). There are also a fair number of cases of sexual abuse of a minor in the third-degree, a Class C felony, involving sexual contact under the same circumstances. AS 11.41.438. Some of these cases involve consensual sexual conduct in boyfriend-girlfriend situations, where one partner is young enough and the age spread is great enough that the case is considered to be statutory rape. These relationships may be generally acceptable to communities as well as to the participants, but sometimes come to the attention of law enforcement personnel who are under parental pressure to prosecute or who believe they are obliged to do so.

Some commissioners thought that when there is a genuine relationship between the parties, such as between a 19-year-old boyfriend and a 15-year-old girlfriend, it was unlikely that a prosecutor would be willing to bring charges or that the 15-year-old girlfriend would be willing to testify. Some commissioners felt that particularly in rural areas, where the number of available partners is few, it is common to see relationships

between men in their 20s and 14- or 15-year-old girls. Other commissioners felt that it was more typical to see exploitive relationships between 14-year-old girls and 40-year-old men. The motion to lower the classification of second-degree sexual abuse of a minor subsection (a)(1) from Class B to Class C failed with five in favor. No motion was made to lower the classification of third-degree sexual abuse of a minor.

7. Should the age spread on statutory rape be widened? Following the discussion above, the commissioners asked whether the age spread could be increased, so that the offender would need to be at least five years older than the victim before sexual activity was considered a crime. Some commissioners felt that some minors between 13 and 15 were able to give meaningful consent to a sexual relationship; others felt that there was likely still to be coercion with a person that young. The motion to increase the age spread to at least five years failed, with three in favor.

A number of other questions arising from the commission's seriousness ranking process have yet to be resolved. During 1992, the commission will consider the following issues.

1. Should the penalty for second-degree sexual abuse of a minor be raised? As noted above, second-degree sexual abuse of a minor is currently a Class B felony, with a maximum sentence of ten years for a first offender. AS 11.41.436. However, the sentence for this offense is typically one to four years, as a result of benchmark ranges established by the court of appeals for typical or moderately aggravated offenses. With good time, these offenses result in 8 to 32 months to serve. It has been suggested that the sentence be increased to ensure that sex offenders have time to complete a 24-month inpatient treatment program before they are released. This treatment program is believed to be particularly important for offenders whose actual conduct constituted first-degree sexual abuse, but who were convicted of a second-degree offense on the basis of reduced charges.

2. Should there be a new offense definition and penalty for multiple first-degree sexual abuse of a minor offenses? First-degree sexual abuse of a minor, AS 11.41.434, is an unclassified sexual offense with a presumptive term for a first offender of eight years. Case law has held that an appropriate sentence for multiple incidents or multiple victims should be in the range of 10-15 years. It has been suggested that a new offense be created with a statutory penalty for an extended course of conduct against a single victim or for multiple victims. Something similar has also been suggested for multiple sexual assaults.

3. Should theft offenses be divided at different levels? Theft is currently divided into four levels: AS 11.46.120, Class B, $25,000 or more; AS 11.46.130, Class C, $500 to $25,000; AS 11.46.140, Class A misdemeanor, $50 to $500; and AS 11.46.150, Class B misdemeanor, less than $50. There has been some discussion of changing these levels, particularly if there is a general restructuring of seriousness levels.

4. Should theft offenses be consolidated? Check forgery is currently dealt with as a type of forgery, rather than as a form of theft, and is generally a Class C felony regardless of the amount of money involved. AS 11.46.505. Where government checks are involved, such as permanent fund dividends, the offense is a Class B felony, AS 11.46.500. It has been suggested that check forgery should be treated separately from other forgeries and be included under theft according to the amount of money involved. It has also been suggested that this include forgery of government checks such as the permanent fund dividend.

The revised criminal code consolidated a number of ways of committing theft, including theft of lost property, theft by deception, theft by receiving, theft of services, and theft by failure to make required disposition of funds received. AS 11.46.100. Continuing with this consolidation, it has been suggested that the following offenses also be considered theft and differentiated only by the amount of money involved: bad checks, check forgery, defrauding creditors, concealment of merchandise, fraudulent credit card use, and criminal mischief where the only harm is to property. Similarly, all pre- and post-theft offenses could be consolidated, such as removal of identification, possession of property with identification removed, and criminal simulation.

5. Should cocaine offenses be considered as serious as heroin offenses? It has been suggested that cocaine, "crack" (rock cocaine) and related drugs are at least as serious in their physiological and social affects as heroin. Thus, it has been proposed to combine heroin (schedule IA) offenses with cocaine and crack (schedule IIA) offenses. AS 11.71.140, 11.71.150.

6. Should the penalties for drug offenses be entirely restructured? In the discussion of the seriousness of drug offenses, some commissioners felt that many current penalties are high in proportion to the seriousness of the typical offense, since typical offenses often involve small amounts of a drug sold by a small time dealer who is chemically dependent himself or herself. It has been proposed to restructure drug offenses to lower the penalties for possession and sale of small amounts of all drugs, and to divert the resources which would otherwise be used on imprisonment to substance abuse treatment programs and to drug education. This course is being investigated across the country because of the increasing number of addicted offenders. On the other

hand, the commissioners felt the penalty should remain high for trafficking in large amounts. During 1992, the commission may investigate the work of other states and the federal government and make recommendations in this area.

7. Should the definition of first-degree robbery be changed? A person now commits second-degree robbery if, in the course of taking or attempting to take property from the control of another, he uses or threatens to use force. This conduct becomes first-degree robbery if the person: (1) is armed with a deadly weapon (such as a gun or knife) or represents that he is; (2) uses or attempts to use a dangerous instrument (such as a bat), or represents that he has one; or (3) causes or attempts to cause serious physical injury. AS 11.41.500. First-degree robbery carries a seven-year presumptive term.

In discussing first-degree robbery, the commissioners felt that the typical offense usually involved an intoxicated young man who robbed a convenience store or other small business by brandishing a gun and taking a small amount of money without injuring anybody. The defendant usually has a substance abuse problem and is often a repeat offender. First-degree robbery is one of the offenses most often sent to the three judge panel because the seven-year presumptive sentence seems too harsh for a first offender. It is also common for first-degree robberies to be pled down to second-degree for the same reason. Since the typical robbery involves less physical harm to the victim than other typical Class A offenses (such as manslaughter and first-degree assault), it has been suggested that first-degree robbery include only those cases where deadly weapons or dangerous instruments are actually used, or where serious physical injury actually occurs, and that less serious robberies be reduced by statute to second-degree. A survey of six other states showed that Alaska's sentence is relatively high for the typical first-degree robbery.

8. Should the assault statutes be rewritten? In its discussion of seriousness, the commission noted that there were often several different typical offenses within the definition of each level of assault, and it was not clear that they were all of equal seriousness. AS 11.41.100-.230. A subcommittee of the commission made some attempt to redraft the statutes, but was unable to come to a satisfactory conclusion. Consultation with other states suggests that a completely satisfactory set of assault statutes is apparently very difficult to write, and most states have problems with what they have. The commission may look at this issue again in 1992.

9. Should criminal offenses outside of Title 11, the criminal code, be considered? There are a large number of criminal offenses which are not part of the criminal code. Many of them appear in Title 4, intoxicating beverage offenses, Title 18,

fish and game offenses, and Title 28, traffic offenses; other offenses are scattered here and there throughout the code. It would be extremely difficult in the limited time available to analyze all of these offenses. The commission has not yet decided whether to look at the most commonly charged offenses outside Title 11, discuss their seriousness, and make recommendations for change.

B. Criminal History and Offender Characteristics

The commission discussed whether the following changes should be made in how criminal history and offender characteristics are evaluated at sentencing. No change was recommended as to the first; the second was reserved for further study.

1. Should a statutory mitigating factor be added for extraordinary potential for rehabilitation? The commission considered at length whether to recommend codification of the nonstatutory mitigating factor of "extraordinary potential for rehabilitation," set out by the court of appeals in Smith and King v. State, 711 P.2d 561, 570-71 (Alaska App. 1985). The court of appeals has approved referral to the three-judge panel in cases where defendants demonstrate such extraordinary potential, noting that there are cases where a presumptive term will actually damage a first offender's chances for rehabilitation. Since none of the statutory mitigating factors allow for consideration of favorable information concerning prospects for rehabilitation, "there is a tremendous risk, in cases involving first felony offenders, that a sentence will be imposed without appropriate regard for the goal of rehabilitation."

The commission reviewed the decisions of the three-judge panel to accept or reject this mitigating factor. Some commissioners felt that this mitigating factor should be added to the list of statutory mitigating factors, so that individual judges could use it like any mitigating factor without meeting the higher standard of proof necessary to send it to the three-judge panel. Other commissioners felt that the three-judge panel was functioning well and achieving an appropriate degree of consistency in this area. These commissioners felt that without the three-judge panel to insure uniformity, this mitigating factor would be a loophole through which racial and socio-economic inequality might be introduced. Other commissioners thought that there might be other aggravating and mitigating factors which are as subjective in nature as "extraordinary potential for rehabilitation," and these could conceivably be referred to the three-judge panel as well. Finally, other commissioners felt that the non-statutory mitigating factor should be done away with altogether. Because of this range of opinion, generally favorable to the status quo, the commission took no action on codification of the proposed mitigating factor.

4. When are consecutive sentences appropriate? Alaska law on consecutive and concurrent sentences is currently a complex blend of statutes and case law, difficult to summarize and difficult to apply. As part of its study of criminal history, the commission looked at consecutive/concurrent sentencing in other states, and it intends to study the problem further in 1992. Because this is an area with great potential for high prison costs and sentencing disparity, the commission prefers to make no recommendation until it has data on what the predicted outcome of any changes might be.

C. Probation and Parole

The commission reserved the following three issues for further study in 1992.

1. Should mandatory parole terms be lengthened? It was suggested that mandatory parole terms be extended by statute so that all felons receive at least two years of supervised time after release. This would allow for greater supervision, particularly for sex offenders and substance abusers. Currently, a typical Class C felony second offender sentenced to a two-year presumptive term has eight months of supervision time on mandatory release; a typical Class B felony second offender sentenced to a four-year presumptive term has 16 months.

Some commissioners felt that it would be worthwhile to investigate the release policies used in Delaware, where all offenders receive a six-month term of intensive supervision immediately following release, to assist with their re-entry into the community. The commissioners agreed to gather more data on what type of offenders were currently on mandatory parole and for what length of time. Information on the fiscal implications will also be gathered. The commission agreed to study this question in 1992.

2. Should discretionary parole release be available to any presumptively sentenced offenders? It was suggested that certain first felony offenders could be made eligible for discretionary parole without increasing risk to the community, which might result in less prison crowding. Some commissioners felt that increasing discretionary parole opportunities for presumptively sentenced offenders would be appropriate and would not necessarily undermine the goals of presumptive sentencing. Such parole eligibility might be restricted by saying that an inmate with an identified problem with anger management, substance abuse, or sexual abuse, etc., could not be released until the inmate has entered or completed an appropriate treatment program.

Other commissioners felt that increasing parole might reintroduce racial disparity and undermine truth in sentencing, breaking down the relationship between the sentence imposed by the judge and the sentence actually served. In the interviews conducted with judges and criminal practitioners, several people felt that discretionary parole could be extended to some presumptively sentenced offenders without problems. Such a proposal could conceivably affect a fair number of people, with a consequent impact on prison crowding. The commission agreed to address this question in 1992.

3. Should the maximum term of available probation be lengthened from five to 10 years? House Bill 106 proposes to lengthen the maximum allowable term of probation from five to 10 years. Some commissioners expressed support for this proposal because it would allow for long-term supervision where necessary for particularly dangerous offenders. If widely applied, this statutory change could have a significant fiscal impact. The commission agreed to consider this question in early 1992.

With respect to all of these questions, the commission welcomes input from all branches of government and private citizens. It also welcomes suggestions for other areas of appropriate study in relation to sentencing.