February 1978

Alaska Criminal Code Revision — Tentative Draft, Part 6: Sentencing: Classification of Offenses Chart; Index to Tentative Draft, Parts 1-6

Alaska Criminal Code Revision Subcommission

Summary

The Alaska Criminal Code Revision Commission was established in 1975, and reestablished in June 1976 as a Subcommission of the newly formed Code Commission, with the responsibility to present a comprehensive revision of Alaska's criminal code for consideration by the Alaska State Legislature. Tentative Draft, Part 6, contains an overview of sentencing in existing Alaska law as of 1978 and the provisions on sentencing and related procedures of the draft Revised Criminal Code, including classification of offenses, probation, fines, restitution, community service, imprisonment, and appeals. Commentary following each article is designed to aid the reader in analyzing the effect of the draft Revised Code on existing law and also provides a section-by-section analysis of each provision of the draft Revised Code. Appendices include definitions, proposed revisions to Title 33 of the Alaska Statutes (parole), a chart of classification of offenses, and an index to the six volumes of the Tentative Draft.

Additional information

As of 1975, Alaska's criminal laws were based primarily on Oregon criminal statutes as they existed at the close of the nineteenth century, with new statutes added and old statutes amended over the succeeding 75 years by Alaska territorial and state legislatures in a piecemeal approach to revision. This resulted in a criminal code containing outdated statutes, obsolete terminology, a number of overly specific statutes, a haphazard approach to *mens rea* (the culpable mental state with which a defendant must perform an act in order to be convicted of a crime) and the lack of a coherent, rational sentencing structure.

The Alaska Criminal Code Revision Commission was established in 1975 with the responsibility to present a comprehensive revision of Alaska's criminal code for consideration by the Alaska State Legislature. (The Commission was reestablished in June 1976 as a Subcommission of the newly formed Code Commission.)

Staff services for the Criminal Code Revision Commission and Criminal Code Revision Subcommission were provided by the Criminal Justice Center at University of Alaska, Anchorage (John Havelock, project executive director; Barry Jeffrey Stern, reporter/staff counsel; Sheila Gallagher, Reporter/Staff Counsel; and Peter Smith Ring, research director). The tentative draft proposed by the Criminal Code Revision Subcommission was substantially amended by the Alaska State Legislature prior to its approval as the Revised Alaska Criminal Code in June 1978 (effective January 1, 1980).

Related publications

Work of the Criminal Code Revision Commission and Criminal Code Revision Subcommission are contained in these volumes:

Alaska Criminal Code Revision: Preliminary Report by Criminal Code Revision Commission (1976)

Alaska Criminal Code Revision — Tentative Draft, Part 1: Offenses against the Person (1977)

Alaska Criminal Code Revision — Tentative Draft, Part 2: General Principles of Criminal Liability; Parties to a Crime; Attempt; Solicitation; Justification; Robbery; Bribery; Perjury (1977)

Alaska Criminal Code Revision — Tentative Draft, Part 3: Offenses against Property (1977)

Alaska Criminal Code Revision — Tentative Draft, Part 4: Conspiracy; Criminal Mischief; Business and Commercial Offenses; Escape and Related Offenses; Offenses Relating to Judicial and Other Proceedings; Obstruction of Public Administration; Prostitution; Gambling (1977)

Alaska Criminal Code Revision — Tentative Draft, Part 5: General Provisions; Justification; Responsibility; Bad Checks; Littering; Business and Commercial Offenses; Credit Card Offenses; Offenses against the Family; Abuse of Public Office; Offenses against Public Order; Miscellaneous Offenses; Weapons and Explosives (1978)

Alaska Criminal Code Revision — Tentative Draft, Part 6: Sentencing: Classification of Offenses Chart; Index to Tentative Draft, Parts 1-6 (1978)

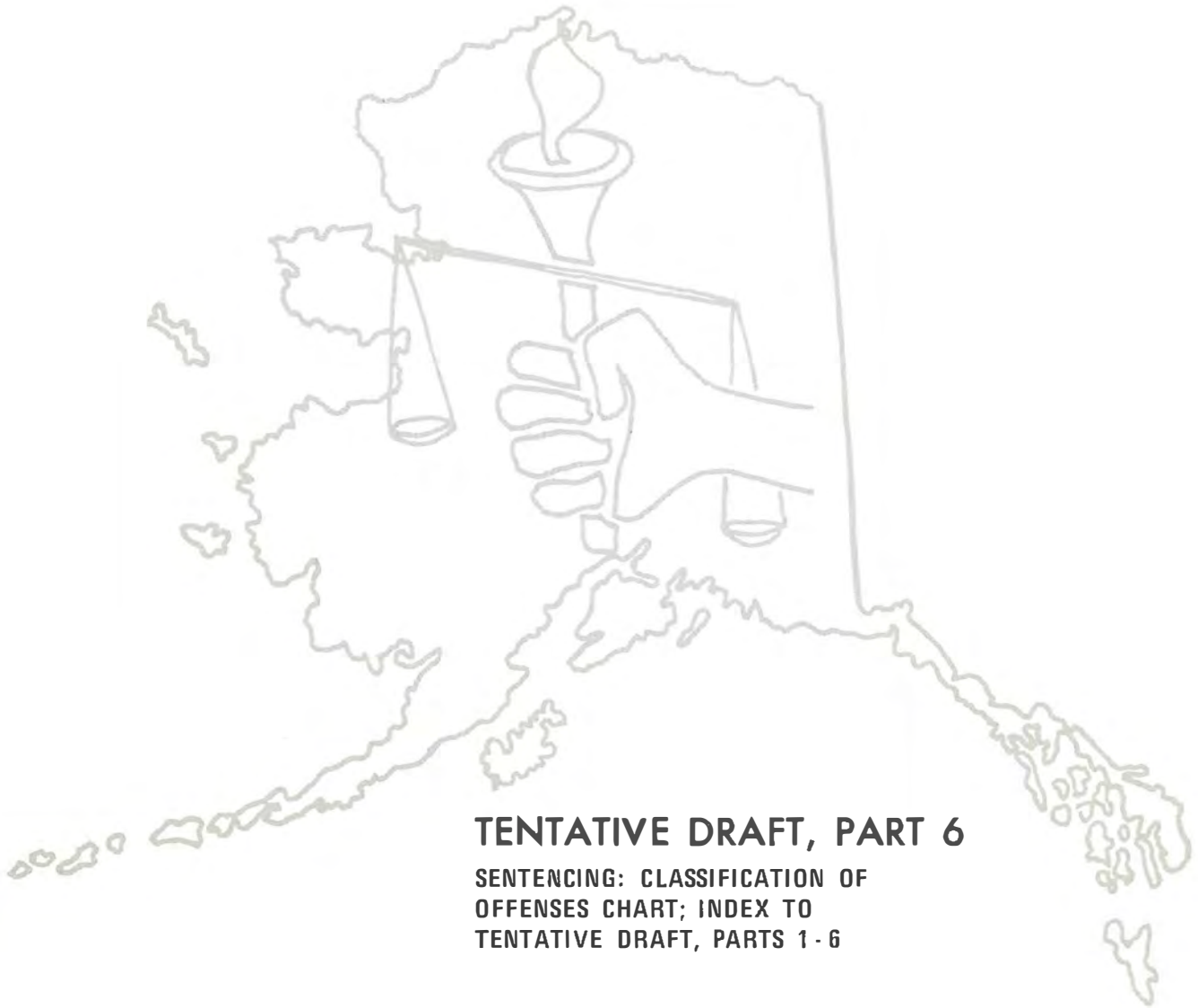
Commentary on the Alaska Revised Criminal Code (Ch. 166, SLA 1978) and Errata to the Commentary (1978)

Additional information about the criminal code revision can be found in the following articles by Subcommission's staff counsel:

Stern, Barry J. (1977). "The Proposed Alaska Revised Criminal Code." *UCLA-Alaska Law Review* 7(1): 1–74 (Fall 1977).

Stern, Barry J. (1978). "New Criminal Code Passes." *Alaska Justice Forum* 2(6): 1, 4–5 (Jul 1978).

ALASKA CRIMINAL CODE REVISION



TENTATIVE DRAFT, PART 6

SENTENCING: CLASSIFICATION OF OFFENSES CHART; INDEX TO TENTATIVE DRAFT, PARTS 1 - 6

CRIMINAL CODE REVISION SUBCOMMISSION
HONORABLE TERRY GARDINER, CHAIRMAN
FEBRUARY 1978

ALASKA REVISED CRIMINAL CODE

Tentative Draft, Part 6

Chapter 36. Sentencing and Related Procedures

February, 1978

Honorable Terry Gardiner
Chairman

TABLE OF CONTENTS

INTRODUCTION TO TENTATIVE DRAFT, PART 6

Tentative Draft, Part 6, contains the provisions on Sentencing and Related Procedures of the Revised Criminal Code.

A bill, HB 661, dated January 19, 1978, has been introduced for consideration by the 1978 session of the legislature. The bill provides for a complete revision of Title 11 and is comprised of the recommendations of the Subcommission contained in this and the five previous parts of the Tentative Draft. Copies are available at Legislative Information Offices.

Tentative Draft, Part 5, was distributed in January, 1978, and was composed of the remaining substantive provisions of the Revised Criminal Code - the articles on general provisions, justification, responsibility; the remaining articles in the Offenses Against Property chapter - theft and related offenses, arson, criminal mischief and related offenses, business and commercial offenses and credit card offenses; offenses against the family; the remaining article in the Offenses Against Public Administration chapter - abuse of public office; two Offenses Against Public Order articles - riot, disorderly conduct and related offenses and offenses against privacy of communication; weapons and explosives; and miscellaneous offenses.

Tentative Draft, Part 4, was distributed in November, 1977, and was composed of nine articles of the Revised Criminal Code - attempt and related offenses, part 2; arson, criminal

mischief and related offenses, part 2; business and commercial offenses; escape and related offenses; offenses relating to judicial and other proceedings; obstruction of public administration; general provisions; prostitution and related offenses; and gambling offenses.

Tentative Draft, Part 3, was distributed in April, 1977, and was composed of five articles in the Offenses Against Property chapter of the Revised Criminal Code - theft and related offenses, burglary and criminal trespass, arson and related offenses, forgery and related offenses and general provisions.

Tentative Draft, Part 2, was distributed in March, 1977, and was composed of seven articles of the Revised Criminal Code - general principles of criminal liability; parties to crime; justification; attempt and related offenses, part 1; robbery; bribery and related offenses and perjury and related offenses.

Tentative Draft, Part 1, was distributed in February, 1977, and was composed of four articles contained in the Offenses Against the Person chapter of the Revised Criminal Code - criminal homicide, assault and related offenses, kidnapping and related offenses and sexual offenses.

Commentary follows each article in the Tentative Draft and is designed to aid the reader in analyzing the effect of the Revised Code on existing law. The Commentary also provides a section-by-section analysis of each provision of the Revised Code. All references in the Commentary to Tentative Draft provisions contain the letters TD before the usual AS cite.

Also in this volume are a Classification of Offenses chart, Appendix III, and an Index to the Tentative Draft, Parts 1 - 6, Appendix IV.

ALASKA REVISED CRIMINAL CODE

Chapter 36. Sentencing

COMMENTARY

OVERVIEW OF SENTENCING IN EXISTING LAW

AND IN THE REVISED CODE

Existing Law

Existing Alaska law provides neither a coherent nor a rational sentencing structure. Virtually every crime contains its own sentencing provision, usually a designated prison term within a minimum and maximum range, a minimum and maximum range of fine and a proviso that either or both may be imposed upon conviction for the offense. Punishments have been authorized on an ad hoc basis, as must be the case when the statutes defining crimes are adopted in piecemeal fashion. As a result, widely disparate sentences are authorized or required in statutes regulating conduct of comparable gravity.

The lack of a coherent sentencing structure is evident, for example, in the area of theft offenses. While larceny is aggravated to a felony when the value of the property stolen exceeds $250, embezzlement becomes a felony when the value of the property exceeds $100. When an animal is stolen, the thief commits a felony if the value of the animal exceeds $50. The theft of certain minerals, on the other hand, will always be a felony regardless of their value.

In a number of instances, statutes authorize severe penalties for crimes against property, while relatively mild sentences are provided for crimes against the person and

property crimes that endanger the person. The maximum penalty, for example, for forging a bill of lading is 20 years, while the maximum penalty for an aggravated assault that results in "serious, permanent disfigurement. . ." is only five. A person who burns an unoccupied outhouse commits arson in the first degree, while a person who sets fire to a crowded restaurant only commits arson in the second degree. The minimum penalty for burglary in a dwelling is less than the minimum penalty for burglary not in a dwelling. The maximum penalty for embezzlement is 10 years, while the maximum penalty for extortion is only five.

While many substantive offenses appear to carry mandatory minimum prison terms and fines, AS 11.05.150 nonetheless permits a judge to suspend all or part of the minimum prison term and impose a lesser sentence, either of a fine or imprisonment or both.

Prison terms in existing law evidence a wide variety of minimum and maximum sentences, ranging from 20 years to life for first degree murder (AS 11.15.010), 10 years to 20 years for assault on an officer in jail (AS 11.30.160), to 0 to 25 years for a second conviction on use of firearms during the commission of certain crimes (AS 11.15.295). Sentences in the ranges of 1 - 20, 1 - 10 and 1 - 5 appear more frequently than do other combinations but no particular combination of minimum and maximum prison terms and fines is common to title 11. The variety is endless.

In a number of instances, including those provided

for by AS 12.55.040 and AS 12.55.050, increased punishments can be had for habitual offenders. In practice these provisions are rarely, if ever, employed because of problems associated with the proof of prior convictions and the fact that a satisfactory lengthy sentence can almost always be obtained upon the most recent conviction.

In addition to prison terms and fines, two other sentencing alternatives are available to the courts in existing law: (1) suspended imposition of sentence (AS 12.55.085) and (2) probation (AS 12.55.080, .090 and .100).

In a case involving a suspended imposition of sentence, the court withholds imposing any sentence for a specified period of time (not to exceed the maximum term for the offense) during which the defendant must meet conditions imposed upon him by the court. Failure to comply with those conditions can lead to the imposition of any sentence authorized by law for the offense, including a prison term which exceeds the duration of the period set by the court during which the defendant was under the suspended imposition of sentence. No credit for any part of the time passing prior to the violation of a condition of supsended imposition of sentence - known as "dead time" - is required to be given the defendant. If the defendant successfully completes the period of suspended imposition of sentence he may petition to have his conviction set aside.

Probation functions in a somewhat different fashion than suspended imposition of sentence. The primary distinction

lies in the fact that the court actually sentences a defendant to serve a specified term of imprisonment and then suspends all or part of that sentence and places the person on probation for the balance of the term upon such conditions as the court imposes. A violation of such a condition can lead to the court sentencing the person to serve the entire term of imprisonment originally imposed, a part of it, or the person can be continued on probation. In no event may probation extend beyond five years, as is also the case with suspended imposition of sentence. The time served prior to the violation of a condition leading to a revocation of probation is considered dead time and no credit need be given for it.

In both suspended imposition of sentence and probation cases, the court may impose any conditions it deems necessary, including fines (Brown v. State, 559 P.2d 107 (Alaska 1971)) and/or restitution. Revocation proceedings in both cases are governed by case law based on constitutional principles and by Court Rule. The standard of proof at these revocation hearings is by "a preponderance of the evidence," and the burden is on the state.

Sentences may be appealed by either the state or the defendant under provisions of AS 12.55.120. An entire body of case law on sentencing has developed out of this provision. (See generally Erwin, "Five Years of Sentence Review in Alaska," 5 UCLA-Alaska L. Rev. 1 (1975)).

By and large the provisions just discussed, their

accompanying case law and court rules govern current sentencing practices in Alaska, although there are a number of separate provisions scattered through title 11 such as AS 11.35.060 and AS 11.20.590(e) (providing for work on the public roads and picking up litter respectively) which provide the sentencing court with other alternatives.

A detailed discussion of actual sentencing practices is beyond the scope of this commentary. In short they can be described as apparently too disparate and too heavily controlled by whether the judge is "lenient" or "harsh" in his approach to the kind of offense in question. (See generally "Alaska Felony Sentencing Patterns: A Multivariate Statistical Analysis (1974-1976)," The Alaska Judicial Council, April 1977; and Cutler, "Sentencing in Alaska: A Description of the Process and Summary of Statistical Data for 1973," The Alaska Judicial Council, March 1975.)

The Code Provision

I. Six Classes of Offenses - Article 2.

The Revised Code minimizes unreasonable disparity among authorized sentences by creating six classes of offenses: three for felonies, two for misdemeanors and one for violations. Felonies are classified as A, B or C with A being the most serious. Misdemeanors are classifed as A or B. Murder is an unclassified felony carrying its own term of imprisonment: 0 - 99 years.

Offenses were classified on the basis of their relative degree of seriousness. Classification decisions were made only

after all offenses within a chpater had been defined.

II. Terms of Imprisonment - Article 8.

Having provided for the classification of offenses according to their relative degrees of seriousness, the Revised Code creates a new scheme of authorized terms of imprisonment, tied to the new classifications, applicable to all crimes in title 11.

Article 8 is designed to maintain an appropriate degree of judicial discretion while at the same time reducing the likelihood that wide, unexplained disparities in sentencing will continue to result within each class of offense. Instead of providing a single, necessarily extremely wide, range of sentences for each class of felony, the Code provides three narrower ranges of increasing severity according to whether the crime is a first, second or third or subsequent offense. Maximum penalties for first felony offenders are established according to current sentencing practices, the decisions of the Alaska Supreme Court and the American Bar Association sentencing guidelines.

For first felony offenders - those who previously have not been convicted of the same or a more serious class of offense - and all misdemeanants, potential prison term sentences will be couched in traditional terms reflecting a minimum and maximum range within which a definite term of imprisonment must be set.

"Second" and "third or subsequent" offenders - those previously convicted of the same or more serious class of offense - will be sentenced under a presumptive sentencing scheme. This scheme requires that most repeat felony offenders

be sentenced to some mandatory prison term.

The range of possible sentences is broken into three smaller sets of ranges: the presumptive - to be used in the "average" case; and the mitigated and aggravated - to be used in cases in which those types of factors are present and mandate treatment outside the norm. (See generally Dershowitz, Fair and Certain Punishment, McGraw-Hill (1976), for a full discussion of presumptive sentencing.)

The following chart sets forth the prison term alternatives proposed for the Revised Code.

Class of Offense	First Offender	Second Offender			Third or Subsequ. Offender		
		M	P	A	M	P	A
Murder	0 - 99 yrs for all						
A felony	0 - 15	3 - 7	7 - 11	11 - 16	7 - 11	11 - 18	18 - 30
B felony	0 - 7	1 - 3	3 - 5	5 - 7	3 - 7	7 - 11	11 - 16
C felony	0 - 3	0 - 3 mo.	3 mo - 3 yr.	3 - 4 1/2	1 - 3	3 - 5	5 - 7
A misd.	0 - 1 yr for all						
B misd.	0 - 90 days for all						

M = Mitigated
P = Presumptive
A = Aggravated

III. Fines - Article 5.

The range of fines applicable to natural persons under the Revised Code follows:

Class of Offense	Fine
Murder	None
A felony	0 - $10,000
B felony	0 - $10,000
C felony	0 - $10,000
A misdemeanor	0 - $ 1,000
B misdemeanor	0 - $ 500
Violation	0 - $ 300

IV. Suspended Imposition of Sentence; Probation - Articles 3 and 4.

Suspended imposition of sentence and probation are authorized as sentencing alternatives under the Revised Code and remain in much the same form as in existing law. Somewhat greater illustration as to possible conditions of probation is provided in the Revised Code. Two significant changes in existing provisions are proposed.

First, in suspended imposition of sentence cases the conviction will automatically be set aside upon successful completion of the terms and conditions of the suspended imposition of sentence unless the court receives written objection from either the district attorney or the Commissioner of Health and Social Services. Under existing law, this action is discretionary and must be initiated by the defendant.

Second, in both suspended imposition of sentence and probation cases if the person is alleged to have committed an act in violation of a condition which constitutes the commission of an offense the act must be proved by the State by clear and

convincing evidence, a change from the existing standard of proof by a preponderance of the evidence.

V. Restitution; Community Work Service - Article 6 and 7.

The Revised Code contains two articles dealing with restitution and community work service. As drafted, these sentences may be imposed as conditions in connection with other authorized sentences in the chapter. Both articles provide a list of examples of possible programs for the court's guidance. Both concepts are sentencing alternatives under existing law, but in limited situations. The Revised Code makes them much more explicit and authorizes the use of restitution and community work service in connection with all offenses.

VI. Sentence Appeals - Article 10.

Existing sentence appeal provisions are carried over into the Revised Code with some modifications required by the proposed presumptive sentencing scheme. The proposal would eliminate the right to appeal the length of a sentence imposed upon a second or third or subsequent offender. Those individuals could appeal the type of sentence (presumptive, aggravated, or mitigated) but not the length of time imposed by the sentence.

VII. Parole - Appendix II

In addition to the provisions contained in chapter 36, the Subcommission also reviewed the provisions of title 33 dealing with parole. After careful consideration of the relative merits of "good time" and "parole" release systems, the Subcommission voted to adopt a modified system of parole release. (For a fuller discussion of parole versus good time

see the Alaska Criminal Code Revision Commission, Preliminary Report (1976) pp. 175-189.)

The most fundamental change in the parole system adopted by the Subcommission entailed the creation of an Advisory Commission on Prison Terms and Parole Standards made up of the five person parole board, five superior court judges appointed by the Chief Justice and the Attorney General. This Advisory Commission will be required to establish objective criteria upon which parole release decisions will be made. The Advisory Commission will also establish ranges of release for all offenses. The Board of Parole will then be required to fix a prisoner's release date within six months of confinement on the basis of the objective criteria and within the prescribed release range for the offense.

Patterned after recent Oregon enactments, (see ORS 137.079, 137.120, 144.035 and 144.345), and similar in intent to recently revised Federal Parole procedures, the proposals of the Subcommission are designed to reduce the potential for disparity in parole decisions. They are also intended to narrow parole decision making discretion in a manner consistent with the overall changes in sentencing practices contemplated by the Revised Code.

The parole revisions would substitute for the present requirement that one-third of a sentence must be served prior to a person becoming eligible for parole consideration, a provision permitting the judge to require that up to one-half the sentence be served before parole is considered. The pro-

posed revisions also amend good time provisions of title 33, limiting statutory good time to a maximum of the equivalent of ten percent of the prison sentence. Changes are also proposed for meritorious good time.

The Subcommission's recommendations on good time and parole are included in Appendix II of this volume. These provisions will be included in a bill revising portions of AS 33.15 and 33.20 which will be presented to the legislature in February.

CHAPTER 36. SENTENCING AND RELATED PROCEDURES.

ARTICLE 1. PURPOSES AND GENERAL PROVISIONS.

Section

Sec. 11.36.010. DECLARATION OF PURPOSE. The legislature finds that the elimination of unjustified disparity in sentences and the attainment of reasonable uniformity in sentences can best be achieved through the application of judicial discretion within a legislatively fixed framework as provided in this chapter.

Sec. 11.36.020. PURPOSE OF SENTENCING. The purpose of this chapter is to provide the means for determining the appropriate sentence to be imposed upon conviction for an offense. In imposing sentence, the court shall use the least severe measures through the imposition of a sentence which gives primary weight to the seriousness of the defendant's present offense and his prior criminal history and, to the extent that they are not inconsistent,

(1) the relationship of the offense to other offenses within its class;

(2) the extent to which the offense harmed the victim or endangered the public safety or order;

(3) the effect of the sentence to be imposed on the likely reformation of the defendant;

(4) the need to confine the defendant to prevent further harm to the public;

(5) the effect of the sentence to be imposed in deterring the defendant or other members of society from future criminal conduct;

and

(6) the effect of the sentence to be imposed as a community condemnation of the criminal act and as a reaffirmation of societal norms.

Sec. 11.36.030. AUTHORIZED SENTENCES. (a) Subject to the provisions of this chapter, in imposing sentence upon a person convicted of an offense, the court may, singly or in combination, to the extent that they are not inconsistent,

(1) suspend imposition of sentence as authorized by sec. 90 of this chapter;

(2) order the defendant to be placed on probation or order unconditional discharge as authorized by secs. 100 - 130 of this chapter;

(3) order payment of a fine as authorized by secs. 140 - 180 of this chapter;

(4) order the defendant to make restitution as authorized by secs. 190 - 210 of this chapter;

(5) order the defendant to carry out a continuous or periodic program of work service to the community as authorized by secs. 220 - 240 of this chapter; or

(6) impose a term of imprisonment, periodic or continuous, as authorized by secs. 250 - 300 of this chapter.

(b) Nothing in this section deprives the court of any authority conferred by law to order a forfeiture of property, suspend or revoke a license, remove a person from office, or impose any other civil penalty.

Sec. 11.36.040. GENERAL PROVISIONS. (a) In addition to any other requirement of law relating to the imposition of sentences, at the time of imposing a sentence of imprisonment exceeding 180 days, the court shall prepare a sentencing report as a part of the record, to include

the following:

(1) a verbatim record of any sentencing hearing, including statements made by witnesses, the prosecuting attorney, the defense attorney, and the defendant;

(2) findings on material issues of fact and on factual questions required to be determined as a prerequisite to the selection of the sentence imposed; and

(3) a precise statement of the terms of the sentence imposed, including recommendations as to the place of confinement or the manner of treatment.

(b) The sentencing report required under (a) of this section shall be furnished to the division of corrections and the state Board of Parole within 30 days after imposition of sentence.

(c) When a defendant is sentenced to imprisonment, his term of confinement commences as of the date of imposition of sentence. A defendant who is sentenced shall receive credit toward service of his sentence for time spent in custody pending trial, sentencing, or appeal if that detention was in connection with the offense for which sentence was imposed. If the defendant was detained on multiple counts or offenses and has been sentenced consecutively, he may not receive total credit for more than the actual time he spent in custody pending trial, sentencing, or appeal. The time during which the defendant is voluntarily absent from institutional confinement, or from the custody of an officer after his sentence, may not be credited toward service of his sentence.

(d) A sentence of imprisonment shall be stayed if an appeal is taken and the defendant is admitted to bail. If an appeal is taken and the defendant is not admitted to bail, the Department of Health and Social Services shall designate the facility in which the defendant

shall be detained pending appeal or admission to bail.

(e) A sentence of imprisonment shall specify the duration of imprisonment. However, the place of confinement, manner of treatment, and employment of the person sentenced shall be determined by statute or by regulation adopted in accordance with the Administrative Procedure Act (AS 44.62).

(f) If the defendant is convicted of two or more crimes before judgment on either has been entered, any sentences of imprisonment shall run concurrently unless the court expressly directs otherwise, in which case the judgment may provide that the imprisonment upon one conviction begins at the expiration of the imprisonment for any other of the crimes. If the defendant is imprisoned upon a previous judgment of conviction for a crime, the judgment may provide that the imprisonment commences at the expiration of the term limited by the previous judgment.

(g) A sentence that the defendant pay money, whether as a fine or in restitution or both, constitutes a lien in the same manner as a judgment for money entered in a civil action. Nothing in this section limits the authority of the court to otherwise enforce payment of a fine or restitution.

ALASKA REVISED CRIMINAL CODE

Chapter 36. Sentencing

ARTICLE AND SECTION ANALYSIS OF REVISED CODE

ARTICLE 1 - PURPOSES AND GENERAL PROVISIONS

Article Highlights

This article contains sections which set forth:

1. the legislative declaration of purpose in enacting the chapter on sentencing;
2. the general purposes of sentencing;
3. an outline of all authorized sentences; and
4. the general provisions related to sentencing.

The article is designed to consolidate a larger number of provisions scattered throughout three titles of existing law.

Section Analysis

I. TD AS 11.36.010. DECLARATION OF PURPOSE

This section sets out the legislative intent in revising existing sentencing provisions. The primary purpose behind the revision is an attempt to reduce the disparities in existing sentencing practice - disparities which are unrelated to any legally relevant criteria.

Data compiled by the Alaska Judicial Council in two separate studies of sentencing practices in Alaska (see p. 7, supra) revealed far too many instances in which no legally relevant facts and circumstances could be found to explain variations among felony sentences imposed for the same offense.

These variations were not a temporary aberration. The data reflected sentencing practices in felony cases from January of 1973 through August of 1976.

As indicated in the Alaska Criminal Code Revision Commission, Preliminary Report (1976), a number of approaches were available to the Subcommission in attempting to eliminate sentencing disparity. Among the approaches considered and rejected by the Subcommission as being too restrictive of legitimate judicial discretion were mandatory minimum sentences for all offenses, "flat-time" sentencing similar to that recommended by David Fogel in ". . . We Are The Living Proof. . .", (Charles Thomas, Cincinnati, 1975) and a modified version of flat-time sentencing similar to that recently enacted by the California legislature.

In the more cautious approach recommended for Alaska: (1) judicial discretion is narrowed but maintained in dealing with first offenders and (2) the court's discretion in sentencing second or subsequent offenders is substantially narrowed. These objectives are accomplished by adopting a sentencing proposal which contains minimum and maximum ranges for all misdemeanor offenders and first time felony offenders and presumptive sentences for all repeat felony offenders.

II. TD AS 11.36.020. PURPOSES OF SENTENCING

Chapter 36 has been drafted to reflect, to the greatest extent possible, the "just deserts" view of punishment[1/]. In

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1/ For a full exposition of the "just deserts" approach, see for example, Andrew Von Hirsch in Doing Justice: The Choice of Punishments (Hill and Wang, New York 1976).

determining the appropriate sentence to be imposed, two basic principles guide the court:

(1) the least severe measure should always be used which accomplishes the purposes of sentencing; and

(2) primary consideration in imposing sentence should always be given to the seriousness of the offense and the prior criminal history of the convicted person.

Under the "just deserts" theory of punishment, as a matter of justice or fairness, decisions with respect to a particular defendant ought to be made on the basis of what the person has done, not on some speculative expectation of what he might do in the future. Neither rehabilitation nor deterrence, as such, are primary considerations in determining the appropriate sentence, although both remain objectives of a "deserved" sentence. If a person's crime is serious, his punishment should be severe. If the offense is minor, the sanction should be mild.

Other, more traditional views of punishment may also be considered in choosing a sentence to the extent that they are not inconsistent with the two basic principles.

These secondary considerations - paragraphs (1)-(6) in TD AS 11.30.020 - are, to a large extent, similar to the Supreme Court's interpretation of the meaning of the constitutional mandate that "penal administration shall be based on the principle of reformation and upon the need for protecting the public," Alas. Const. art I, § 12 in State v. Chaney, 477 P.2d 441 (Alaska 1970). There the court observed that:

> Within the ambit of this constitutional phraseology are found the objectives of rehabilitation of the offender into a noncriminal member of society, isolation of the offender from society to prevent criminal conduct during the period of confinement, deterrence of the offender himself after his release from confinement or other penological treatment, as well as deterrence to other members of the community who might possess tendencies toward criminal conduct similar to that of the offender, and community condemnation of the individual offender, or in other words, reaffirmation of societal norms for the purpose of maintaining respect for the norms themselves. (477 P.2d at 443.)

The Subcommission concluded that the objectives of sentencing, as opposed to those of "penal administration", could require that primary weight be given to the combination of the seriousness of an offense and a defendant's criminal record without creating constitutional problems.

In Nichols v. State, 477 P.2d 447 (Alaska 1970), the Supreme Court stated that a sentencing court must in each case determine the application of the Chaney objectives in fixing the sentence.

Under the provisions of TD AS 11.36.020(1)-(6) a trial court judge will still consider Chaney factors as they apply to "penal administration" and to the extent that they are not inconsistent with the "just deserts" objectives of sentencing which govern chapter 36.

In this section, the term "criminal history" is used in its traditional legal sense, meaning those offenses for which a person has been previously convicted. Arrests which have not led to convictions or other verified "police

contacts" are not meant to be included in determining a defendant's criminal history, although they may still provide relevant considerations in determining an appropriate sentence within Supreme Court established guidelines in Peterson v. State, 487 P.2d 682 (Alaska 1971) and its progeny.

Additionally, paragraph (1) permits the court to consider the relationship of a particular offense to other offenses within a given class. For example, a judge must consider the seriousness of a particular second degree burglary (TD AS 11.46.310) in relation to other second degree burglaries and then may appropriately consider the relationship between that type of offense and other class C felonies. In classifying offenses as A, B or C felonies, A or B misdemeanors or as violations, the legislature has determined the "seriousness" of an offense only within very broad ranges. Some A, B or C felonies are still more serious than others of the same class. In imposing sentence under the Revised Code the court must consider factors which mitigate or aggravate a particular offense. It may also determine that an offense as defined is a more or less serious offense within the class and accordingly deserves a more or less serious sentence.

III. TD AS 11.36.030. AUTHORIZED SENTENCE

This section sets forth the kinds of sentences which may be imposed upon conviction for an offense. Those sentences listed in TD AS 11.36.030(a)(1)-(6), and only those, are available to judges. As is provided in subsection (a) the sentences may be imposed either singly or in combination.

The possible sentences are listed in order of their increasing severity under most circumstances, consonant with the mandate of sec. 20 that the least severe measures should be used by the court in imposing sentence. It should be remembered, however, that the decision of what sentence is the least severe can only be made while considering the seriousness of the offense and the defendant's criminal history.

Subsection (b) reflects existing law and permits the court to impose other sanctions upon conviction as may be permitted or required by statute or the constitution.

IV. TD AS 11.36.040. GENERAL PROVISIONS

The seven subsections which make up this section are provisions of existing law which have been modified to complement the overall direction taken by chapter 36.

Subsections (a) and (b) are amended versions of AS 12.55.075. The amendments will eliminate some unnecessary sentence reports or reduce their bulk. The subsection also sets out the existing distribution requirements applicable to sentencing reports. Under the Revised Code a sentencing report will only be required in cases in which a term of imprisonment in excess of 180 days is imposed. Under existing law a report is required in all cases. The Subcommission concluded that in short sentence cases the record of the sentencing proceeding met the needs of justice. Since paragraph (2) in AS 12.55.075 is somewhat redundant of paragraphs (3) and (4) it was deleted.

Paragraph (3) of subsection (a) of TD AS 11.36.040 allows judges to recommend a place of incarceration or a treat-

ment program. The Subcommission rejected a proposal to make these recommendations mandatory or subject to judicial review. In addition, the Subcommission intended by the use of the phrase "a precise statement of the terms of the sentence imposed, . . ." that the court must make a specific reference to a parole release eligibility date under the revisions to title 33 proposed by the Subcommission.

Since the information contained in the sentencing report required by section (a) is most pertinent to the Division of Corrections and the Parole Board, and because all other interested parties would actually be present or represented at the sentencing hearing, the Subcommission determined that these two agencies would be the sole recipients of the sentencing report. In addition, to expedite the classification procedures of the Division of Corrections, sentencing reports are delivered to the agencies within 30 days of the date of imposition of sentence.

Subsection (c) and (d) are amended versions of AS 11.05.040(a) and (b). The primary change in language is to be found in TD AS 11.36.040(c). There language was added making it clear that a person would receive no more credit towards a sentence than that time which he actually served. The Subcommission wished to insure that a hypothetical defendant charged with three separate crimes in three separate indictments, whose bail was not met in all three and who served 100 days in jail prior to going to prison, and who was sentenced to three 10 year terms to be served concurrently could not get credit

for more than 100 days.

Both subsections (c) and (d) will insure that those defendants who are not released on their own recognizance or do not make bail receive credit for time served in jail prior to the start of a prison term which might be imposed upon a conviction. Subsection (c) sets the date of the commencement of confinement - the date sentence is imposed. This date is important not only for purposes of determining the length of a sentence, but also for determining parole eligibility release dates, "good time" triggering dates, and for other purposes of penal administration.

Subsection (d) provides a statutory basis for dealing with situations in which appeal is noticed in cases involving a sentence of imprisonment. If the defendant is bailed, the sentence of imprisonment is stayed. If not, subsection (d) provides that the Commissioner of Health and Social Services shall designate the facility in which the person shall be detained pending appeal.

Subsection (e) is based on AS 11.05.060. The existing provision, however, does not mandate that the court specify the duration of imprisonment. The new subsection (e) will require that the court establish the precise length of the sentence. AS 11.05.060 conflicts with AS 33.30.100 and the Supreme Court's opinion in Richards v. State, 451 P.2d 359 (Alaska 1969), both of which hold that the Commissioner of Health and Social Services has the sole responsibility for

determining where a person will be imprisoned. Subsection (e) resolves this conflict. However, as has been noted previously, under subsection (a)(3) the court will be permitted to make recommendations as to both the place and manner of confinement.

Subsection (f) is an amended version of AS 11.05.050 and is designed to remove any doubts which might exist with respect to how multiple sentences will be dealt with by the court. Such sentences will be deemed to be concurrent unless the court specifically mandates that they be served consecutively. This provision is consistent with the A.B.A. Standard on Sentencing Alternatives and Procedures (3.4(b)(10)).

The final subsection, (g), is similar in intent to provisions of AS 12.55.020. It is designed to provide dual avenues of recourse in dealing with those who owe monies on fines or restitution: (1) either by civil suit - preserving all the rights a debtor enjoys in any civil action; or (2) by contempt or other forms of enforcement (revocation of probation) inherent in judicial powers.

ARTICLE 2. CLASSIFICATION OF OFFENSES.

Section

Sec. 11.36.050. DESIGNATION OF OFFENSES. (a) The particular classification of each felony defined in this title, except murder, is expressly designated in the section defining it. An offense defined outside this title which is declared by law to be a felony without either specification of the classification or of the penalty is a class C felony.

(b) The particular classification of each misdemeanor defined in this title is expressly designated in the section defining it. An offense defined outside this title which is declared by law to be a misdemeanor without either specification of the classification or of the penalty is a class A misdemeanor.

(c) An offense defined in this title which is a violation is expressly designated as such in the section defining it.

Sec. 11.36.060. CLASSIFICATION OF FELONIES. Except for murder, felonies are classified for the purpose of sentence into the following categories:

(1) class A felonies;

(2) class B felonies; and

(3) class C felonies.

Sec. 11.36.070. CLASSIFICATION OF MISDEMEANORS. Misdemeanors are classified for the purpose of sentence into the following categories:

(1) class A misdemeanors; and

(2) class B misdemeanors.

Sec. 11.36.080. CLASSIFICATION OF VIOLATIONS. Violations are not classified.

ALASKA REVISED CRIMINAL CODE

CHAPTER 36. Sentencing

ARTICLE 2 - CLASSIFICATION OF OFFENSES

Article Highlights

Article 2 sets forth the various classifications of offenses to be found in the Revised Code.

The primary purposes of Article 2 are: (1) to establish the classification schema which is the heart of the sentencing proposals contained in this chapter; and (2) to provide a means of dealing with offenses outside title 11 which are simply classified as felonies or misdemeanors and carry no specific penalty.

Section Analysis

I. TD AS 11.36.050. DESIGNATION OF OFFENSES

This section establishes the three types of offenses in the Revised Code: felonies, misdemeanors and violations. Felonies and misdemeanors are traditional classifications of crimes, both in Alaska and elsewhere. Violations, the third types of offense proposed for the Revised Code, are found in many jurisdictions' penal statutes. However, in Alaska the concept usually has been reserved for vehicular violations in title 28.

This section also provides a means of dealing with sentencing of some offenses defined outside title 11. The Subcommission, upon review of a number of offenses defined outside title 11, concluded that the absence of a specific sentence for a felony was probably reflective of a legislative judgment that the offense was, in relative terms, among the less serious of felonies. Consequently, the Subcommission decided that felony offenses defined outside title 11 which did not carry a specific sentence would be dealt with as class

C felonies.

In its review of misdemeanors defined outside title 11, the Subcommission found many more instances of offenses for which no specific sentence was provided. Their relative degrees of seriousness varied greatly. As a result the Subcommission concluded that the maximum range of flexibility in dealing with such offenses was desirable and thus decided that such offenses should be dealt with for sentencing purposes as class A misdemeanors.

II. TD AS 11.36.060. CLASSIFICATIONS OF FELONIES

Under existing statutes, felonies are classified simply as felonies. Distinctions in terms of relative degrees of seriousness are made by specific sentencing provisions attached to each offense and in the mind of the judge. As already noted, the wide variety of sentencing provisions and of judicial opinion is the source of the disparity which exists in sentencing.

This problem has been dealt with by every major body investigating sentencing problems and by virtually every state which has revised its criminal laws through the technique of classifying all felony offenses in terms of their relative degree of seriousness.

The number of discrete classifications has varied from state to state. By far the greater number use between three and five classes of felonies. After careful review, the Subcommission determined that four groupings would be sufficient to deal with all felonies in the Revised Code.

Because it is so distinct a crime, the Subcommission concluded that murder, as defined in TD AS 11.41.110, should be regarded as a separate, unclassified felony. The letter designation for the other three classes of felonies, class A, B and C, is typical of that used in most revised codes.

While specific standards are not attached to each class, the Subcommission nonetheless assigned only the most serious offenses involving either serious physical injury or the threat of serious physical injury to a person to Class A. Those offenses involving less aggravated injuries to the person, aggravated property offenses, aggravated offenses against public order or administration and the like were designated B felonies. Class C felonies, the least serious in relative terms, include all other offenses which the Subcommission deemed serious enough to involve the consequences (and the protections) of felony designation.

III. TD AS 11.30.070. CLASSIFICATION OF MISDEMEANORS

The Subcommission approached misdemeanor classification decisions in much the same way as felonies. While some states (Pennsylvania and Delaware, for instance) used three classes for misdemeanors, the Subcommission concluded that two were sufficient to deal with misdemeanors in the Revised Code. Classification of an offense as an A misdemeanor was made on the judgment of whether the offense was deemed of such seriousness to warrant as much as a year in jail.

IV. TD AS 11.36.080. CLASSIFICATION OF VIOLATIONS

An offense was characterized as a violation when

the Subcommission concluded that a person should never be imprisoned for its transgression. A maximum $300 fine is the only authorized sentence for a violation. Because of the nature of the proposed sentence and because of the limited number of offenses designated as violations, the Subcommission concluded that it would be inappropriate to subdivide violations into classes. (Tentative Draft, Part 6 at 94) provides a definition of the term violation as it is used in title 11.

ARTICLE 3. SUSPENDED IMPOSITION OF SENTENCE.

Section

090 Suspended Imposition of Sentence

Sec. 11.36.090. SUSPENDED IMPOSITION OF SENTENCE. (a) If it appears that the purposes of sentencing set out in sec. 20 of this chapter will be served, the court may, subject to secs. 250 - 300 of this chapter, suspend the imposition of sentence. In suspending imposition of sentence the court may release the defendant or place him on probation. If the defendant is placed on probation, it may be to the court or supervised by the division of corrections. The court may direct that the suspension continue for a period of time not exceeding the authorized sentence of imprisonment for the offense, but in no event for longer than five years, and upon the terms and conditions which the court determines.

(b) At any time during the period of suspended imposition of sentence, a probation officer may, upon a finding of probable cause, rearrest a person placed in his custody or the court may, upon a finding of probable cause, issue a warrant for the rearrest of the person. The court may revoke the suspended imposition of sentence if it finds, by a preponderance of the evidence, that the defendant violated a condition of the suspended imposition of sentence, unless the act or acts alleged to be in violation of a condition constitute an offense, in which case the court must find by clear and convincing evidence that the condition was violated.

(c) Upon revocation of the suspended imposition of sentence, as provided in (b) of this section, the court may impose another sentence authorized by law for the original conviction or may impose sentence within the longest period for which the defendant might have been sentenced under sec. 260 or 270 of this chapter.

(d) The court may, at any time during the period of suspended imposition of sentence, modify requirements imposed to relieve the defendant of a requirement that, in its opinion, imposes an unreasonable burden on him.

(e) The court may, when the purposes of sentencing set out in sec. 20 of this chapter will be served, and when the conduct of the defendant warrants it, terminate the period of suspended imposition of sentence and unconditionally discharge the defendant. If the court has not revoked the order of suspended imposition of sentence and imposed sentence, the defendant shall, at the end of the term of suspended imposition of sentence, be unconditionally discharged by the court.

(f) In all court proceedings for the revocation of a suspended imposition of sentence the defendant is entitled to reasonable notice and to be represented by counsel.

(g) Upon unconditional discharge of the defendant by the court without imposition of sentence, the clerk of the court shall set aside the conviction and issue to the defendant a certificate to that effect, unless the district attorney or the commissioner of health and social services files written notice of objection.

ALASKA REVISED CRIMINAL CODE

Chapter 36. Sentencing

ARTICLE 3 - SUSPENDED IMPOSITION OF SENTENCE

Article Highlights

In large measure this section is an amended version of AS 12.55.085 and is intended to accomplish essentially the same objectives as existing law: (1) to provide the court with an alternative sentence less than incarceration in appropriate cases; and (2) to provide a defendant who complies with the court's conditions with the opportunity, as it were, to "wipe the slate clean."

Section Analysis

I. TD AS 11.36.090. SUSPENDED IMPOSITION OF SENTENCE

Subsection (a) is nearly identical to AS 12.55.085(a), both in language and intent. The options open to the court in providing for supervision (or not) have been made clearer, and reflect current practice. The five year limit on Suspended Imposition of Sentence, not set forth in AS 12.55.085(a), was added by the Subcommission to make Suspended Imposition of Sentence situations identical with maximum time limits which can be imposed in cases involving probation.

Subsection (b) of TD AS 11.36.090 is similar to AS 12.55.085(b). One major change has been made. The Subcommission concluded that the statute should reflect the appropriate standard of proof (.085 is silent on the matter) to be employed in determining if conditions of Suspended Imposition of Sentence have been violated. The Subcommission voted, by a narrow margin, to apply a dual standard.

For the act(s) which did not constitute the com-

mission of an offense but nonetheless were alleged to violate a condition of Suspended Imposition of Sentence, the standard of proof by a preponderance of the evidence was adopted. However, when the act alleged to be in violation of a condition of Suspended Imposition of Sentence constitutes an offense, the majority of the Subcommission was of the opinion that a more stringent standard ("clear and convincing") should be required because the analogy to a criminal case was stronger and the probable consequence of a finding that a violation occurred was likely to be a loss of personal freedom.

Subsection (c) is consistent with existing law and reflects the view that a person who violates a condition of Suspended Imposition of Sentence and foregoes the opportunities for self-rehabilitation available should be back in the same place he was at the time he first appeared before the court for sentencing. In these cases, the court should have open to it the fullest range of alternatives.

Subsections (d) and (e) provide mechanisms by which the court may either modify conditions of Suspended Imposition of Sentence or unconditionally discharge a person prior to the original date when, in its opinion, the purposes of sentencing set forth in sec. 20 would be served.

Subsection (f) is designed to affirm the minimum substantive rights of a defendant to notice and counsel in revocation hearings. It is not a definitive list of all rights which a person facing revocation may enjoy.

Subsection (g) is patterned after AS 12.55.085(e) and represents a change only to the extent that the certificate setting aside the conviction will automatically be given to the defendant, unless the district attorney or the Commissioner of Health and Social Services objects in writing. Under current law, setting aside the conviction is discretionary with the court and requires the initiation of a procedure by the defendant. As a practical matter, it is frequently highly inconvenient or expensive for a defendant to initiate such a proceeding even though in the great majority of cases the conviction would routinely be set aside.

As drafted, subsection (e) provides that the clerk of the court will initiate an automatic setting aside of the conviction. If no objection is received the conviction will be set aside. If an objection is received, the matter will then be considered by the court to determine if the conviction should be set aside.

ARTICLE 4. PROBATION AND UNCONDITIONAL DISCHARGE.

Section

100 Eligibility for Probation or Unconditional Discharge

110 Modification and Discharge

120 Conditions of Probation

130 Probation Revocation

Sec. 11.36.100. ELIGIBILITY FOR PROBATION OR UNCONDITIONAL DISCHARGE. (a) Upon entry of a judgment of conviction or within 60 days thereafter, the court may, if it is satisfied that the purposes of sentencing set out in sec. 20 of this chapter will be served,

(1) suspend a term of imprisonment authorized by secs. 250 - 300 of this chapter and place the defendant on probation; or

(2) unconditionally discharge the defendant, if he does not need the supervision, guidance, assistance, or direction that probation can provide and no proper purpose would be served by probation.

(b) A period of probation may not exceed the authorized sentence of imprisonment for the offense, and may in no event exceed five years. Probation may be limited to one or more counts or indictments, but, in the absence of an express limitation, extends to the entire sentence and judgment. A sentence of unconditional discharge is for all purposes a final judgment of conviction.

(c) The authority granted by this section is subject to secs. 250 - 300 of this chapter.

Sec. 11.36.110. MODIFICATION AND DISCHARGE. (a) During the period of probation specified in a sentence imposed under sec. 100 of this chapter, and upon application of the defendant or his probation officer, or on its own motion, the court may, after hearing upon notice to the probation officer and the defendant, modify requirements of probation that, in its opinion, impose an unreasonable burden on the

defendant.

(b) On application of the defendant or his probation officer, or on its own motion, the court may, after notice to the district attorney and the probation officer, terminate a period of probation and discharge the defendant at any time earlier than that provided in the sentence imposed under sec. 100 of this chapter, if warranted by the conduct of the defendant. This termination and discharge relieves the defendant of all obligations imposed by the sentence of probation.

Sec. 11.36.120. CONDITIONS OF PROBATION. (a) While on probation, among other conditions of probation, a defendant may be required to

(1) pay a fine as authorized by secs. 140 - 180 of this chapter;

(2) make restitution as authorized by secs. 190 - 210 of this chapter;

(3) perform community work service as authorized by secs. 220 - 240 of this chapter;

(4) serve a period of imprisonment not exceeding 90 days;

(5) provide support for those persons he is legally responsible to support;

(6) undergo, upon certification by an organization or individual that it will accept him as an outpatient, available medical or psychiatric treatment, or enter a specific treatment facility and remain there as a voluntary patient;

(7) pursue a specified secular course of study or vocational training;

(8) remain within the jurisdiction of the court and confine his movements as directed by the court;

(9) report as directed to the court or the probation officer;

(10) refrain from possessing a firearm without the specific

approval of the court;

(11) refrain from violating any state or federal law;

(12) refrain from drug use and the use of intoxicants and submit to reasonable medical testing designed to determine the extent of compliance with such a condition if so ordered by the court;

(13) devote himself to an approved employment or occupation; or

(14) forfeit for a prescribed period of time any license or permit which he may hold.

(b) Failure to comply with a condition of probation requiring the defendant to undergo medical or psychiatric treatment, or to enter and remain in a treatment facility, is considered only a violation of probation and does not, in itself, authorize involuntary treatment or hospitalization.

(c) The liability of the defendant for a punishment other than a fine imposed as a condition of probation is fully discharged upon expiration of the period of probation.

Sec. 11.36.130. PROBATION REVOCATION. (a) The defendant may not be arrested for a violation of probation except upon a showing of probable cause that a violation of a condition of probation has occurred. The court may revoke probation if it finds, by a preponderance of the evidence, that the defendant violated a condition of probation, unless the act or acts alleged to be in violation of a condition constitute an offense, in which case the court must find by clear and convincing evidence that the condition was violated.

(b) Upon revocation of probation, the court may

(1) order the defendant to serve any other nonincarcerative punishment authorized by law for the original offense;

(2) order the defendant to serve a term of imprisonment

equal to

(A) the balance of the original suspended term of imprisonment remaining at the time the violation occurred; plus

(B) 50 per cent of the time served on probation before the violation;

(3) order the defendant to serve a term of imprisonment less than that specified in (b)(2) of this section; or

(4) extend the period of probation for a period of time not exceeding 50 per cent of the original suspended term of imprisonment.

(c) In all court proceedings for the revocation of probation the defendant is entitled to reasonable notice and to be represented by counsel. Probation revocation proceedings shall be provided for by court rule.

CHAPTER 36. Sentencing

ARTICLE 4 - PROBATION AND UNCONDITIONAL DISCHARGE

Article Highlights

Article 4 describes a second non-incarcerative alternative - probation; one which has been traditionally a part of a comprehensive sentencing scheme and a practice frequently resorted to by the courts, especially when dealing with less serious first offenders. Composed of four sections, this article in large measure maintains the general intent and seeks the same underlying objectives as the provisions in AS 12.55.080 and AS 12.55.090-110.

Section Analysis

I. TD AS 11.36.100. ELIGIBILITY FOR PROBATION OR UNCONDITIONAL DISCHARGE

As is set forth in subsection (c), eligibility for probation is conditioned upon the provisions of sections 250-300 of chapter 36. In short, probation will be available at the discretion of the judge to: (1) all misdemeanants; (2) first felony offenders as they are defined in the Revised Code; and (3) "second offense, class C felony" offenders if mitigating circumstances are found to exist. Probation and unconditional discharge will also be open to an offender who can demonstrate by clear and convincing evidence that his case is extraordinary under provisions of TD AS 11.36.280.

Subsection (a) provides that a person convicted of an offense who is eligible may either be placed on probation or unconditionally discharged. Such a decision is within the

discretion of the court. As discussed in the commentary accompanying Article 11, an unconditional discharge results in a total severance of the court's jurisdiction over the person as related to that offense. Unconditional discharge might arise out of circumstances in which the arrest, incarceration pending trial, criminal prosecution and the attendant stigma fully served as "just deserts" given the seriousness of the offense and the prior criminal history of the defendant.

In subsection (b), existing provisions with respect to the length of probation and its application to multiple sentences are retained. The proviso that probation not exceed the lesser of the authorized sentence for an offense or five years means that a person eligible for probation upon conviction of a class C felony could be placed on probation for no more than three years while a person convicted of a class A or B felony or murder, if eligible, could be placed on probation for no longer than five years.

This restriction reflects the view that if the offense is serious enough that the court is considering a longer term, the court should probably think about a sentence including time to serve and the view that probation can fully serve its function in a five year period.

II. TD AS 11.36.110. MODIFICATION AND DISCHARGE

This section is designed to provide the court with the same type of flexibility in dealing with probation as it will have with Suspended Imposition of Sentence, restitution and community work service. (See discussion of TD AS

11.36.090(d) and (e). A similar provision is contained in AS 12.55.090(b).

III. TD AS 11.36.120. CONDITIONS OF PROBATION

In this section the Subcommission sought to provide the courts with greater illustration of the types of conditions which might be attached to probation without otherwise restricting existing levels of discretion. This decision was made after discussion whether to limit the kinds of conditions which could be attached to probation to those specifically set forth by statute and to further require that such conditions be applied only as they related to the offense for which the defendant was convicted.

Paragraph (4) of this section is intended to permit the court to sentence a person to a specified term of imprisonment, suspend all of that sentence and require the defendant to serve no more than 90 days in jail as a condition of probation. However, it is not intended to prohibit imposition of a term of imprisonment of, for example, six years with three to be suspended during which the defendant will be on probation.

IV. TD AS 11.36.130. PROBATION REVOCATION

In subsection (a), the Subcommission has provided that revocation of probation will proceed along lines similar to those set forth in TD AS 11.36.090(b), discussed in its accompanying commentary. Similarly, in subsection (c), minimum substantive rights of the person accused of violating a condition of probation, akin to those provided in the section on Suspended Imposition of Sentence, are set forth.

Subsection (b) provides a series of sanctions which a court may impose upon a finding of a violation of a condition of probation. Existing statutory provisions are silent on this matter. However, the courts have used their inherent powers to either continue the defendant on probation or require him to serve all or part of the term of imprisonment which was suspended when probation was granted.

The Subcommission felt that these options should continue to be available to the court. However, it also determined that a person on probation should be credited with some of the time served prior to the violation which led to the revocation. Moreover, the Subcommission also decided that the court should be authorized to resort to other non-incarcerative alternatives, such as a fine, as sanctions for violations of probation in lieu of either extended probation or a term of imprisonment.

ARTICLE 5. FINES.

Section

Sec. 11.36.140. CRITERIA FOR IMPOSING FINES. Upon conviction of an offense, a defendant may be sentenced to pay a fine as authorized in sec. 150 of this chapter. In determining the amount and method of payment of the fine, the court shall take into account the financial resources of the defendant and the nature of the burden that its payment will impose. No defendant may be imprisoned solely because of inability to pay a fine.

Sec. 11.36.150. AMOUNTS AUTHORIZED. (a) Upon conviction of an offense, a defendant who is not an organization may be sentenced to pay, unless otherwise specified in the section defining the offense, a fine of no more than

(1) $10,000 for a class A, B, or C felony;

(2) $1,000 for a class A misdemeanor;

(3) $500 for a class B misdemeanor;

(4) $300 for a violation.

(b) If the defendant is an organization, upon conviction of an offense it may be sentenced to pay a fine not exceeding the greater of

(1) $100,000; or

(2) an amount not exceeding twice the pecuniary gain realized by the defendant as a result of the offense.

Sec. 11.36.160. TIME AND METHOD OF PAYMENT OF FINES. If a defendant is sentenced to pay a fine, the court may grant permission for the

payment to be made within a specified period of time or in specified installments.

Sec. 11.36.170. CONSEQUENCES OF NONPAYMENT. (a) If a defendant sentenced to pay a fine defaults in the payment of the fine or of any installment, the court, upon application of the official to whom the money is payable or another officer of the court, or on its own motion, may require the defendant to show cause why he should not be sentenced to imprisonment for nonpayment and may issue a summons or a warrant of arrest for his appearance. Unless the defendant establishes, by a preponderance of the evidence, that his default was not attributable to an intentional refusal to obey the order of the court or to his failure to make a good faith effort to obtain the funds required for the payment, the court shall find that his default was unexcused and may order him imprisoned, subject to sec. 140 of this chapter, until the fine or a specified part of the fine is paid. The term of imprisonment for unexcused nonpayment of the fine shall be specified in the order of the court and may not exceed one day for each $50 of the unpaid portion of the fine or six months, whichever is the shorter. When a fine is imposed on an organization, the person or persons authorized to make disbursements from the assets of the organization shall pay the fine from those assets, and intentional failure to do so is punishable under this section. A person imprisoned for nonpayment of a fine shall be given credit towards its payment for each day that he is in the custody of the Department of Health and Social Services, at the rate specified in the order of the court. He shall also be given credit for each day that he has been detained as a result of a warrant of arrest issued under this section.

(b) If it appears that the default in the payment of a fine is excusable, the court may make an order allowing the defendant additional

time for payment, reducing the amount of the fine or of each installment, or revoking the fine or the unpaid portion of the fine in whole or in part.

Sec. 11.36.180. REVOCATION OF FINES. (a) A defendant who has been sentenced to pay a fine may at any time petition the court which sentenced him for a revocation of any unpaid portion of the fine. A failure to so petition will give rise to a rebuttable presumption of intentional default of payment in a proceeding under sec. 170 of this chapter.

(b) If, in a judicial proceeding following conviction, a court issues a final judgment invalidating the conviction, that judgment may include an order that any or all of a fine which the defendant paid under the sentence for that conviction be returned to him.

ALASKA REVISED CRIMINAL CODE

CHAPTER 36. Sentencing

ARTICLE 5 - FINES

Article Highlights

The fine is an exceptional sanction in that the justice of its application cannot be determined without considering the circumstances of the defendant. A court must be given broad latitude to consider the means of the defendant in determining the appropriateness of the use of this sanction and the amount. The means of the defendant are not the sole criteria of course. A crime which involves monetary gain is certainly a prime case for a fine, after restitution has been adequately provided for. In addition to providing broad latitude to the court in application of fines, the Subcommission concluded that distinctions ought to be permitted between organizational and natural persons.

Section Analysis

I. TD AS 11.36.140. CRITERIA FOR IMPOSING FINES

This section sets the standard that the levy and amount of fine will be based upon the ability of the defendant to pay. It also reflects the constitutional requirement that a person not be imprisoned because of an inability to pay a fine. (See Hood v. Smedley, 498 P.2d 120 (Alaska 1972)).

II. TD AS 11.36.150. AMOUNT AUTHORIZED

Since the amount of a fine imposed is largely conditioned on an ability to pay and will not regularly reflect the seriousness of the offense, the Subcommission determined the maximum amounts of fines which might be imposed with a view towards providing an appropriate degree of flexibility to the

court. At the same time, an attempt was made to provide for reasonable distinctions between violations, misdemeanors and felonies.

However, the Subcommission felt that murder, when committed by a natural person, was the kind of crime for which a fine would invariably be inappropriate. Further, a fine cannot be imposed as a condition of probation in a murder case involving a defendant who is a natural person since no fine is authorized for murder and only those fines authorized by this article may be imposed as conditions of probation.

On the other hand, where a party in a murder case is an organization, the only effective remedy against such a defendant is likely to be a very heavy fine. For this reason, and because other forms of criminal activity more frequently associated with organizational defendants would "deserve" much higher fines than those which might be imposed against natural person defendants, the Subcommission chose the $100,000 figure. Paragraph (2) of subsection (b), providing for imposition of a fine equal to twice the pecuniary gain, was designed to insure a justly deserved sanction in cases involving organization defendants, especially where the offense for which the organization was convicted might have been economically motivated.

III. TD AS 11.36.160. TIME AND METHOD OF PAYMENT OF FINES

This section is designed to insure that where a fine may be an entirely appropriate sanction for a person's conduct, it may be imposed without creating undue economic burdens on

the person or those relying on that person for support.

IV. TD AS 11.36.170. CONSEQUENCES OF NONPAYMENT

This section provides the means for dealing with those individuals who, while financially able, do not pay their fines. Together with subsection (a) of TD AS 11.36.180, subsection (a) of this section creates a rebuttable presumption of intentional nonpayment. If a defendant who has been sentenced to pay a fine does not, despite his ability to do so, and has not petitioned the court under subsection (a) of TD AS 11.36.180, then it will be presumed that this failure is intentional. The presumption can be overcome by the defendant upon a contrary showing by a preponderance of the evidence.

Willful nonpayment can result in imprisonment. The judge may sentence the person to a period of imprisonment not to exceed six months or the number of days produced by dividing the unpaid balance of the fine by $50, whichever is less. Thus, a $300 balance would produce six days in jail, while a $10,000 balance would produce a six month sentence.

V. TD AS 11.36.180. REVOCATION OF FINES

Subsection (a) of this section has just been discussed. Subsection (b) is included to provide a means for returning fine monies to defendants whose convictions are invalidated.

ARTICLE 6. RESTITUTION.

Section

190 Eligibility for Restitution

200 Restitution Programs

210 Modification and Discharge

Sec. 11.36.190. ELIGIBILITY FOR RESTITUTION. (a) Subject to secs. 250 - 300 of this chapter, the court may, if it is satisfied that the purposes of sentencing set out in sec. 20 of this chapter will be served, order a defendant convicted of an offense to perform a program of restitution as provided under sec. 200 of this chapter. The court may order that restitution be made while the defendant is serving a term of imprisonment under secs. 250 - 300 of this chapter or may order restitution as a condition of probation or as a condition of a suspended imposition of sentence.

(b) In determining the amount and manner of payment of restitution, the court shall take into account the financial resources of the defendant and the nature of the burden that its payment will impose.

Sec. 11.36.200. RESTITUTION PROGRAMS. (a) The court, in sentencing a defendant under sec. 190 of this chapter, may require the defendant to provide the victim with restitution for the harm caused by the offense, including but not limited to payment for

(1) the replacement value of property taken or damaged during the commission of or flight from the offense, less the value of the property recovered and returned to the victim;

(2) medical expenses sustained by the victim as a result of the defendant's actions during the commission of or flight from the offense, less any reimbursement from another source, collateral or otherwise;

(3) income from wages lost as a result of an injury sustained

by the victim as a result of the defendant's actions during the commission of or flight from the offense, less any reimbursement from another source, collateral or otherwise; or

(4) repair of damage to the property of the victim caused by the defendant's actions during the commission of or flight from the offense.

(b) A program of restitution is subject to such conditions as the court may impose. The period during which restitution must be made may not exceed five years.

(c) Before the court may sentence a defendant to a program of restitution, the district attorney must give notice of the contemplated action to the victim of the offense.

Sec. 11.36.210. MODIFICATION AND DISCHARGE. (a) During the period in which restitution must be made as specified in a sentence imposed under sec. 190 of this chapter, and upon application of the defendant or his probation officer, or on its own motion, the court may, after hearing upon notice to the probation officer, the victim, and the defendant, modify requirements of restitution that, in its opinion, impose an unreasonable burden on the defendant.

(b) On application of the probation officer, the victim, or the defendant, or on its own motion, the court may, after notice to the district attorney, the victim, and the probation officer, terminate restitution and discharge the defendant at any time earlier than that provided in the sentence imposed under sec. 190 of this chapter, if warranted by the conduct of the defendant. This termination and discharge relieves the defendant of all obligations imposed by the sentence of restitution.

ALASKA REVISED CRIMINAL CODE

CHAPTER 36. Sentencing

ARTICLE 6 - RESTITUTION

Article Highlights

The Code gives greater emphasis to restitution than is the case under existing law. Restitution is available in all cases and in connection with most kinds of sentences. As it now stands, only passing reference is made to restitution in AS 12.55.100(a)(2), where it is listed as a possible condition of probation.

Section Analysis

I. TD AS 11.36.190. ELIGIBILITY FOR RESTITUTION

The Subcommission felt that restitution should be available in all cases, not just those in which probation was granted and therefore approved subsection (a). Under these provisions, a person who is eligible could be fined and placed on probation on a condition that restitution be made to the victim. Or, with the development of a program of prison industries, a court could order a person to serve a prison term for a period of time required to make restitution in a specified amount to the victim.

Further, because restitution is the one sanction which has the potential for making a victim "whole," or nearly so, and because the victim is the most frequently ignored party in the justice system, the Subcommission felt that restitution should be given more extended treatment as a complementary sanction in the Revised Code.

Subsection (b) is designed to permit the imposition of restitution without creating undue financial burdens on

the defendant or those dependent upon the defendant for support.

II. TD AS 11.36.200. RESTITUTION PROGRAMS

Subsection (a) of this section is intended to provide a court with some legislative guidance as to the types of programs which might be used in connection with restitution, without limiting its discretion to fashion a program of restitution to fit a particular case. Further illustrations of such programs can be found in: Harlan and Warren, "National Evaluation of Adult Restitution Programs;" "Research Report No. 1," Criminal Justice Research Center, Albany, N.Y. 1977; Hudson and Galaway, Restitution in Criminal Justice: A Critical Assessment of Sanctions, Lexington Books, Cambridge, Ma., (1977); Hudson and Chesney, "Research in Restitution: A Review and Assessment," Paper presented to the Second National Restitution Symposium, St. Paul, Minnesota, Nov. 13-15, 1977; and Shafer, Stephen, Restitution to Victims of Crime, Quadrangle Books, Chicago, Ill. (1960).

In discussing the nature of restitution programs the Subcommission, however, concluded that the victims should not "profit" from their misfortunes and thus attached the limitations found in paragraphs (2) and (3) of subsection (a). The intent was to simply make the victim financially "whole," not better off, whenever possible.

Subsections (b) and (c) reflect the concerns of the Subcommission that victims who wished to have no further contacts with the wrongdoer could be protected. Under subsection (b)

the court can attach any number of conditions including those related to the manner in which the restitution ordered will be made. And, as provided by subsection (c), a victim must be notified that restitution is contemplated and, theoretically, could refuse to accept restitution. The Subcommission did not wish to create the potential of situations in which dependent relationships were forced upon unwilling victims.

Finally, the Subcommission determined that a program of restitution, like suspended imposition of sentence or probation, should not be interminable. Since it can be a condition of either, the Subcommission concluded that it, logically, should be coterminal with their outer limits.

III. TD AS 11.36.210. MODIFICATION AND DISCHARGE

This section permits the court to modify or terminate restitution if it should become an undue burden on the defendant or when it would no longer serve a useful purpose. The Subcommission was not anxious to create sanctions which could become counterproductive to the purposes of sentencing and recognized that where obligations, especially those of a financial nature, are imposed upon a defendant care must be taken to insure that those obligations do not contribute to further anti-social actions by the defendant.

ARTICLE 7. COMMUNITY WORK SERVICE.

Section

220 Eligibility for Community Work Service

230 Community Work Service Programs

240 Modification and Discharge

Sec. 11.36.220. ELIGIBILITY FOR COMMUNITY WORK SERVICE. Subject to secs. 250 - 300 of this chapter, the court may, if it is satisfied that the purposes of sentencing set out in sec. 20 of this chapter will be served, order a defendant convicted of an offense to perform a program of community work service as provided under sec. 230 of this chapter. The court may order that community work service be performed while the defendant is serving a term of imprisonment under secs. 250 - 300 of this chapter or may order community work service as a condition of probation or as a condition of a suspended imposition of sentence. However, no program of community work service may be ordered except upon the agreement of the defendant.

Sec. 11.36.230. COMMUNITY WORK SERVICE PROGRAMS. (a) The court, in sentencing a defendant under sec. 220 of this chapter, may require the defendant to perform a program of community work service recommended by the division of corrections, the defendant, or the defendant's legal representative, including but not limited to work

(1) on projects designed to maintain or improve forests, parks, or other lands of the federal government, the state government, or a municipal government;

(2) on the roads or highways of the state government or a municipal government;

(3) on public projects designed to reduce or eliminate environmental damage to streams, lakes, ponds, rivers, or seacoast;

(4) on projects designed to improve public facilities of the

state government or a municipal government;

(5) in programs designed to protect the public health or to prevent injury or illness; or

(6) in programs designed to improve the education of residents of the state.

(b) A program of community work service is subject to any conditions which the court imposes and the employer agrees to. The period during which community work service must be performed may not exceed the maximum term of imprisonment to which the defendant could have been sentenced under sec. 260 or 270 of this chapter. Community work service does not confer a private benefit upon an individual except as it may be incidental to the public benefit produced by the community work service.

Sec. 11.36.240. MODIFICATION AND DISCHARGE. (a) During the period of community work service specified in a sentence imposed under sec. 220 of this chapter, and upon application of the defendant, his probation officer, or his employer, or on its own motion, the court may, after hearing upon notice to the probation officer, the employer, and the defendant, modify requirements of community work service that, in its opinion, impose an unreasonable burden on the defendant.

(b) On application of the probation officer, the employer, or the defendant, or on its own motion, the court may, after notice to the district attorney and the probation officer, terminate the community work service program and discharge the defendant at any time earlier than that provided in the sentence imposed under sec. 220 of this chapter, if warranted by the conduct of the defendant. This termination and discharge relieves the defendant of all obligations imposed by the sentence of community work service.

ALASKA REVISED CRIMINAL CODE

CHAPTER 36. Sentencing

ARTICLE 7 - COMMUNITY WORK SERVICE

Article Highlights

This article reflects the Subcommission's continuing concern that courts should have a greater variety of non-incarcerative sentencing alternatives available under the Revised Code. Recognizing that in many crimes, such as vandalism, the real "victim" is the public or a governmental body, the Subcommission concluded that restitution, in the form of community work service to the larger society could frequently be an appropriate remedy.

Section Analysis

I. TD AS 11.36.220. ELIGIBILITY FOR COMMUNITY WORK SERVICE

The same objectives outlined in the commentary accompanying TD AS 11.36.190 - Eligibility for Restitution - led to Subcommission decisions in the drafting of this section. One major distinction does exist, however. A defendant must agree to perform community work service. The Subcommission concluded that nonconsenting community work service "workers" realistically were not likely to be very productive.

II. TD AS 11.36.230. COMMUNITY WORK SERVICE PROGRAMS

As is the case with the comparable section in the restitution article, the Subcommission determined that courts should be provided with some specific illustrations of work service programs on a case-by-case basis.

There were a number of concerns with respect to community work service programs which were raised during its

discussion of the concept which could not be dealt with in this section. For instance, all parties who are contemplating community work service programs should carefully consider issues such as liability, the need for insurance, the legal rights of the parties, etc., prior to ordering a defendant to engage in a program of community work service. The Subcommission's view was that those issues would best be dealt with at the administrative level in considering particular programs and that the sentencing article should not attempt to treat such matters.

A final concern of the Subcommission with respect to community work service programs is expressed in subsection (b) of this section. The Subcommission agreed unanimously that community work service should not serve to confer private benefits upon individuals except where such benefits were incidental to the primary public benefit. Thus, if a person was tutored under paragraph (6) of subsection (a) of this section that person would undoubtedly receive some private benefits but they would be a natural outgrowth of the larger effort to improve the education of residents of Alaska. On the other hand, community work service programs could not be used to clear brush along a person's property even though in so doing a spawning stream might be improved to the overall benefit of all the state's citizens.

III. TD AS 11.36.240. MODIFICATION AND DISCHARGE

The commentary accompanying TD AS 11.36.210 will provide the reader with an explanation of the intent of this section.

ARTICLE 8. IMPRISONMENT.

Section

Sec. 11.36.250. PERIODIC TERM OF IMPRISONMENT AUTHORIZED. Subject to the provisions of this chapter, the court may sentence a defendant to periodic terms of imprisonment if it is satisfied that the purposes of sentencing set out in sec. 20 of this chapter will be served.

Sec. 11.36.260. SENTENCES OF IMPRISONMENT FOR MISDEMEANORS. (a) A defendant convicted of a class A misdemeanor may be sentenced to a definite term of imprisonment for not more than one year.

(b) A defendant convicted of a class B misdemeanor may be sentenced to a definite term of imprisonment for not more than 90 days unless otherwise specified in this title.

Sec. 11.36.270. SENTENCES OF IMPRISONMENT FOR FELONIES. (a) A defendant convicted of murder may be sentenced to a definite term of imprisonment for not more than 99 years.

(b) A defendant convicted of a class A felony

(1) may be sentenced to a definite term of imprisonment for a first, class A felony for not more than 15 years;

(2) shall be sentenced to a definite term of imprisonment within a presumptive range of seven or more but less than 11 years for a second, class A felony subject to adjustment as provided in (e) and (f) of this section;

(3) shall be sentenced to a definite term of imprisonment

within a presumptive range of 11 or more but less than 18 years for a third or subsequent class A felony subject to adjustment as provided in (e) and (f) of this section.

(c) A defendant convicted of a class B felony

(1) may be sentenced to a definite term of imprisonment for a first, class B felony for not more than seven years;

(2) shall be sentenced to a definite term of imprisonment within a presumptive range of three or more but less than five years for a second, class B felony subject to adjustment as provided in (e) and (f) of this section;

(3) shall be sentenced to a definite term of imprisonment within a presumptive range of seven or more but less than 11 years for a third or subsequent class B felony subject to adjustment as provided in (e) and (f) of this section.

(d) A defendant convicted of a class C felony

(1) may be sentenced to a definite term of imprisonment for a first, class C felony for not more than three years;

(2) shall be sentenced to a definite term of imprisonment within a presumptive range of three or more months but less than three years for a second, class C felony subject to adjustment as provided in (e) and (f) of this section;

(3) shall be sentenced to a definite term of imprisonment within a presumptive range of three or more but less than five years for a third or subsequent class C felony subject to adjustment as provided in (e) and (f) of this section.

(e) If sentence is imposed under (b), (c), or (d) of this section, the court shall sentence the defendant to a definite term of imprisonment within the following ranges for factors in mitigation:

(1) for a second, class A felony, three or more but less than

seven years;

(2) for a third or subsequent class A felony, seven or more but less than 11 years;

(3) for a second, class B felony, one or more but less than three years;

(4) for a third or subsequent class B felony, three or more but less than seven years;

(5) for a second, class C felony, three months or less;

(6) for a third or subsequent class C felony, one or more but less than three years.

(f) If sentence is imposed under (b), (c), or (d) of this section, the court shall sentence the defendant to a definite term of imprisonment within the following ranges for factors in aggravation:

(1) for a second, class A felony, 11 or more but less than 16 years;

(2) for a third or subsequent class A felony, 18 or more but less than 30 years;

(3) for a second, class B felony, five or more but less than seven years;

(4) for a third or subsequent class B felony, 11 or more but less than 16 years;

(5) for a second, class C felony, three or more but less than four and one-half years;

(6) for a third or subsequent class C felony, five or more but less than seven years.

(g) Aggravating factors adopted by the Advisory Commission on Prison Terms and Parole Standards shall be considered by the court in sentencing and shall increase the presumptive ranges set out in (b), (c), and (d) of this section.

(h) Mitigating factors adopted by the Advisory Commission on Prison Terms and Parole Standards shall be considered by the court in sentencing and shall reduce the presumptive ranges set out in (b), (c), and (d) of this section.

(i) When a factor in aggravation is an element of the offense, or a factor in mitigation is raised as a defense at trial and results in reducing the charge to a lesser included offense, that factor may not be used to increase or reduce the presumptive range.

(j) If the state seeks to establish a factor in aggravation at sentencing, or if the defendant seeks to establish a factor in mitigation at sentencing, written notice must be served on the opposing party and filed with the court at least 15 days before the date set for the imposition of sentence. Factors in aggravation and factors in mitigation must be established by clear and convincing evidence before the court sitting without a jury. The court shall set out all findings concerning factors in mitigation and aggravation with specificity.

Sec. 11.36.280. EXTRAORDINARY CIRCUMSTANCES. If the defendant is subject to sentencing under sec. 270 of this chapter, and the court finds by clear and convincing evidence that relevant mitigating or aggravating factors not specifically adopted by the Advisory Commission on Prison Terms and Parole Standards should be considered or that imposition of a term of imprisonment within the authorized range for the offense would be contrary to the purposes of sentencing set out in sec. 20 of this chapter, the court shall enter findings and cause a record of the proceedings to be transmitted to a three-judge panel for sentencing under sec. 290 of this chapter.

Sec. 11.36.290. THREE-JUDGE SENTENCING PANEL. (a) There is created within the superior court a panel of five superior court judges to be appointed by the chief justice of the supreme court in accordance

with rules and for terms as may be prescribed by the supreme court. The chief justice shall designate three of the judges appointed as panel members, one of the judges appointed as first alternate, and the remaining judge as second alternate. In accordance with rules as may be prescribed by the supreme court, an alternate member shall sit as a member of the panel only in the event of disqualification or disability of a regular panel member.

(b) The three-judge panel shall sentence a defendant when a sentencing court finds under sec. 280 of this chapter that imposition of sentence within the range authorized under sec. 270 of this chapter would be contrary to the purposes of sentencing set out in sec. 20 of this chapter.

(c) Sentencing shall be imposed only by a majority of the three-judge panel after consideration of all pertinent files, records, and transcripts, including the findings and conclusions of the judge who originally heard the matter. The three-judge panel may hear oral testimony to supplement the record before it.

(d) The three-judge panel may, in the interests of serving the purposes of sentencing set out in sec. 20 of this chapter, sentence the defendant under any provision of this chapter applicable to the class of offense in question.

Sec. 11.36.300. PRIOR CONVICTIONS. (a) For purposes of considering prior convictions in imposing sentence under this chapter,

(1) no prior felony convictions may be considered if a period of seven or more years, excluding any periods of incarceration, has elapsed between the date of conviction of the prior felony and the date of commission of the present felony;

(2) a conviction in this or another jurisdiction for an offense having elements substantially identical to those of a classified

felony defined in this title is considered the equivalent of that class of felony conviction;

(3) two or more convictions arising out of a single substantially contemporaneous course of criminal conduct are considered a single conviction;

(4) a conviction of murder under AS 11.41.110, or a conviction in this or another jurisdiction of an offense having elements substantially identical to those of murder as defined in AS 11.41.110, is considered a prior class A felony conviction.

(b) In sentencing proceedings under this chapter,

(1) prior convictions not expressly admitted by the defendant must be proved by authenticated copies of court records served on the defendant or his counsel at least 20 days before the date set for imposition of sentence;

(2) at least 15 days before the date set for imposition of sentence, the defendant shall file with the court and serve on the state a notice of denial if he alleges that two or more separate convictions should be considered a single conviction under (a)(3) of this section or if he denies that

(A) a prior judgment of conviction is authentic;

(B) he is the person named in a prior judgment of conviction;

(C) a prior conviction occurred within the period specified in (a)(1) of this section; or

(D) the elements of a prior offense committed in this or another jurisdiction are substantially identical to those of a classifed felony defined in this title or to those of murder as defined in AS 11.41.110;

(3) a notice of denial shall include a clear and concise

statement of the grounds relied upon and may be supported by affidavit or other documentary evidence;

(4) matters alleged in a notice of denial shall be heard by the court sitting without a jury; if the defendant introduces substantial evidence that he is not the person named in a prior judgment of conviction, that the judgment is a forgery, or that the conviction did not occur within the period specified in (a)(1) of this section, then the burden is on the state to prove the contrary beyond a reasonable doubt; additional issues shall be decided by the court as matters of law;

(5) the authenticated judgments of courts of record of the United States, the District of Columbia, or a state, territory, or political subdivision of the United States are prima facie proof of conviction.

ALASKA REVISED CRIMINAL CODE

CHAPTER 31. Sentencing

ARTICLE 8 - IMPRISONMENT

The article consists of six sections. Three secs., 250, 260 and 270, deal with prison terms. Secs., 280 and 290 set forth the procedure for the imposition of prison terms in felony cases involving extraordinary circumstances. Sec. 300 sets forth the method of determining which prior convictions can be considered by the sentencing court.

Section Analysis

I. TD AS 11.36.250. PERIODIC TERM OF IMPRISONMENT AUTHORIZED

This section recognizes a practice which sentencing judges currently view as inherent in their judicial powers: periodic sentences such as serving on weekends. While the Subcommission was aware that periodic sentences posed administrative problems for corrections officials (largely because most jail facilities are not multipurpose), and should be employed judiciously, it was also aware that there were occasions which merited such treatment. For example, the impact that serving a continuous 10 day mandatory sentence for OMVI could have on a young person in the senior year of high school might well be disproportionate if the offender was required to repeat the entire school year as a result of missing too many school days or exams.

II. TD AS 11.36.260. SENTENCES OF IMPRISONMENT FOR MISDEMEANORS

This section sets maximum prison terms for misdemeanors. The traditional "not more than one year" limit used to distinguish misdemeanors from felonies was retained for the bulk of the misdemeanor offenses in the Code. However, for some of the

less serious misdemeanors, the Subcommission felt that a 90 day maximum more properly reflected the concept of "just deserts" upon which the sentencing provisions are based.

III. TD AS 11.36.270. SENTENCES OF IMPRISONMENT FOR FELONIES

This section proved to be one of the most difficult in the chapter. Issues arose over what kind of sentencing scheme should be used in connection with the Revised Code; how long maximum prison terms should be; which offenders, if any, should be required to serve mandatory prison terms; whether to statutorily list aggravating and mitigating circumstances; and what to do with parole and "good time" once the presumptive sentencing scheme was selected.

In dealing with murder a consensus was easily reached. Subsection (a) reflects the decision that maximum flexibility should be available to the courts in sentencing for this crime. By its very nature murder is at the same time both the most complex in determining the appropriate sanction and most threatening to society. To avoid the problems created by "life" sentences, especially as they relate to parole and good time computations, the Subcommission chose instead, the 99 year upper limit.

In considering other felonies, the Subcommission agreed that although imprisonment would frequently be warranted, persons who had never been convicted of a previous felony should be eligible for non-incarcerative sanctions irrespective of the offense for which they had been convicted.

A closely divided Subcommission then agreed to limit the application of presumptive sentencing to those defendants with prior felony convictions. While aware that this decision could result in some continued amount of sentencing disparity, those who favored the majority position were of the opinion that a new program as radical in concept as presumptive sentencing ought to be implemented slowly. They reasoned that if presumptive sentencing presented no problems in its areas of application, then the legislature could always later move to expand its applicability to all offenders.

Those in the minority argued that the concept was not so radical or complex, that it could eliminate a greater amount of potential or real disparity if applied across the board to all felony offenders, and that the failure to apply presumptive sentencing to those with no prior convictions could result in first time felony offenders receiving longer sentences than second or subsequent offenders.

The next issue addressed by the Subcommission was how to design the presumptive sentencing structure with regard to aggravating and mitigating factors. Among the options open to the Subcommission were: (1) use of a sliding scale of a plus or minus of some percent off the presumptive term; or (2) a fixed number of years for each of the terms - mitigated, presumptive and aggravated.

The Subcommission concluded that both of these options were unduly restrictive of judicial discretion and

could lead to a variety of injustices over a period of time. Accordingly, the Subcommission adopted a plan designed to permit distinctions to be made between the seriousness of individual offenses within a class of offenses and between the differing criminal histories of individual defendants.

The plan calls for providing a range for each of the three categories of sentence - mitigated, presumptive and aggravated. The use of ranges would still permit discretion to be exercised in individual cases, but would narrow the field considerably. Further, this approach would permit variations within the ranges to be made within classes of offenses designed to take into account relative degrees of complexity produced by the combination of instant offense seriousness and prior criminal history seriousness.

The Subcommission then considered how to treat prior offenses as those offenses would relate to automatic increases in sentences upon conviction. This issue arose in the context of what constituted a "prior" offense for purposes of determining automatic heavier sentencing. Would a minor one count or only a more serious one? The Subcommission concluded that if the offender had been convicted previously of the same or a more serious class of offense, he more likely would have been alerted to the seriousness of his conduct than he would have been had the prior conviction been for a less serious offense. Having failed to learn from the prior experience, it would be fair to conclude, as did the Subcommission, that the person "justly

deserved" no further breaks. This decision was translated, in technical terms, into the definitions of first, class A felony offender; second, class A felony offender, etc., contained in article 11 and discussed in the accompanying commentary.

The Subcommission then considered whether all aggravating and mitigating factors should be set out in sec. 270. After considerable discussion, the Subcommission concluded that by their nature these kinds of factors were susceptible to change and that a legislatively prescribed list was too inflexible. Therefore the decision was made to leave the designation of these factors to the Advisory Commission on Prison Terms and Parole Standards which the Subcommission had determined would be part of its recommendations for improvements in the parole system.

However, the Subcommission decided that illustrations of the kinds of aggravating and mitigating factors which it had been considering should be included in commentary.

Among factors in aggravation which the Subcommission considered and which it offers to the proposed Advisory Board are the following:

(1) the defendant was the leader of a group of persons committing the offense;

(2) the offense involved a risk of serious physical injury to several victims;

(3) the victim or victims of the offense were particularly vulnerable or incapable of resistance due to age,

disability or ill health;

(4) the defendant was by the duties of his office or by his condition, obliged to prevent the particular offense or to bring offenders committing it to justice;

(5) the defendant held public office at time of offense and the offense related to the conduct of that office;

(6) the defendant utilized his professional reputation or position in the community to commit the offense, or to afford him an easier means of committing it;

(7) the defendant, though able to make restitution, refuses to do so;

(8) the defendant has threatened witness during the course of prosecution or investigation of the offense;

(9) the defendant has a prior criminal history, including a history of adjudications of delinquency, which will not automatically enhance his punishment. Prior convictions which do not figure into the primary sentencing decision, such as a fourth or fifth will be considered as aggravating factors.

Mitigating factors considered by the Subcommission included:

(1) the defendant's criminal conduct neither caused nor threatened serious physical harm;

(2) the defendant acted under serious provocation;

(3) there were substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense;

(4) the victim induced or facilitated the commission of the offense;

(5) the defendant has compensated or will compensate the victim for the damage or injury sustained;

(6) the offense was principally accomplished by another person and the defendant's conduct manifested concern for the safety or well being of the victim or victims;

(7) the conduct of a youthful defendant was influenced by another person more mature than the defendant;

(8) the conduct of an aged defendant was a product of physical or mental infirmities resulting from his age;

(9) the defendant believed he had a claim or a right to the property;

(10) the defendant was motivated by a desire to provide the necessities of life for his family or himself;

(11) imposition of the presumptive term would cause great hardship to persons dependent on the defendant for support, which may result in responsibility for the support passing to the state; or

(12) the defendant's age at the time the offense was committed.

Because some aggravating and mitigating factors might end up also being either elements of the offense, proof of which would be required in order to obtain the conviction, or possible defenses, proof of which might reduce the offense in class, the Subcommission determined that subsection (i) was necessary to protect the defendant's double jeopardy rights and to also insure that a single set of facts would not be

used twice to give a defendant two breaks: (1) reducing the offense to a lower class; and (2) possibly mitigating the punishment within that class.

Subsection (j) was designed to permit one or both parties sufficient time to prepare responses to notice from the opposing party that one or the other was moving to have a sentence other than a presumptive sentence imposed. The Subcommission also felt that factors in aggravation or mitigation should be proved by "clear and convincing" evidence so that deviation from the presumptive sentence would not occur routinely. To preserve the rights of both parties on appeal, subsection (j) was drafted to require that a judge specifically set forth his decisions on aggravating or mitigating factors on the record.

The Subcommission then turned its attention to deciding what numbers would be used in connection with the various sentencing ranges.

From the onset, the Subcommission recognized that there would be no certain answers to these questins. Fortunately, a considerable amount of objective data on past sentencing practices was available to the Subcommission as a result of studies of sentencing which had been conducted by the Alaska Judicial Council. Also available to the Subcommission were the recommendations of the Model Sentencing Act, the Model Penal Code, the A.B.A. standards project, the National Advisory Committee on Criminal Justice Standards and Goals, the decisions of the Alaska Supreme Court, and the results of a 1976 public opinion poll which asked Alaskans their views

on average sentences for offenders convicted for the first time for specific offenses.

Having reached the decision that persons who had never been convicted of a felony and all misdemeanants would be eligible for non-incarcerative sentences, the Subcommission then sought to determine who among all other offenders would also be eligible for similar treatment. The Subcommission agreed unanimously that persons convicted for a third time for the same or a more serious offense should not be ordinarily eligible for a non-incarcerative sentence. Nor was there any sustained discussion of persons convicted for the second time for a class A felony. After some discussion second, class B felons were similarly excluded. However, because of the large variety of offenses contained in class C felonies, the Subcommission decided that persons convicted of only a class C felony should be eligible for probation or other non-incarcerative alternatives upon a second class C felony conviction if sufficient mitigation existed.

Having established the nature of the lower end of the range for all offenses, the Subcommission was then in a position to begin discussion of maximums. There was little debate that existing maximums, in general, were too high; further, that they were rarely imposed. The Subcommission determined that maximums should be brought more into line with actual sentencing practice and that in-so-far as maximum terms were concerned, the existence of extraordinary circumstances sentencing would cover those rare situations in which a higher

than provided for prison term was called for under the circumstances.

It was on the basis of considerations such as these that the Subcommission approved the following prison sentences for felony offenses other than murder:

Felony Class	1st Offender	2nd Offender Mitigated	2nd Offender Presumptive	2nd Offender Aggravated	3rd or subsequ. offender M	3rd or subsequ. offender P	3rd or subsequ. offender A
A	0 - 15	3 - 7	7 - 11	11 - 16	7 - 11	11 - 18	18 - 30
B	0 - 7	1 - 3	3 - 5	5 - 7	3 - 7	7 - 11	11 - 16
C	0 - 3	0 - 90 da	90 - 3 yr	3 - 4 1/2	1 - 3	3 - 5	5 - 7

IV. TD AS 11.36.280. EXTRAORDINARY CIRCUMSTANCES

The Subcommission was aware that in adopting the presumptive sentencing scheme for certain second and subsequent offenders, and because prison terms would be mandatory for many of those offenders, there might be rare occasions when the principle of just deserts would require imposition of less than the required term of imprisonment or the imposition of no prison term at all. Similarly, the Subcommission also was aware that there would be occasions in which the maximum sentence for an offense, including those committed by offenders with no prior felony convictions, might be too low and thus also violative of the principle of just deserts.

By the very nature of the kind of cases in question the Subcommission concluded that it was not possible to define

in advance what was meant by the term "extraordinary." It felt that those issues were likely to be raised by the parties in interest, in any event. Consequently, the Subcommission decided that both the defendant and the state, in all cases, should have the opportunity to request sentencing outside the ranges provided by statute. Such a case might be made by either party, or the court could so move in its own discretion. The burden of proof would be on the moving party and would have to be met by clear and convincing evidence.

A full record of the proceedings are required and must be forwarded to the three judge panel provided for in the following section. Denial of a request for extraordinary sentencing is an appealable matter.

V. TD AS 11.36.290. THREE JUDGE SENTENCING PANEL

Having concluded that in a few rare cases the imposition of a sentence other than that normally required for the offense might be appropriate, the Subcommission then proceeded to determine the type of vehicle to be used in deciding such cases. Prior to settling upon the three judge panel, it considered, and rejected, direct appeal to the Supreme Court, collegial panels made up of judges within a judicial district, and the concept of a sentencing commission.

The Subcommission felt that the three judge panel would provide the fairest approach to the handling of what would be exceedingly difficult cases. Beyond outlining the broad nature of the panel and how it would function in subsections (a)-(c), however, the Subcommission decided that the Supreme Court, under its rule making powers, should establish

the procedures by which the panel would function.

As is provided in subsection (d), the three judge panel may sentence the defendant to any sentence applicable to the offense, regardless of whether it was a first, second or third class felony. A defendant convicted, for example, of a first, class A felony could be sentenced by the three-judge panel to a maximum sentence of less than 30 years, the maximum sentence authorized for an aggravated third or subsequent class A felony. The Subcommission determined that this authority was in line with the extraordinary nature of the kinds of cases that would come before the panel.

VI. TD AS 11.36.300. PRIOR CONVICTIONS

This section is included in chapter 36 so that the effect of prior convictions could be properly considered by sentencing courts.

Without dissent, the Subcommission determined, that prior convictions should not follow a person around for the remainder of a lifetime even for purposes of sentencing on a subsequent offense. Those who recidivate usually do so within a short period of time after release. Even the use of the term "recidivate" connotes a connection between the prior offense and a later. The connection lies in the presumption that both offenses arise from the same milieu of susceptibility, whether arising from surroundings, personal attitude or some life style combination of both. The Subcommission concluded that a seven year period would be an appropriate length of time within which a conclusive presumption would be reasonable.

After seven years, the probability is that fresh

criminal misconduct does not relate to the milieu of the prior offense and that society is dealing with the individual in a different setting. That the offender has a prior conviction, under these circumstances, is as likely to be coincidental as causal. At least for purposes of determining a fair sentence, it should not automatically count against the offender. As provided in subsection (a)(1), the seven year period excludes years spent in prison, thus insuring that there is ample distance between the past offense and a present life.

In paragraphs (2)-(4) of the subsection, the Subcommission has provided the means for determining how crimes committed in other jurisdictions, or in Alaska prior to the Revised Code, will relate to new offenses and how crimes which are committed as a result of a single substantially contemporaneous course of conduct must be considered by the sentencing court. In that regard, paragraph (3) is designed to overcome potential double jeopardy problems.

Subsection (b) is intended to provide a vehicle by which a defendant can raise objections to prior convictions which the state alleges are his. The Subcommission was particularly concerned that defendants be provided with ample notice of the state's intention to allege prior convictions and recommends that it be done prior to trial whenever possible so that this factor can be considered by defendants and their counsel, along with others, in determining trial strategies.

On the other hand, the Subcommission was equally aware that it is not always possible to obtain accurate criminal history information prior to the start of a trial. For that

reason, the 20 day requirement in subsection (b)(1) was approved. Since rebuttal information as to allegations of a prior history is usually immediately available to the defendant, the Subcommission decided that five days was sufficient to reply to the allegations. On the other hand the state might require some time to answer a defendant's denial and thus the Subcommission gave the state the 15 day period.

Since the consequences of proof of a prior conviction can be serious, the Subcommission determined that the state should be required to prove the prior conviction "beyond a reasonable doubt" in those cases in which the defendant denied the existence of the prior conviction or alleged the existence of one of the other defects set forth in paragraph (2) of subsection (b).

As a final matter, the Subcommission concluded that the commentary should reflect the fact that a conviction obtained in the case of an unrepresented defendant might well be unconstitutional. Determining whether or not a defendant was represented by counsel could be both time consuming and difficult, but it was assumed that if the 15 day time period was not sufficient to resolve the issue a continuance could be obtained.

ARTICLE 9. SUSPENSION AND RESTORATION OF CIVIL RIGHTS; CERTAIN OCCUPATIONAL DISABILITIES PROHIBITED.

Section

310 Suspension and Restoration of Civil Rights; Certain Occupational Disabilities Prohibited

Sec. 11.36.310. SUSPENSION AND RESTORATION OF CIVIL RIGHTS; CERTAIN OCCUPATIONAL DISABILITIES PROHIBITED. (a) A conviction for a crime suspends during the period of imprisonment only the following civil rights of the defendant:

(1) the right to hold a public office of trust or profit;

(2) the right to serve as a juror; and

(3) any other civil right the suspension of which is

(A) a reasonable and necessary concommitant of imprisonment; and

(B) made in accordance with regulations adopted by the Department of Health and Social Services in conformity with the Administrative Procedure Act (AS 44.62).

(b) A defendant who has been sentenced is not thereby rendered incompetent as a witness in an official proceeding or incapable of making or acknowledging a sale or conveyance of property.

(c) A defendant who has been sentenced is under the protection of the law, and any injury to his person or property, not authorized by law, is punishable in the same manner as if he were not convicted and sentenced.

(d) The conviction of a defendant of an offense does not work forfeiture of any property, except where a forfeiture is expressly imposed by law. All forfeitures to the state, unless expressly imposed by law, are abolished.

(e) Upon discharge from imprisonment inside or outside the state, a defendant is automatically restored to any civil rights which were suspended by reason of the imprisonment, unless expressly provided otherwise by law.

(f) Upon completion of a sentence, other than imprisonment, imposed upon conviction of an offense, a defendant is automatically restored to any civil rights which were suspended by reason of the conviction, unless expressly provided otherwise by law.

(g) Except as provided in (h) of this section,

(1) no person may be disqualified from employment with a state agency or local government agency solely because of a prior conviction of an offense inside or outside this state;

(2) no person whose civil rights have been restored may, solely because of a prior conviction of an offense inside or outside this state, be disqualified from engaging in an occupation for which the state requires that a license, permit, or certificate be obtained.

(h) A person may be disqualified from employment with a state agency or local government agency solely because of a prior conviction of an offense if the offense has a substantial relationship to the functions of the employment. A person whose civil rights have been restored may, solely because of a prior conviction of an offense, be disqualified from engaging in an occupation for which the state requires that a license, permit, or certificate be obtained if the offense has a substantial relationship to the functions of the occupation. The requirements of (g) of this section do not apply to a law enforcement agency, but nothing in this subsection prohibits a law enforcement agency from complying with (g) of this section voluntarily.

(i) As used in this section,

(1) "local government agency" means a department or agency

of a municipality or other political subdivision;

(2) "state agency" means a state department or agency, whether in the legislative, judicial, or executive branch, including such entities as the Alaska State Housing Authority and the University of Alaska.

ALASKA REVISED CRIMINAL CODE

CHAPTER 36. Sentencing

ARTICLE 9 - SUSPENSION AND RESTORATION OF CIVIL RIGHTS; CERTAIN OCCUPATIONAL DISABILITIES PROHIBITED

Section Analysis

I. TD AS 11.36.310. SUSPENSION AND RESTORATION OF CIVIL RIGHTS; CERTAIN OCCUPATIONAL DISABILITIES PROHIBITED

This section is designed to comprehensively deal with problems which arise out of a conviction for an offense. Very little is said in existing law with respect to the effect a conviction has on a person's civil rights. AS 11.05.070 suggests that a judgment of imprisonment suspends all civil rights of a defendant, but in Bush v. Reid, 516 P.2d 1215 (Alaska 1973), the Supreme Court held that this provision violates concepts of due process and equa. protection to the extent that it forbids civil suits by parolees.

AS 11.05.080 provides that a life sentence results in a declaration of "civil death" for the inmate, meaning he no longer enjoys any civil rights. It seems likely that this provision, too, creates both due process and equal protection problems. Article V, section 2 of the Alaska Constitution states that "[n]o person may vote who has been convicted of a felony involving moral turpitude unless his civil rights are restored." On the other hand, AS 11.05.090 protects prisoners' rights by making crimes committed against them punishable.

The Subcommission determined that the wholesale removal of civil rights upon conviction of an offense was largely counterproductive. It was aware of a considerable body of evidence suggesting that a significant contributing

factor to recidivism is the economic sanctioning, in the form of employment discrimination, which follows convictions.

Primarily for these reasons, the Subcommission concluded that only those civil rights which are authorized by subsection (a) of this section should be suspended and that they should be suspended only while a person is imprisoned. Paragraph (3) is intended to provide the Division of Corrections with the opportunity to determine which civil rights, if exercised by prisoners, might create intolerable administrative burdens.

Subsections (b)-(d) are designed to further illustrate protections of civil rights which a convicted person would retain and largely reflect existing statutory provisions.

Subsections (e) and (f) are intended to insure prompt and immediate restoration of civil rights upon completion of a sentence unless the law expressly requires otherwise. The intent of the use of the phrase "outside the state" in subsection (e) is to insure that Alaskan prisoners held in institutions outside the State of Alaska will be treated identically to those inside the state and that persons who come to Alaska from other jurisdictions will automatically be restored their civil rights while they are in Alaska.

Subsection (g) is designed to reduce the frequency with which prior convictions are used to deny individuals employment. Unless a substantial relationship can be shown between a prior conviction and an occupation for which a state license, permit or certificate is required, one or another of them cannot be denied because an applicant has been convicted.

The same standard applies to employment by state agencies or local governments. However, law enforcement agencies such as the State Troopers, Fish and Wildlife Officers, or local police agencies are not bound by these requirements but may comply with them voluntarily.

ARTICLE 10. APPEAL OF SENTENCE.

Section

320 Appeal of Sentence

Sec. 11.36.320. APPEAL OF SENTENCE. (a) A sentence of imprisonment otherwise lawfully imposed by the superior court for a term or for aggregate terms exceeding one year may be appealed to the supreme court by the defendant on the ground that the sentence is unlawful in that the court has not properly considered factors in mitigation or aggravation or, in the case of a sentence imposed under sec. 270(a), (b)(1), (c)(1), or (d)(1) of this chapter, that the sentence was excessive. By appealing a sentence under this section, the defendant waives the right to plead that by a revision of the sentence resulting from the appeal he has been twice placed in jeopardy for the same offense.

(b) A sentence of imprisonment otherwise lawfully imposed by the superior court may be appealed to the supreme court by the state on the ground that the sentence is unlawful in that the court has not properly considered factors in mitigation or aggravation or, in the case of sentence imposed under sec. 270(a), (b)(1), (c)(1), or (d)(1) of this chapter, that the sentence was too lenient; however, when a sentence is appealed by the state and the defendant has not appealed the sentence, the court is not authorized to change the sentence but may express its approval or disapproval of the sentence and its reasons in a written opinion.

(c) A sentence appeal under this section does not confer or enlarge a right to bail pending appeal. When the defendant, in the prosecution of a regular appeal, urges the unlawfulness or excessiveness of the sentence as an additional ground for appeal, the defendant's right to bail pending appeal is governed by the relevant statutes and the rules of court.

ALASKA REVISED CRIMINAL CODE

CHAPTER 36. Sentencing

ARTICLE 10 - APPEAL OF SENTENCE

Section Analysis

I. TD AS 11.36.320. APPEAL OF SENTENCE

This section is, in large measure, a recodification of AS 12.55.120. Only one major change was made, one which the Subcommission felt followed naturally from adoption of presumptive sentencing for second and subsequent offenders.

Because the Subcommission adopted sentencing ranges for mitigated, presumptive or aggravated circumstances, it concluded that a trial judge's selection of a definite sentence from within such a range should not be reviewable by the Supreme Court. In some respects, the Subcommission felt, these ranges would take the form of legislatively mandated "zones of reasonableness" and thus the removal of this jurisdiction from the Supreme Court would not produce a radical departure from existing practice. Further, the Subcommission hoped that this action would serve to reduce the growing number of sentence appeals with which the Court has been faced of late.

Both defendants and the state will have the right to appeal a judge's determination that a sentence within the presumptive, mitigated or aggravated range was correct. Here the Subcommission felt the Court would be dealing with far less subjective issues than the appropriateness of a "number" as representing "just deserts" and that over a period of time a body of decisional law would likely narrow the areas of dispute on these issues and further reduce the burden of sentence appeal.

ARTICLE 11. DEFINITIONS.

Section

330 Definitions

Sec. 11.36.330. DEFINITIONS. As used in this chapter, unless the context requires otherwise,

(1) "discharge" means that a person is relieved of all obligations imposed by that part of a sentence being terminated by the court;

(2) "division of corrections" means the division of corrections within the Department of Health and Social Services;

(3) "employer" means a governmental organization, or its agent, willing to supervise an individual convicted of a crime in the performance of community work service;

(4) "first, class A felony" means that the defendant has not been previously convicted of a class A felony;

(5) "first, class B felony" means that the defendant has not been previously convicted of a class A or class B felony;

(6) "first, class C felony" means that the defendant has not been previously convicted of a class A, class B, or class C felony;

(7) "medical testing" means urinalysis, breathalyzer, or similar commonly accepted routine medical practices designed to determine either the existence or level of alcohol or a controlled substance in a person's body chemistry;

(8) "pecuniary gain" means the amount of money or value of property at the time of commission of the offense derived by the defendant from the commission of the offense, less the amount of money or value of property returned to the victim of the offense or seized by or surrendered to lawful authority before sentence is imposed;

(9) "second, class A felony" means that the defendant has

previously been convicted of a class A felony;

(10) "second, class B felony" means that the defendant has previously been convicted of a class A or class B felony;

(11) "second, class C felony" means that the defendant has previously been convicted of a class A, class B, or class C felony;

(12) "set aside the conviction" means that

(A) the conviction is of no legal effect and that a person, if asked, may truthfully answer that he has never been convicted of a criminal offense as the question relates to that offense;

(B) the conviction may not be admitted in evidence in a subsequent criminal or civil proceeding;

(C) the conviction may not be used to increase punishment in a subsequent criminal proceeding; and

(D) the existence of the conviction may not be revealed by an officer or employee of the state to any person without court authorization;

(13) "third or subsequent class A felony" means that the defendant at least twice has been previously convicted of a class A felony;

(14) "third or subsequent class B felony" means that the defendant at least twice has been previously convicted of a class B or more serious class of felony;

(15) "third or subsequent class C felony" means that the defendant at least twice has been previously convicted of a felony;

(16) "unconditional discharge" means that a person is released by the court without restriction and may thereafter be subject to the jurisdiction of the court only by the initiation of a separate criminal prosecution.

ALASKA REVISED CRIMINAL CODE

CHAPTER 36. Sentencing

ARTICLE 11 - DEFINITIONS

I. TD AS 11.36.330. DEFINITIONS

The introduction of several new sentencing practices and procedures in the Revised Code requires definition of terms used in chapter 36. Article 11, TD AS 11.36.330 contains 16 such definitions.

Paragraph (1), defining "discharge", is intended to insure that provisions related to the termination of probation, fines, restitution and community work service are given limited effect. Paragraph (2) is intended to eliminate any possible doubt about the meaning of the term "division of corrections."

In paragraph (3) "employer" is defined to make clear the intent of the Subcommission that community work service should be provided by defendants to governmental agencies for governmental purposes. Persons convicted of offenses who are sentenced to make restitution may be required to work for their victims, but those sentenced upon a condition that community work service be performed may not confer benefits or privileges on private persons.

Definitions in paragraphs (4), (5), (6), (9), (10), (11), (13), (14) and (15) are designed to permit the court to identify with precision classes of repeat offenders so that those who require a mandatory term may be identified. These definitions are consistent with TD AS 11.36.020 which requires that primary consideration in sentencing be given to the seriousness of the defendant's instant offense and his criminal history - that is his record of prior convictions.

Paragraph (7) provides a definition for "medical testing", a term used in connection with a condition of probation contained in TD AS 11.36.120(a)(12) and was so defined to guide courts and corrections officials in conducting bodily examinations for evidence of suspected violations of the condition according to accepted medical practices.

Paragraph (8) defines "pecuniary gain." The definition is intended to insure an appropriate degree of flexibility in dealing with offenses committed with economic motive by organizations. Where the offense is grave, the only real indication of the measure of society's condemnation of the conduct is likely to be found in the amount of the fine extracted from the corporate treasury, a sanction which reminds all shareholders or members of their responsibility to keep watch on the propriety of corporate conduct.

Paragraph (12) lists the specific consequences for the defendant and the justice system which occur when a conviction is set aside. Existing law is ambiguous concerning the legal effect of the setting aside of a conviction upon successful completion of a suspended imposition of sentence. The definition assumes that when a conviction is set aside it cannot be subsequently used in punishing the person, directly or indirectly.

"Unconditional discharge" is defined in paragraph (16) to preclude a further exercise of judicial jurisdiction against a defendant when his case is finally closed without the initiation of a new prosecution.

APPENDIX I

ALASKA REVISED CRIMINAL CODE

DEFINITIONS

"Offense" means conduct for which a sentence of imprisonment or a fine is authorized by any statute of this state or by a regulation authorized by and lawfully adopted under a statute of this state. An offense is either a crime or a violation.

"Crime" means an offense for which a sentence of imprisonment is authorized. A crime is either a felony or a misdemeanor.

"Felony" means a crime for which a sentence of imprisonment to a term in excess of one year is authorized.

"Misdemeanor" means a crime for which a sentence to a term of imprisonment in excess of one year cannot be imposed.

"Violation" is a noncriminal offense punishable only by a fine. Conviction of a violation does not give rise to any disability or legal disadvantage based on conviction of a crime. An offense is a violation only if it is so designated in a statute of this state or in a regulation authorized by and lawfully adopted under a statute of this state. A person charged with a violation shall not be entitled

(1) to a trial by jury; or

(2) to have a public defender or other counsel appointed at public expense represent him.

APPENDIX II

REVISIONS TO TITLE 33

* Section 1. AS 33.15.010 is amended to read:

Sec. 33.15.010. STATE BOARD OF PAROLE. There is in the department a board of parole consisting of five members to be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. [ONE OF THE MEMBERS, WHO SHALL BE CHAIRMAN OF THE BOARD, SHALL BE A PERSON WITH TRAINING OR EXPERIENCE IN THE FIELD OF PROBATION AND PAROLE, AND HE MAY BE AN OFFICIAL OR EMPLOYEE OF THE DEPARTMENT BUT MAY NOT BE AN OFFICIAL OR EMPLOYEE OF THE DIVISION OF CORRECTIONS.] The term of each of the five [OTHER FOUR] members of the board is four years and until his successor is appointed and qualifies. Successors are appointed in the same manner as provided for the board members first appointed. A vacancy shall be filled for the unexpired term. The governor shall designate a chairman of the board who shall serve as such for a two year term.

* Sec. 2. AS 33.15.020 is amended to read:

Sec. 33.15.020. COMPENSATION AND EXPENSES. The members of the board[, OTHER THAN THE CHAIRMAN,] shall not receive salaries but are entitled to compensation per day at an amount to be set by the governor for every day they are in session, and a per diem and travel allowance as provided by law. [THE CHAIRMAN IS NOT ENTITLED TO A SALARY OR COMPENSATION FOR DAYS HE ATTENDS A SESSION OF THE BOARD BUT IS ENTITLED TO A PER DIEM ALLOWANCE AND TRAVEL COSTS AS PROVIDED BY LAW.]

* Sec. 3. AS 33.15.030 is repealed.

* Sec. 4. AS 33.15.050 is repealed and re-enacted to read:

Sec. 33.15.050. DUTY OF BOARD TO CONSIDER THOSE ELIGIBLE FOR PAROLE. (a) Within six months of the admission of a prisoner after sentencing to any state correctional institution, the board shall conduct a parole hearing to interview the prisoner and set the initial date of his release on parole pursuant to (b) of this section. Release shall be contingent upon satisfaction of the requirements of sec. 060 of this chapter.

(b) In setting the initial parole release date for a prisoner pursuant to (a) of this sec., the board shall apply the appropriate range established pursuant to sec. 105 of this chapter. Variations from the range shall be in accordance with sec. 110 of this chapter.

(c) In setting the initial parole release date for a prisoner pursuant to (a) of this sec., the board shall consider reports, statements and information received from the sentencing judge, the district attorney and the arresting agency.

(d) Notwithstanding (a) of this sec., in the case of a prisoner whose offense included extraordinarily violent or otherwise dangerous criminal conduct or whose record includes a psychiatric or psychological diagnosis of severe emotional disturbance, the board may deny parole in accordance with its adopted rules.

(e) Upon the expiration of six months after the admission of the prisoner after sentencing to any state correctional institution, the board may defer setting the initial parole

release date for the prisoner for a period not to exceed 90 additional days pending receipt of psychiatric or psychological reports, criminal records or other information essential to formulating the release decision.

(f) When the board has set the initial parole release date for a prisoner, it shall inform the sentencing court of the date.

* Sec. 5. AS 33.15.060 is repealed and re-enacted to read:

Sec. 33.15.060. CONSIDERATIONS IN DETERMINING ELIGIBILITY FOR PAROLE. (a) Prior to the scheduled release on parole of any prisoner and prior to release rescheduled under this section, the board shall interview each prisoner to review his parole plan, his psychiatric or psychological report, if any, and the record of his conduct during confinement.

(b) The board shall postpone a prisoner's scheduled release date if it finds, after hearing, that the prisoner engaged in serious misconduct during his confinement. The board shall adopt rules defining serious misconduct and specifying periods of postponement for such misconduct.

(c) If a psychiatric or psychological diagnosis of present severe emotional disturbance has been made with respect to the prisoner, the board may order the postponement of the scheduled parole release until a specified future date.

(d) Upon commitment of a prisoner sentenced to imprisonment under (a) of this section, the commissioner, under such regulations as the board prescribes, shall have a complete study

made of the prisoner and shall furnish to the board a summary report together with any recommendations which, in his opinion, would be helpful in determining the suitability of the prisoner for parole. This report may include, but shall not be limited to, data regarding the prisoner's previous delinquency or criminal experience, circumstances of his social background, his capabilities, his mental and physical health, and such other factors considered pertinent. The board may make such other investigation as it considers necessary.

(e) Parole officers and government bureaus and agencies shall furnish the board information concerning the prisoner, and, whenever not incompatible with the public interest, their views and recommendations with respect to the parole disposition of his case.

(f) Each prisoner shall furnish the board with a parole plan prior to his scheduled release on parole. The board shall adopt rules specifying the elements of an adequate parole plan and may defer release of the prisoner for no more than three months if it finds that the parole plan is inadequate. The Division of Corrections shall assist prisoners in preparing parole plans.

* Sec. 6. AS 33.15.070 is repealed and re-enacted to read:

Sec. 33.15.070. ELIGIBILITY FOR PAROLE. (a) In sentencing in a felony case, the court may impose a minimum term of imprisonment of up to one-half of the period of confinement it imposes, before the prisoner may be released on parole.

(b) The court, in sentencing, shall make specific reference

to its intent as to when an individual is to become eligible for parole.

(c) Notwithstanding the provisions of secs. 050 and 105 of this chapter, the board shall not release a prisoner on parole who has been sentenced under (a) of this section until the minimum term has been served, except in extraordinary cases and upon the affirmative vote of at least four members of the board.

* Sec. 7. AS 33.15.080 is repealed and re-enacted to read:

Sec. 33.15.080. ORDER FOR PAROLE. An order for parole shall contain the conditions imposed, and a parole expiration date.

* Sec. 8. AS 33.15 is amended by adding a new section to read:

Sec. 33.15.095. ADOPTION OF RULES. The board shall adopt rules with respect to the eligibility of prisoners for parole, the conduct of parole hearings, and conditions of release to be imposed on parolees consistent with regulations established by the commission.

* Sec. 9. AS 33.15.100 is repealed and re-enacted to read:

Sec. 33.15.100. ESTABLISHING ADVISORY COMMISSION ON PRISON TERMS AND PAROLE STANDARDS. (a) There is hereby established an Advisory Commission on Prison Terms and Parole Standards consisting of 11 members. Five members of the commission shall be the voting members of the State Board of Parole. Five members of the commission shall be Superior Court Judges appointed by the Chief Justice. The Attorney General shall serve as an ex

officio member of the commission and shall not vote unless necessary to break a voting deadlock.

(b) The term of office of each of the members appointed by the Governor is four years. Before the expiration of the term of any of those members, the Governor shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(c) Notwithstanding the term of office specified by (b) of this sec., of the members first appointed by the Chief Justice:

(1) one shall serve for a term ending June 30, 1979;

(2) one shall serve for a term ending June 30, 1980;

(3) one shall serve for a term ending June 30, 1981;

(4) two shall serve for a term ending June 30, 1982.

(d) A member of the commission shall be compensated in accordance with the provisions of sec. 020 of this chapter.

(e) The chairman of the State Board of Parole and a judge elected by the judicial members shall serve in alternate years as chairman of the commission. The chairman and a vice chairman shall be elected prior to July 1 of each year to serve for the year following. The commission shall adopt its own bylaws and rules of procedure. Six members shall constitute a quorum for the transaction of business.

(f) The commission shall meet at least annually.

(g) The State Board of Parole shall provide the commission with the necessary clerical and secretarial staff support and shall keep the members of the commission fully informed of the experience of the board in applying the standards derived from those proposed by the commission.

(h) The commission shall propose to the State Board of Parole and the board shall adopt rules establishing ranges of duration of imprisonment and variations from the ranges.

* Sec. 10. AS 33.15 is amended by adding a new section to read:

Sec. 33.15.105. COMMISSION AUTHORIZED TO ESTABLISH RELEASE REGULATIONS. (a) The commission shall propose to the board and the board shall adopt regulations establishing ranges of duration of imprisonment to be served for felony offenses prior to release on parole. The range for any offense shall be within the maximum sentence provided for that offense.

(b) The ranges shall be designed to achieve the following objectives:

(1) Punishment which is commensurate with the seriousness of the prisoner's criminal conduct; and

(2) to the extent not inconsistent with paragraph (1) of this subsection:

(A) the deterrence of criminal conduct; and

(B) the protection of the public from further crimes by the defendant.

(c) The ranges, in achieving the purposes set forth in (b) of this section, shall give primary weight to the serious-

ness of the prisoner's present offense and his criminal history.

* Sec. 11. AS 33.15 is amended by adding a new section to read:

Sec. 33.15.111. VARIATIONS FROM AUTHORIZED RANGES PERMITTED. (a) The commission shall propose to the board and the board shall adopt rules regulating variations from the ranges, to be applied when aggravating or mitigating circumstances exist. The rules shall define types of circumstances as aggravating or mitigating and shall set the maximum variation permitted.

(b) In no event shall the duration of the actual imprisonment under the ranges or variations from the ranges exceed the maximum term of imprisonment fixed for an offense.

* Sec. 12. AS 33.15 is amended by adding a new section to read:

Sec. 33.15.112. WRITTEN REASONS FOR DECISIONS REQUIRED. The board shall state in writing the detailed bases of its decisions under secs. 060 and 080 of this chapter.

* Sec. 13. AS 33.15.110 is renumbered to read:

Sec. 33.15.115. AUTHORITY OF BOARD TO ISSUE PROCESS. The board may issue subpoenas and subpoenas duces tecum, and may issue warrants to retake a parole violator.

* Sec. 14. AS 33.15.140 is amended to read:

Sec. 33.15.140. PROTECTION OF RECORDS. (a) The pre-parole reports submitted to the board are privileged and shall not be disclosed to anyone other than the board, the sentencing judge, the prosecuting attorney, or others entitled under this chapter to receive the information.

(b) Notwithstanding the provisions of (a) of this section

prior to a parole hearing or other personal interview, each prisoner shall have access to the written materials which the board shall consider with respect to his release on parole.

(c) The board and the director of the division of corrections shall jointly adopt procedures for a prisoner's access to pre-parole report pursuant to this section.

[HOWEVER, THE BOARD OR COURT MAY PERMIT A PRISONER, HIS ATTORNEY, OR OTHER PERSON HAVING A PROPER INTEREST IN IT TO INSPECT THE REPORT OR A PART OF IT WHEN THE BEST INTEREST OR WELFARE OF THE PRISONER MAKES IT DESIRABLE OR NECESSARY.]

* Sec. 15. AS 33.15.180 is amended to read:

Sec. 33.15.180. PERSONS ELIGIBLE FOR PAROLE. A state prisoner other than a juvenile delinquent, wherever confined and serving a definite term of over 180 days or a term the minimum of which is at least 181 days, whose record shows that he has observed the rules of the institution in which he is confined, may, in the discretion of the board, be released on parole, subject to the limitation prescribed in § 80 [§§ 80] [AND 230(a)(1)] of this chapter.

* Sec. 16. AS 33.15.190 is amended to read:

Sec. 33.15.190. RELEASE AND TERMS AND CONDITIONS OF RELEASE. The board may permit a parolee to return to his home if it is in the state, or to go elsewhere in the state, upon such terms and conditions, including personal reports from the paroled person as the board prescribes. The board may permit the parolee to go into another state upon terms and conditions as the board prescribes, and subject to the provisions

of any compact executed under the authority of ch. 10 of this title and amendments to it. A prisoner released on parole remains in the legal custody of the board until the expiration of the maximum term or terms to which he was sentenced, less good time allowances provided by law. However, the board may discharge a parolee from the remainder of his parole term under regulations adopted pursuant to sec. 105 of this chapter. [WHILE IN THE CUSTODY OF THE BOARD, A PERSON IS SUBJECT TO THE DISABILITIES IMPOSED BY AS 11.05.070.]

* Sec. 17. AS 33.15.200 is repealed and re-enacted to read:

Sec. 33.15.200. RETAKING OF PAROLE VIOLATOR. A warrant for the retaking of a state prisoner who violates his parole may be issued only upon a finding of probable cause by the board or a member of it based on a statement indicating the existence of probable cause to the board and the warrant shall issue within the maximum term of parole set by the board at the time of release. A parole violator may be retaken with or without a warrant for violation of a condition of release.

* Sec. 18. AS 33.15.205 is amended by adding a new section to read:

Sec. 33.15.205. RERELEASE UPON REVOCATION. The board shall adopt rules consistent with the criteria in sec. 105 of this chapter relating to the rerelease of persons whose parole has been revoked.

* Sec. 19. AS 33.15.220 is amended to read:

Sec. 33.15.220. REVOCATION UPON RETAKING PAROLEE. [(a)] Upon the retaking of a parolee, a peace officer making the arrest shall notify the parole officer. The parole officer upon

making the arrest, or being notified by a peace officer of an arrest, shall immediately notify the board, or a member of the board. [IF THE RETAKING IS WITHOUT A WARRANT, THE PAROLE OFFICER SHALL SUBMIT TO THE BOARD, OR A MEMBER OF IT, A REPORT IN WRITING INDICATING IN WHAT MANNER THE PAROLEE VIOLATED THE TERMS AND CONDITIONS OF HIS PAROLE.] The board shall have the parolee brought before it without unreasonable delay for a hearing on the violation charged, under such rules as the board adopts. If the violation is established, the board may then, or at any time within its discretion, revoke the order of parole and terminate the parole or change the terms and conditions of parole, or impose additional conditions. The parolee may waive the hearing provided for in this section.

[(b) IF PAROLE IS REVOKED AND TERMINATED, THE PRISONER IS SUBJECT TO SERVE THE REMAINDER OF THE TERM TO WHICH HE WAS SENTENCED AS PROVIDED IN § 200 OF THIS CHAPTER. THE BOARD MAY REQUIRE THE PRISONER TO SERVE ONLY A PART OF THE TERM TO WHICH HE WAS SENTENCED. IF THE BOARD DOES NOT TERMINATE ALL OR PART OF THE PAROLE, THE PAROLEE SHALL BE RELEASED FROM CONFINEMENT AND CONTINUE ON PAROLE UNDER THE TERMS AND CONDITIONS THE BOARD PRESCRIBES.]

* Sec. 20. AS 33.15.230 is repealed.

* Sec. 21. AS 33.15.240 is amended to read:

Sec. 33.15.240. APPLICABILITY TO PERSONS ON PAROLE OR INCARCERATED. This chapter applies to all persons convicted and sentenced in the superior court and the district courts of this state <u>after the effective date of this bill. Persons</u>

who were convicted prior to the effective date of the bill shall be given a new release date within one year of the date of enactment of this bill. [AND TO ALL PERSONS CONVICTED OF A CRIME PUNISHABLE UNDER LAWS ENACTED BY THE ALASKA TERRITORIAL LEGISLATURE WHO WERE CONVICTED AND SENTENCED BEFORE ALASKA BECAME A STATE OR BEFORE THE ALASKA STATE COURT SYSTEM WAS IN OPERATION.]

* Sec. 22. AS 33.15.260 is amended to read:

Sec. 33.15.260. DEFINITIONS. In this chapter

(1) "board" means the Board of Parole;

(2) "commission" means the Advisory Commission on Prison Terms and Parole Standards.

(3)[2] "commissioner" means the commissioner of the Department of Health and Social Services or his designee;

(4)[3] "parole" means the release of a prisoner to the community by the parole board before the expiration of his term, subject to conditions imposed by the board and subject to its supervision.

(5)[4] "department" means the Department of Health and Social Services.

* Sec. 23. AS 33.20.010 is amended to read:

Sec. 33.20.010. COMPUTATION GENERALLY. (a) Each prisoner convicted of an offense against the state and confined in a [PENAL OR] correctional institution for a definite term [OTHER THAN FOR LIFE], whose record of conduct shows that he has faithfully observed all the rules and has not been subject to punishment, is entitled to a deduction from the term of his sentence,

beginning with the day on which the sentence starts to run, of the equivalent of 10 percent of his total sentence. [AS FOLLOWS:

(1) FIVE DAYS FOR EACH MONTH, IF THE SENTENCE IS NOT LESS THAN SIX MONTHS AND NOT MORE THAN ONE YEAR;

(2) SIX DAYS FOR EACH MONTH, IF THE SENTENCE IS MORE THAN ONE YEAR AND LESS THAN THREE YEARS;

(3) SEVEN DAYS FOR EACH MONTH, IF THE SENTENCE IS NOT LESS THAN THREE YEARS AND LESS THAN FIVE YEARS;

(4) EIGHT DAYS FOR EACH MONTH, IF THE SENTENCE IS NOT LESS THAN FIVE YEARS AND LESS THAN TEN YEARS;

(5) TEN DAYS FOR EACH MONTH, IF THE SENTENCE IS TEN YEARS OR MORE.

(b) WHEN TWO OR MORE CONSECUTIVE SENTENCES ARE SERVED, THE BASIS UPON WHICH THE DEDUCTION IS COMPUTED IS THE AGGREGATE OF THE SEVERAL SENTENCES.]

* Sec. 24. AS 33.20.020 is amended to read:

Sec. 33.20.020. GOOD TIME. (a) [A PRISONER MAY, IN THE DISCRETION OF THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES OR HIS DESIGNEE, BE ALLOWED A DEDUCTION FROM HIS SENTENCE OF NOT TO EXCEED THREE DAYS FOR EACH MONTH OF ACTUAL EMPLOYMENT IN A PRISON OR CAMP PROJECT OR ACTIVITY FOR THE FIRST YEAR OR ANY PART OF IT, AND NOT TO EXCEED FIVE DAYS FOR EACH MONTH OF ANY SUCCEEDING YEAR OR PART OF IT.]

[(b)] In the discretion of the commissioner an [THE SAME] allowance of three days of good time may [ALSO] be made to a

prisoner performing exceptionally meritorious service or performing duties of outstanding importance in connection with institutional operations.

(b)[(c)] The allowance is in addition to commutation of time for good conduct, and under the same terms and conditions and without regard to length of sentence.

* Sec. 25. AS 33.20.060 is amended to read:

Sec. 33.20.060. RESTORATION OF LOST GOOD TIME. The commissioner may restore forfeited or lost good time or such portion of it which he considers proper upon recommendation of the [KEEPER OR] person in charge of the penal or correctional institution in which the prisoner is incarcerated.

APPENDIX III

CLASSIFICATION OF OFFENSES IN REVISED CRIMINAL CODE

FELONIES

A	B	C
Attempted Murder TD AS 11.31.100(d)(1)	Attempted A felony TD AS 11.31.100(d)(2)	Attempted B felony TD AS 11.31.100(d)(3)
Solicitation of Murder TD AS 11.31.110(c)(1)	Solicitation of A felony TD AS 11.31.110(c)(2)	Solicitation of a B felony TD AS 11.31.110(c)(3)
Conspiracy to Commit Murder TD AS 11.31.120(e)(1)	Conspiracy to Commit Arson I or Kidnapping TD AS 11.31.120(e)(2)	Conspiracy to Commit Extortion or Scheme to Defraud I TD AS 11.31.120(e)(3)
Manslaughter TD AS 11.41.120	Assault II TD AS 11.41.210	Criminally Negligent Homicide TD AS 11.41.130
Assault I TD AS 11.41.200	Kidnapping II TD AS 11.41.310	Assault III TD AS 11.41.220
Kidnapping I TD AS 11.41.300	Sexual Assault II TD AS 11.41.420	Custodial Interference I TD AS 11.41.320
Sexual Assault I TD AS 11.41.410	Robbery II TD AS 11.41.510	Unlawful Imprisonment I TD AS 11.41.340
Robbery I TD AS 11.41.500	Extortion TD AS 11.46.195	Sexual Assault III TD AS 11.41.430
Arson I TD AS 11.46.400	Burglary I TD AS 11.46.300	Theft I TD AS 11.46.130
Escape I TD AS 11.56.300	Arson II TD AS 11.46.410	Theft of Services over $500 TD AS 11.46.200(c)(1)
Criminal Possession of Explosives to Commit Murder TD AS 11.71.140(b)(1)	Criminal Mischief I TD AS 11.46.480	

A	B	C
UNCLASSIFIED	Scheme to Defraud I TD AS 11.46.600	Theft by Failure to Make Required Disposition of Funds Received or Held over $500 TD AS 11.46.210(d)(1)
Murder TD AS 11.41.110 0 - 99 years	Bribery TD AS 11.56.100	Concealment of Merchandise over $500 TD AS 11.46.220(c)(1)
	Receiving a Bribe TD AS 11.56.110	Unauthorized Use of Propelled Vehicle - Second Offense TD AS 11.46.240
	Escape II TD AS 11.56.310	Removal of Identification Marks over $500 TD AS 11.46.260(b)(1)
	Influencing a Witness TD AS 11.56.510	Unlawful Possession (of Altered Property) over $500 TD AS 11.46.270(b)(1)
	Receiving a Bribe by a Witness TD AS 11.56.530	Burglary II TD AS 11.46.310
	Influencing a Juror TD AS 11.56.550	Criminal Mischief II TD AS 11.46.482
	Receiving a Bribe by a Juror TD AS 11.56.580	Forgery TD AS 11.46.500
	Compelling Prostitution I TD AS 11.66.140	Criminal Possession of a Forged Instrument TD AS 11.46.510
	Criminal Possession of Explosives with Intent to Commit A felony TD AS 11.71.140(b)(2)	Criminal Possession of Forgery Device TD AS 11.46.520

A	B	C
		Criminal Simulation over $500 TD AS 11.46.530(b)(1)
		Criminal Usury I TD AS 11.46.685
		Forgery of a Credit Card TD AS 11.46.810
		Fraudulent Use of a Credit Card TD AS 11.46.820(b)(1)
		Fraud by a Person Authorized to Provide Property or Services TD AS 11.46.830(b)(1)(A),(b)(2)(A)
		Possession of Machinery, Plate, or Other Contrivance or Incomplete Credit Card TD AS 11.46.840
		Receipt of Anything of Value Obtained by Fraudulent Use of Credit Card TD AS 11.46.850(b)(1)
		Endangering Welfare of Minor I TD AS 11.51.100
		Unlawful Exploitation of Child TD AS 11.51.135
		Perjury TD AS 11.56.200
		Perjury by Inconsistent Statements TD AS 11.56.230

A	B	C
		Escape III TD AS 11.56.320 Attempting to Aid Escape TD AS 11.56.360 Criminally Negligently Permitting Escape TD AS 11.56.370 Promoting Contraband TD AS 11.56.380 Jury Tampering TD AS 11.56.590 Misconduct by a Juror TD AS 11.56.600 Tampering with Physical Evidence TD AS 11.56.610 Hindering Prosecution I TD AS 11.56.770 False Bomb Reports TD AS 11.56.810 Riot TD AS 11.61.100 Promoting Prostitution I TD AS 11.66.120 Compelling Prostitution II TD AS 11.66.150

FELONIES

A	B	C
		Promoting Gambling I TD AS 11.66.210
		Possession of Gambling Records I TD AS 11.66.230
		Misconduct Involving Weapons I TD AS 11.71.100
		Criminal Possession of Explosives with Intent to Commit B Felony TD AS 11.71.140(b)(3)
		Unlawful Furnishing of Explosives TD AS 11.71.150

CLASSIFICATIONS

MISDEMEANORS AND VIOLATIONS

A	B	Violations
Attempted C felony TD AS 11.31.100(d)(4)	Attempted A misdemeanor TD AS 11.31.100(d)(5)	Littering TD AS 11.46.488
Solicitation of C felony TD AS 11.31.110(c)(4)	Attempted B misdemeanor TD AS 11.31.100(d)(5)	Engaging in a Business Unlawfully First Offense TD AS 11.46.680
Assault IV TD AS 11.41.230	Solicitation of A misdemeanor TD AS 11.31.110(c)(5)	Criminal Usury II TD AS 11.46.690
Reckless Endangerment TD AS 11.41.250	Solicitation of B misdemeanor TD AS 11.31.110(c)(5)	Failure to Permit Visitation with a Minor TD AS 11.51.125
Unlawful Imprisonment II TD AS 11.41.350	Simple Assault TD AS 11.41.240	Refusing to Assist Peace Officer or Judicial Officer TD AS 11.56.720
Coercion TD AS 11.41.360	Custodial Interference II TD AS 11.41.330	Gambling - First Offense TD AS 11.66.200
Sexual Assault IV TD AS 11.41.440	Theft III TD AS 11.46.150	Possession of Gambling Device TD AS 11.66.260
Indecent Exposure TD AS 11.41.450	Theft of Services less than $50 TD AS 11.46.200(c)(3)	Selling or Giving Tobacco to a Minor - First Offense TD AS 11.76.100
Theft II TD AS 11.46.140	Theft by Failure to Make Required Disposition of Funds Received or Held under $50 TD AS 11.46.210(d)(3)	
	Concealment of Merchandise under $50 TD AS 11.46.220(c)(3)	

MISDEMEANORS

A	B	Violations
Theft of Services $50 - $500 TD AS 11.46.200(c)(2)	Removal of Identification Marks less than $50 TD AS 11.46.260(b)(3)	
Theft by Failure to Make Required Disposition of Funds Received or Held $50 - $500 TD AS 11.46.210(d)(2)	Unlawful Possession of Altered Property less than $50 TD AS 11.46.270(b)(3)	
Concealment of Merchandise $50 - $500 TD AS 11.46.220(c)(2)	Criminal Trespass II TD AS 11.46.330	
Unauthorized Use of a Propelled Vehicle - First Offense TD AS 11.46.240	Criminally Negligent Burning TD AS 11.46.430	
Unauthorized Occupancy of a Propelled Vehicle TD AS 11.46.250	Criminal Mischief IV TD AS 11.46.486	
Removal of Identification Marks $50 - $500 TD AS 11.46.260(b)(2)	Criminal Simulation less than $50 TD AS 11.46.530(b)(3)	
Unlawful Possession (of Altered Property) $50 - $500 TD AS 11.46.270(b)(2)	Engaging in a Business Unlawfully, Second and Subsequent Offenses TD AS 11.46.680	
Bad Checks TD AS 11.46.280	Fraudulent Use of a Credit Card TD AS 11.46.820(b)(3)	
Criminal Trespass I TD AS 11.46.320	Fraud by a Person Authorized to Provide Property or Services TD AS 11.46.830(b)(1)(C), (b)(2)(C)	
Reckless Burning TD AS 11.46.420		

MISDEMEANORS

A	B	Violations
Failure to Control or Report A Dangerous Fire TD AS 11.46.450	Receipt of Anything of Value Obtained by Fraudulent Use of Credit Card TD AS 11.46.850(b)(3)	
Criminal Mischief III TD AS 11.46.484	Endangering the Welfare of a Minor II TD AS 11.51.110	
Criminal Simulation $50 - $500 TD AS 11.46.530(b)(2)	Failure to Comply with Order of Peace Officer to Leave Dwelling TD AS 11.51.150	
Obtaining Signature by Deception TD AS 11.46.540	Unlawful Evasion II TD AS 11.56.350	
Offering False Instrument for Recording TD AS 11.46.550	Receiving Unauthorized Communication by a Juror TD AS 11.56.605	
Criminal Impersonation TD AS 11.46.570	Resisting or Interfering with Arrest TD AS 11.56.700	
Scheme to Defraud II TD AS 11.46.610	Refusing to Assist in an Emergency TD AS 11.56.730	
Misapplication of Property TD AS 11.46.620	Hindering Prosecution II TD AS 11.56.780	
Falsifying Business Records TD AS 11.46.630	Impersonating a Public Servant TD AS 11.56.830	
Commercial Bribe Receiving TD AS 11.46.660	Disorderly Conduct (10 day maximum) TD AS 11.61.110	
Commercial Bribery TD AS 11.46.670		

A	B	Violations
Possession of Usurious Loan Records TD AS 11.46.700 Deceptive Business Practices TD AS 11.46.710 Misrepresentation of Use of a Propelled Vehicle TD AS 11.46.720 Defrauding Secured Creditors TD AS 11.46.730 Defrauding Judgment Creditors TD AS 11.46.740 Fraud in Insolvency TD AS 11.46.750 Theft of a Credit Card or Obtaining a Credit Card by Fraudulent Means TD AS 11.46.800 Fraudulent Use of a Credit Card TD AS 11.46.820(b)(2) Fraud by a Person Authorized to Provide Property or Services TD AS 11.46.830(b)(1)(B), (b)(2)(B)	Harassment TD AS 11.61.120 Obstruction of Highways TD AS 11.61.150 Prostitution TD AS 11.66.100 Promoting Prostitution II TD AS 11.66.130 Gambling - Second and Subsequent Offenses TD AS 11.66.200 Misconduct Involving Weapons III TD AS 11.71.120 Criminal Possession of Explosives with Intent to Commit A or B misdemeanor TD AS 11.71.140(b)(5) Selling or Giving Tobacco to a Minor - Second and Subsequent Offenses TD AS 11.76.100	

MISDEMEANORS

A	B	Violations
Receipt of Anything of Value Obtained by Fraudulent Use of a Credit Card TD AS 11.46.850(b)(2)		
Criminal Nonsupport TD AS 11.51.120		
Contributing to the Delinquency of Minor TD AS 11.51.130		
Unlawful Marrying TD AS 11.51.140		
Receiving Unlawful Gratuities TD AS 11.56.120		
Unsworn Falsification TD AS 11.56.210		
Escape IV TD AS 11.56.330		
Unlawful Evasion I TD AS 11.56.340		
Tampering with a Witness TD AS 11.56.540		
Simulating Legal Process TD AS 11.56.620		

MISDEMEANORS

A	B	Violations
Compounding TD AS 11.56.790		
False Reports TD AS 11.56.800		
Tampering with Public Records TD AS 11.56.820		
Official Misconduct TD AS 11.56.850		
Misuse of Confidential Information TD AS 11.56.860		
Abuse of Corpse TD AS 11.61.130		
Cruelty to Animals TD AS 11.61.140		
Eavesdropping TD AS 11.61.200		
Interception of Private Correspondence TD AS 11.61.210		
Unauthorized Divulgence or use of Communication TD AS 11.61.220		

A	B	Violations
Solicitation for purposes of Prostitution TD AS 11.66.110		
Solicitation of Prostitution TD AS 11.66.210		
Promoting Gambling II TD AS 11.66.220		
Possession of Gambling Records II TD AS 11.66.240		
Misconduct Involving Weapons II TD AS 11.71.110		
Possession of Burglary Tools TD AS 11.71.130		
Criminal Possession of Explosives with Intent to Commit C felony TD AS 11.71.140(b)(4)		
Interference with Constitutional Rights TD AS 11.76.110		

APPENDIX IV

ALASKA REVISED CRIMINAL CODE

CHAPTER 06 - GENERAL PROVISIONS

CHAPTER 11 - GENERAL PRINCIPLES OF CRIMINAL LIABILITY

CHAPTER 16 - PARTIES TO CRIME

CHAPTER 21 - GENERAL PRINCIPLES OF JUSTIFICATION

* indicates amendment appears in Appendix II to Tentative Draft, Part 5.