LEGISLATIVE IMPLEMENTATION

for the

CORRECTIONS MASTER PLAN
STATE OF ALASKA

House of Representatives
Committee on Finance

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INTRODUCTION AND SUMMARY

In 1978 and 1979 the State of Alaska committed itself to the development of the first master plan for corrections in the state's history. The master plan developed included some 576 pages of recommendations plus appendixes. The House Committee on Finance of the Alaska state legislature, faced with the task of implementing this plan, requested the Justice Center to first extract those elements of the master plan which had legislative implications (a report prepared under the direction of Professor Roger Endell) and second to commit to legislative language those proposals which embodied suggestions for legislative change. This is the product of that second phase study.

Despite its great length and the thousands of hours of professional time which went into its preparation, the Master Plan is still only a bare bones outline. In this legislative implementation phase we were required to fill in many gaps in policy which were passed over in the Plan and consider problems which were not raised in the Plan's development. Many of these questions of policy are on points where opinions may differ as to the best response. We have here made choices so that those responsible for legislative implementation would be able to see what a complete inplementation proposal would "look like."

Inevitably, as we have focused in on the details of some recommendations of the Plan, we have concluded that a recommendation should be revised in some minor respects. Where that has been done our text indicates why changes have been made.

Inevitably, too, we have reached some conclusions about the importance and priority to be given some recommendations. These observations we pass on to the committee now:

1. ADMINISTRATIVE IMPLEMENTATION OF REORGANIZATION. In general, no additional responsibilities should be shifted to the Division of Corrections from other units of government until the internal administrative recommendations are fully implemented. In particular, until the Adult Community Services unit is set up and its performance of present functions evaluated, it should not be assigned responsibilities now undertaken by the court or the Department of Law.

2. AUTHORITY OF THE COMMISSIONER. While not critical in the sense of being a precondition to the implementation of the corrections plan, we believe that the restatement of the Commissioner's authority, the specification of classification authority and the redesign of the legislative framework for prisoner honor programs drafted in response to recommendation No. Five will put legislative authority in step with the overall thrust of the Master Plan and should be adopted now.

3. PRISON INDUSTRIES. Recommendation No. Eight establishes a prison industries program. While some may suggest that prison industries legislation should not be considered until after a year or two of further study and pilot programming, we believe that legislative authorization and policy direction such as given in this legislation is a prerequisite to the successful launching of the program. "Caution" with

its close cousin "timidity" may foredoom a prison industries program. We think a clear mandate can be enacted now.

4. PAROLE RESTUDY. The sections of the Master Plan relating to parole need to be reworked before a legislative proposal would make sense. We have prepared two housekeeping measures which will be very important to prisoners actually affected. These should be adopted now.

5. TITLE 33 HOUSEKEEPING REVISION. Finally, though outside the specifics of the Master Plan and therefore our work, we noted many statutory anachronisms and ambiguities in Title 33 which could be cleaned up, usually by simple repeal, in the same legislation. Some consideration should be given to doing some of this cleanup work as a part of this legislative review.

We would recommend that the legislative recommendations be handled in two bills, giving prison industries a separate status for purposes of legislative recommendation.

I. Master Plan (MP) Recommendation No. One (page 70 MP): DOC assumes responsibility for jail contracts now administered by DPS.

No legislative impediment now exists prohibiting such a change. The change should be effected by administrative order. 1/

Justice Center Comment. Justice Center Summary Recommendation:

AS 33.30.130 gives the DPS authority to provide for custodial care of persons arrested until turned over to the courts or the DOC. This minimal grant of authority should remain. There is always some period of custodial responsibility emanating from the arrest power. That the DPS is not required to maintain facilities by contract is, however, reflected in the variety of institutional arrangements which have grown up around detention practices in varying locations of the state.

The DPS points out that at the present time it does not have authority to establish and enforce minimum standards of custodial care. Nor does it have funding for personnel to administer a jail program.

In some respects these observations are beside the point from a legislative perspective. At whatever standard of care the state is already in the jail business and devotes resources to that purpose. The state elects to choose some jail facilities and rejects others through its contract program. There is no

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1/ There is a hierarchy of executive directions. Constitutional "executive orders" are those requiring submission to the legislature. This does not fall into this class since the action is consistent with existing legislation.

serious dispute that rural detention facilities are commonly grossly inadequate. However, to conclude that on that account they should be administered by DPS rather than DOC does not follow.

The MP does not address the issue of whether the state should be given direct authority to regulate custodial facilities operated by municipalities so we do not address that question.

Justice Center Action recommendation: The following administrative order should be promulgated by the Governor.

"Administrative Order No _____ Date_____

Responsibility for jail facilities.

1. Responsibility for the administration of all contracts heretofore entered into by or under the authority of the Commissioner of Public Safety for the purposes of providing for the detention, subsistence, care and safekeeping of a person held under the authority of state law is transferred effective 30 days from the date hereof to the Commissioner of Health and Social Services or his designee.

2. The Commissioner of Public Safety shall, from time to time, notify the Commissioner of Health and Social Services of the extent and location of facilities needs forecast by him for temporary detention purposes together with his recommendations concerning the practical means that may be at hand for meeting such needs.

3. The Commissioner of Public Safety and the Commissioner of Health and Social Services shall take whatever other action is necessary to make this order effective 30 days

from the date hereof including a) delegation of authority by the Commissioner of Health and Social Services to appropriate subordinate authorities, b) coordination between the departments to provide for an orderly transfer of responsibilities and c) notification to the contracting party concerning administrative changes resulting from the order.

II. M. P. Recommendation No. Two (p. 79 MP): That a five member statewide correctional advisory board be created. Subsidiary recommendations: 1) that a separate prison industries advisory group be created;[2/] that separate advisory groups for the three major corrections service areas for regions or localities of the state be seriously considered; 3) that advisory groups to each institution be considered; 4) that citizen volunteers be utilized with respect to various program functions.

Justice Center Comments. We recommend that a top to bottom structure for citizen input and resource utilization be designed. No advisory structure should be created without a clearer concept of the precise purpose and authority of each advisory body created. It is possible that a temporary, limited life advisory body would be useful to address the precise question of citizen participation in the division.

The MP recommendations are supported by little detail in the MP respecting the topics which the bodies proposed to be created might address or specifics as to the form of organization

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2/ This recommendation is treated separately in our discussion of MP recommendation No. Eight.

(the membership of five, for instance, is not supported by any particular rationale) and relation to administrative structure. There are, however, several expressions of hope that these citizens advisory boards will bridge the notorious, historic isolation of corrections administration from the community, help corrections sell its mission to the community and provide a middle ground pulling together polarized community views of corrections functions. This is a tall order. A citizens advisory committee without a specific agenda and function is as likely to have a negative effect on the department as positive.

Citizen involvement does not come automatically from the creation of citizen's boards. Nor can major problems in corrections administration be solved by the application of citizens advisory bodies otherwise undirected. Further, citizen involvement is as much a matter of administrators' attitudes as citizen initiative.

There is no reason to suppose that sharp divisions of community opinion over the corrections role will early subside, so (even assuming that a middle ground is both tenable and the right place for policy to be), how do we assure that citizen involvement is not a captive of one interest group or another or for that matter of the director? Without considerably more specification of function and objective, the mere creation of another or a series of advisory committees is not likely to be effective in improving the administration of corrections or assist in effecting the Division's goals.

The issues involved are not primarily those of legislative authorization. Advisory bodies by definition exercise no governmental authority and effective groups may be created by administrative directive (as for example the Alaska Growth Policy Council).

Details of the structure of citizen involvement, to be legislatively formalized at a later, more appropriate time, might well be a topic for a temporary committee including citizens who already have some experience with the division's utilization of citizen involvement. Legislation freezing the forms of citizens' involvement is at least premature and may never be necessary.

Rather than establishing a permanent system of advisory committees we recommend that the executive (or the legislature) establish a limited life committee on citizen involvement to define the use of both advisory boards and lay corrections aides.

Justice Center Action Recommendations: That the Governor adopt the following administrative order:

Administrative Order No _____ Dated _____

Citizen Involvement in Corrections.

1. There is established the Advisory Committee on Citizen Involvement in Corrections. The Committee shall consist of up to 9 persons, including representatives of government, private and private non-profit sectors. Composition of the advisory committee shall reflect the need for special attention to rural concerns.

2. The Committee shall: a) examine the ways in which the

Division of Corrections currently obtains information from the citizens of the state and incorporates that information in the policies of the division; b) review ways in which the Division now uses and could use volunteer services; c) make recommendations concerning future policies and practices which will enhance and institutionalize citizen involvement, concluding in a final report, terminating the life of the committee, by December 1, 1980.

3. The Policy Development unit within the Technical Services unit of the Division shall a) provide staff services to the Advisory Committee; b) develop proposed policies, including staffing and personnel evaluation and training policies, which encourage the wise use of citizens in the policy development and processes and programs of the Division.

III. & IV. M. P. Recommendation No. Three and Four (pp 133, 147 and 540) both relate to the operation of pretrial diversionary programs and are treated together. Categorically analyzed, these recommendations include:

1. establishment of uniform criteria for eligibility of charged persons for pretrial diversionary release.

2. establishment of an administrative process for the management of pretrial diversionary determinative (adjudicative) processes (including fact gathering).

3. identification and allocation of administrative roles in the fact gathering and in the determinative aspects of pretrial diversionary release.

4. establishment of standards of supervision applicable to persons in various classifications of pretrial diversionary release.

5. establishment of an administrative process for the

6. identification and allocation of administrative roles in the supervisory processes.

7. establishment of uniform criteria for termination of pretrial diversionary status, successful and unsuccessful.

8. establishment of an administrative process and administrative role assignments for the diversionary termination process.

9. establishment of uniform criteria concerning records management and the subsequent effects on divertees of diversionary status which will include, for some classifications, dismissal of charges.

Justice Center Comments. The recommendations tend to confuse true diversionary programs which divert a person charged outside the system entirely and "diversion" as a part of the bail system which diverts persons only from pretrial custody.

Pretrial Services, now operated as an office within the court system, has responsibility for the investigation and verification of facts relating to the decision to release a person on his own recognizance pending trial. The functions involved are roughly analogous to the pre-sentence report in the sense that information relative to the accused individual stability, his ties to the community, the extent to which he poses a public risk are gathered and quasi-custodial conditions of release may

be involved. The judge must make the ultimate decision.

But there is also a very important distinction. Persons charged are entitled to the presumption of innocence. They have a different status than persons convicted. There is a strong constitutional and statutory bias favoring release. Corrections personnel are not ordinarily trained to reflect this functional distinction. In at least one jurisdiction (New York) this function is performed by personnel employed by a non-profit corporation established for that purpose.

In any view, to shift responsibility for pretrial services to corrections from the court system (a locus which does not appear to have aroused major complaints) without the most careful preparation and staffing analysis would be a mistake. The possibility of using a non-profit corporation should be first considered and rejected before transfer of this function to the DOC is undertaken.

The "permanent" form of diversion involves the utilization of therapeutic alternatives as a total alternative to justice system processing. Although a pilot diversionary project conducted in Anchorage has been evaluated as a success, the implementation of a statewide program poses many present imponderables. Thus while the existing statutory authority for pretrial diversion should be strengthened, it would be unwise to fix many details of the program at the present time, leaving expansion and standards to the more flexible mode of the administrative process until more experience with a statewide system has been gathered.

Outline legislation is herewith offered but it should be

noted that legislation is not essential - witness the existing operation of a pilot program.

1. Uniform Criteria. Our proposed statute identifies general criteria of pretrial diversion but the system is years away from identifying quantifiable criteria. Thus standards guaranteeing true uniformity are impossible. The best way to assure uniformity is by regularly gathering statistics as to the use of the program (See Project Prosecutor Evaluation report of the Justice Center).

2. Uniform Administrative Process. This objective may be impossible considering the disparities in human support resources available in particular locations of the state. It would be better to let the implementing agency feel its way in expanding the program. Our proposed legislation does institutionalize the judicial role. Initially the pilot project utilized judicial authority in approving diversion agreements in felony cases. However, considering the influence of representation by counsel, it became eventually apparent that the judicial role was an expensive rubber stamp. In the proposed legislation, approval can be accomplished by the attorney general or by the court. There may be instances in which counsel to the accused, the accused or the district attorney would prefer judicial review or, in rural situations and some misdemeanors for example, where the Department of Law is not represented.

3. Identification of Administrative roles. Specifically, the MP recommends that Corrections be given roles as screener and supervisor of pretrial release programs. This recommendation

may be implemented by statute or administrative order. We offer legislative language.

This recommendation deserves careful review before implementation. The historic goals of Corrections are not the same as the goals of pretrial diversion. For the most part, Corrections is not involved with the handling of persons who are still entitled to the presumption of innocence. Detention practices show only marginal differences, if any, between the attitudes and actions of Corrections personnel towards pretrial detainees and post-conviction detainees. It will be very difficult for persons educated and trained in the Corrections tradition to distinguish between the management of persons who have not been convicted who are in this program, and parolees and probationers whose status is fundamentally different.

Concern has also been expressed whether the criteria used in diversion can be effectively administered by persons who are not subject to the administrative authority of the prosecutor from whose jurisdictional authority the program emanates. The extent to which this is practical will also depend upon the success of the Division in implementing the management goals of the MP including the establishment of a Community Services unit with a very different approach to correctional processes. To adopt one part of the program without the other would be to court administrative disaster. Accordingly, our legislative solution is to support contracting authority with respect to present functions of the program without an irrevocable transfer.

4. Establishment of differentiated standards of supervision by class. In point of fact this occurs, but the theory of diver-

sion calls for individualized agreements resulting from negotiation of the specific problems of the person charged. In parallel with our comment in paragraph 1, the state of the art does not permit wise quantification. Even a felony/misdemeanor split may not always justify differentiated agreements. Accordingly, we leave this to later administrative action.

in paragraph 3. The function of the existing pilot project is to provide individualized performance contracts for divertees. Accordingly there is a philosophical and practical question whether a uniform system, à la probation administration, should be established. In any case, it is at least premature to freeze this by statute. The statute gives a general grant of authority to contract for administration, maximizing flexibility according to differing circumstances.

6. Role assignments in supervision. See comments to ¶ 3 and 5.

7. Uniform criteria and procedure for status termination. To a point this can be provided by statute at least as to procedure. However, fundamentally the choice must remain one of discretionary judgment as to revocation. The determination of whether a contract violation is so substantial as to warrant status termination cannot be effectively controlled by statute.

8. Role assignments in the termination process. This may be accomplished by statute or administrative order. We have prepared a statutory provision per the recommendation.

9. Uniform criteria concerning subsequent impact of diversion process. The core justifications of the diversionary process are a) the prospect that the social environment of pretrial

diversion will be more conducive to rehabilitation than the post-conviction probationary status (most offenders, at least under the presently used eligibility criteria, would probably be probation candidates anyway)[3/] and b) the fact that pretrial diversion is much lower cost, particularly saving of court, prosecution and defense time.[3/] But from the perspective of the accused, the primary justification may be that he escapes the onus of conviction. To the extent that labeling or differential treatment continues after the successful completion of the contract that benefit is lost and the social environment of rehabilitation is impaired. Accordingly, it is important to the program that the accused not be specially stigmatized after successfully completing his contract.

Justice Center Action Recommendations.

1. M. P. Recommendations Three and Four have substantial budget implications which are beyond the scope of this work. Fiscal notes or budget requests should be prepared by appropriate authorities.

2. Adoption of the following statutory provisions is recommended (assuming legislative action is desired in 1980):

AS 12.30 is amended by adding a new section to read:

AS 12.20.32. PRETRIAL DIVERSION. (a) In an appropriate case, the Attorney General may defer prosecution of a person charged with an offense, pending completion by the person charged of a diversion agreement approved by the court or by

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3/ The Justice Center Evaluation of the existing pilot program convincingly supports this view.

the Attorney General. The diversion agreement shall include establishment of a performance program for the person designed to encourage his rehabilitation.

(b) In determining whether a person should be considered for deferred prosecution, the Attorney General shall consider

(1) the nature and circumstances of the offense charged

(2) the weight of the evidence against the person

(3) the person's record of convictions

(4) the extent of involvement of violence, alcohol or drugs in the offense charged

(5) the possible danger to the community of the offender

(6) the prospects for rehabilitation

(7) the possibility of restitution

(8) such other criteria as appear appropriate including criteria relating to the experimental evaluation of pretrial diversion.

(c) The program agreement shall be approved by the court or the Attorney General upon the determination that

(1) probable cause exists to support the charge

(2) the agreement is voluntarily entered

(3) the person was represented by counsel during the preparation of the diversion agreement

(4) the person has knowingly waived his right to a speedy trial and to such other rights as are specified

in the agreement including a waiver of objection to the admissibility at trial of stipulations, depositions or statements of witnesses that might be necessary to preserve the ability of the state to initiate a successful prosecution at a later date

(d) The Attorney General may enter into cooperative agreements or contract with the Division of Corrections, for the performance of all or part of the functions of developing screening, recommendations, diversion contract preparation, program support or supervision.

(e) No condition may be imposed in a diversion agreement the performance of which extends beyond the term of the maximum sentence which might be imposed upon conviction of the offense charged. The diversion agreement may include provisions relating to the person's

(1) custodial or supervisory responsibilities in relation to a person or organization agreeing to exercise them over the person

(2) rights of travel, association, or place of abode

(3) employment, recreational, medical or educational rights or responsibilties

(4) obligation of restitution or public service

(5) family support obligations and other income allocation provisions

(6) other provisions relating to the safety of the public or the rehabilitation of the person.

AS 12.20.33. TERMINATION OF DEFERRED PROSECUTION. (a) The Attorney General shall give notice by mail to the person, and the attorney who represented him during the development of the diversion agreement in the event that the Attorney General determines that a breach of the diversion agreement has occurred which warrants reinstitution of prosecution. The person may request a hearing before a person designated by the Attorney General or before the court, to decide whether the person has breached the agreement. The standard of proof in such a determination shall be one of probability. In the absence of a request for judicial determination, the decision of the Attorney General's designee is not subject to judicial review.

(b) The Attorney General shall move the court to dismiss the charges against the person on the conclusion of the term of the contract if the person has successfully concluded his diversion agreement. The dismissal of the charge after successful conclusion of a diversionary program, shall have the same effect on conviction of subsequent offenses as if the person had never been arrested except that it may be considered in determining the person's subsequent eligibility for a diversion program.

V. M. P. Recommendation No. Five (pp 205, 206) includes several distinct recommendations for legislation.

1. Policies and Procedures relating to "various types" of furloughs, work release and halfway houses should be consolidated.

2. Institutional superintendents should be given authority to assign prisoners to such programs.

Parole Board authority to assign prisoners will be dealt with within the context of legislative recommendations concerning the parole function.

These MP legislative recommendations are the only ones concerning themselves with the classification power. The absence of recommendations concerning delegation and definition of classification power reflects the tensions, prevalent throughout the plan, between the advantages in speed and simplicity of localized regional management, and the advantage in overall coordination and planning of central administration and the preferential edge which the status quo gives to the latter. Likewise this silence reflects the tension between community corrections and institution-oriented corrections management and the preferential edge which the status quo gives the latter. The MP reflects the fact that these are policy areas in transition where a legislatively fixed "solution" may be premature.

The charge of the MP to consolidate AS 33.30.150, (Family visitation furlough), AS 33.30.250 (Work furlough) and AS 33.30.260 (rehabilitation furlough) has the effect of backing the draftsman into several other provisions of AS 33.30 which generally identify the Commissioner's authority over institutions, programs and personnel. Ironically, while the provisions of the cited statutes can be simplified, the general provisions of the statutes basically adopted in 1960 which establish the assumptions upon which furlough programs were based, require greater elaboration.

The perception at the time the 1960 act was adopted was that the commission was basically a prison keeper. While even then

administrators were aware that their responsibilities were more complex, the legislature of the two year old state was under some pressure to get basic authority on the books. Since then, more complex statements of function, such as the furlough provisions, have been added which overlap with the original statute. Accordingly, we have attempted to reshape the total statutory language in a more contemporary mold without changing the substance in relation to present practices and proposed practices under the Master Plan. But, note specially the substantive change in the term of custody in the language respecting the power and the obligation of the commissioner to classify. The new language ties classification to the commissioner's expectancy concerning the person's custodial residence, not the classification of crime or sentence. The term chosen as the minimum establishing an obligation to classify is ultimately arbitary. The legislature may wish to make an independent evaluation of this setting, here set at four months.

It goes without saying that there is no intention in this proposal to disturb the effect of McGinnis v. Stevens 570 P.2d 735 (Alaska 1977), Rust v. State 582 P.2d 134 (Alaska 1978) or any other decisions of the Alaska Supreme Court, particularly respecting the broad discretion which the legislature has delegated to the Division to administer the corrections process free of detailed judicial review.

Justice Center Action Recommendations:

1. Adoption of the following statutory provisions is recommended:

Sec. 1. AS 33.30.010 is repealed and reenacted to read;

AS 33.30.010. DUTIES OF COMMISSIONER. The Commissioner shall (1) provide for the custody, health, safety, care and rehabilitation of persons committed to his custody pursuant to a charge or judgment of conviction on a criminal offense, consistent with the safety of the public;

(2) Design, establish, operate and evaluate programs which may:

(A) maintain the physical and mental health of persons committed to his custody pursuant to a charge or conviction on a criminal offense;

(B) remove health disabilities;

(C) tend to create or improve occupational skills;

(D) strengthen family relationships;

(E) enhance educational qualifications;

(F) support court ordered restitution; and

(G) facilitate the reintegration of committed persons into society. Consistent with the safety of the public and the duties of the Commissioner, programs may be adopted which utilize honor program elements such as furloughs for education training employment, restitutive service and medical purposes and facilities may be used which are specially adapted to these program elements such as half way houses, group homes and other facilities which utilize constructive partial limited or delegated custody;

(3) Establish, identify, inspect, and classify facilities suitable for supporting the custody and safety,

and programs for the care and rehabilitation of persons committed to his care pursuant to a charge or judgment of conviction on a criminal offense whether or not located in another state, territory or possession of the United States or maintained by the state;

(4) Within a reasonable time, classify each convicted person committed to his custody who may be anticipated to be subject to detention for a period in excess of four months. Classification shall include the identification of a proposed program or series of programs suitable to the person and the person's offense and of facilities supporting the program. The commissioner may classify prisoners anticipated to be subject to periods of detention of less than four months.

(5) Adopt rules and regulations necessary to carry out the purposes of this chapter.

Sec. 2. AS 33.30.100 is amended to read

AS 33.30.100. DESIGNATION OF PROGRAMS AND FACILITIES FOR LONG TERM COMMITMENTS [COMMISSIONER TO DESIGNATE FACILITY]. The commissioner shall consider any recommendation of the sentencing court with respect to the classification, program and facilities to be used in providing for the custody, health, safety, care and rehabilitation of a person committed to his custody [DESIGNATE THE FACILITY WHERE THE SENTENCE SHALL BE SERVED]. The commissioner may assign a person committed to his custody to [DESIGNATE] and program and supporting facilities deemed appropriate by him considering:

(1) the availability of program and facility space;

(2) the prospect of future judicial proceedings requiring the person's presence;

(3) the needs of the person;

(4) the nature and circumstances of the offense on which the person was sentenced;

(5) the person's record of convictions and of involvement in violence, or with drugs or alcohol;

(6) the prospects for rehabilitation and

(7) the reasonable safety of the public; and

(8) such other criteria as appear appropriate including experimental evaluation of correction programs [AVAILABLE, SUITABLE AND APPROPRIATE FACILITY FOR THE SERVICE OF SENTENCE BY A PRISONER] whether or not [IT IS] maintained by the state; and whether [IT IS] inside or outside the judicial district where the person [PRISONER] was convicted, and whether or not [IT IS] in another state, territory or possession of the United States.

Sec. 3 AS 33.30.110 is amended to read:

AS 33.30.110. DESIGNATION OF PROGRAMS AND FACILITIES FOR TEMPORARY COMMITMENTS OR SHORT TERM DETENTION [COMMISSIONER MAY DESIGNATE FACILITY FOR SERVICE OF TEMPORARY COMMITMENTS OR SENTENCES OF ONE YEAR OR LESS]. The commissioner shall [MAY] designate [A] suitable state-approved programs and facilities [FACILITY OR A SUITABLE FACILITY MADE AVAILABLE TO THE STATE BY AGREEMENT OR CONTRACT,] to which [ALL] persons waiting classification or anticipated

to be subject to periods of detention of less than four months [SENTENCED TO SERVE A TERM OF ONE YEAR OR LESS] or detained on temporary commitment may [SHALL] be detained [COMMITTED. THE COURT MAY MAKE COMMITMENT FOR THE TERM IT DIRECTS, OR ORDER TEMPORARY COMMITMENT TO THE CUSTODY OF THE KEEPER OR PERSON IN CHARGE OF THE DESIGNATED FACILITY]. Programs and facilities utilized in such commitments are not required to be adapted to or to include goals of a specifically educational, training or rehabilitative nature.

Sec. 5. AS 33.20.200 is amended by adding a new paragraph to read:

(8) honor program means a correctional program, designated as an honor program by the commissioner, in which the degree of physical restraint on the person committed to the commissioner's custody is so minimal as to place substantial reliance on the person's pledge of self-restraint in assuring that the person remains subject to the commissioner's control.

Sec. 6. AS 33.30 is amended by the addition of a new section to read:

AS 33.30.210. EFFECT OF COMMITMENT. A person who is committed to the custody of the commissioner on the charge of a crime is in official detention for purposes of AS 11.56.300 - .390 unless, at the time he takes his first overt act constituting escape in any degree, he is engaged in a program designated by the commissioner as an honor program.

Sec. 7. AS 11.56.340 and .350 are amended to read:

AS 11.56.340. UNLAWFUL EVASION IN THE FIRST DEGREE. (a) A person commits the crime of unlawful evasion in the

first degree if, being committed to the custody of the commissioner of health and social services on a charge of a felony, he is absent without leave from an honor program as defined by AS 33.30.200(8) [FAILS TO RETURN TO OFFICIAL DETENTION ON A CHARGE OF A FELONY FOLLOWING TEMPORARY LEAVE GRANTED FOR A SPECIFIC PURPOSE OR LIMITED PERIOD, INCLUDING PRIVILEGES GRANTED UNDER AS 33.30.150, 33.30.250, or 33.30.260.]

(b) Unlawful evasion in the first degree is a class A misdemeanor.

AS 11.56.350. UNLAWFUL EVASION IN THE SECOND DEGREE. (a) A person commits the crime of unlawful evasion in the second degree if being committed to the custody of the commissioner of health and social services on a charge of a misdemeanor he is absent without leave from an honor program as defined in AS 33.30.200(8) [FAILS TO RETURN TO OFFICIAL DETENTION ON A CHARGE OF A MISDEMEANOR FOLLOWING TEMPORARY LEAVE GRANTED FOR A SPECIFIC PURPOSE OR LIMITED PERIOD, INCLUDING PRIVILEGES GRANTED UNDER AS 33.30.150, 33.30.250, or 33.30.260.

(b) Unlawful evasion in the second degree is a class B misdemeanor.

Sec. 8. AS 33.30.020, 33.30.030, 33.30.040, 33.30. 050, 33.30.140, 33.30.150, 33.30.250, and 33.30.260 are repealed.

VI. M. P. Recommendation No. Six. (p 224). Creation of position "Chief of Programs" for the Division of Corrections.

Justice Center Comment. This is basically an internal administrative organization and budget recommendation. No legislative action is necessary.

Justice Center Action Recommendations: The Commissioner may implement by administrative directive, delegation and a budget request.

VII. M. P. Recommendation No. Seven (p 226). (a) Public school systems should be given the responsibility of providing educational instruction through grade 12. (b) Expansion of higher educational programs within correctional institutions.

Justice Center Comment. School services are administered by city school districts, borough school districts and regional educational attendance areas. (AS 14.12.010). A child of school age is entitled to attend public school without payment of tuition during the school term in the school district in which he is a resident. (AS 14.12.080). A person is of "school age" if he is under 20 and has not completed the 12th grade. (AS 14.03.070). Persons over school age may be admitted at the discretion of the school board but may be charged tuition (AS 14.03.080). In general, management and control is under a school board (AS 14.12.020, AS 14.14.100), with considerable autonomy under local governmental power (Article X, Constitution of Alaska) but subject to the state's obligation to maintain a system of public schools "open to all children of the state" (Article VII, Section 1). The obligation to educate persons under

20 years old committed to the custody of the commissioner may be constitutional. We do not further broach this question at this time since we assume that the MP concern is not with young residents in any case but with all committed persons.

Since most institutions are within autonomous districts, a proposal to make the delivery of educational services mandatory on local government, particularly for adults, is bound to be controversial. Even as to minors, it should be noted that under locally generated self-governance rules applicable to students, students who misbehave may be expelled from school even though the misbehavior does not directly relate to the peace and quiet of the school.

The Director, DOC, expresses the view that much can be done to upgrade DOC's educational programs without imposing additional burdens on school districts.

While this is an area of law in transition, it is our recommendation that rather than imposing any educational obligation on local governments, authority be given to school districts to contract with the department to include students in such programs in their foundation support formula. The proposal is drafted in the alternative modeled on AS 14.14.110 which is both permissive and allows the Department of Education to require interdistrict and BIA contracting where necessary.

The recommendation respecting the expansion of programs of higher education requires no legislation, however, a statutory directive may encourage University action.

Justice Center Action Recommendation: The first legislative proposal should be checked with the Department of Education. It is

possible that the same end could be accomplished by administrative directive.

Sec. 1. As 14.14 is amended by adding a new section to read:

AS 14.14.115 COOPERATION WITH DEPARTMENT OF HEALTH AND SOCIAL SERVICES. (a) Where necessary to provide more efficient or more economical educational services, a district may cooperate or the department may require a district to cooperate with the department of health and social services in providing educational services to persons committed to the custody of the commissioner of health and social services.

(b) The department may prescribe the terms and conditions of any contract entered into under (a) of this section.

(c) If the educational program provided by the school district is of the same or an improved quality over the program delivered in the other schools, then pupils enrolled in the custodial program shall be counted in the school population of the district for purposes of computing the district's average daily membership in compiling state aid under AS 14.17.021.

Sec. 2. AS 14.40 is amended by the addition of a new section to read:

AS 14.40.018. The University shall establish instructional programs specially adapted to delivery to persons in the custody of the commissioner of health and social services.

VII. M. P. Recommendation No. Eight (pp 295, 297, 295, 296-298, 299, 304-313. Establishment of prison industries. This comprehensive recommendation includes a few specifics but is silent on most choices. Specifics include: 1. the presence of a purpose clause; 2. establishment of an advisory board appointed by the

governor; 3. establishment of a revolving fund; 4. authority to market goods; 5. authority to the commissioner to lease facilities; 6. abolition of wage ceiling for prisoners; 7. establish a position of director; 8. require compliance with health and safety regulations; 9. establish a wage disbursement priority pattern.

Justice Center Comment. The MP text recommends addressing a number of policy issues concerning the establishment of prison industries, suggesting the need for compromise and resolution before legislative drafting (p 295) and accordingly offers few resolutions or solutions. The mandate of this exercise is to propose legislation. Accordingly a number of policy decisions have been made in this draft which should be reviewed by appropriate authorities. Under the circumstances it may be prudent to introduce this legislation separately from other MP recommendations. As a general guide, the draftsman utilized Federal Prison Industries law (18 USC 4121 et seq.).

Among policy choices made: the division of authority between the commercial and institutional aspects of the operation. Since the commissioner has no special competence in business management, those aspects of the operation relating solely to such matters are left to the board and the executive hired by it. Separate corporate status also facilitates this result and will assist in cushioning the commissioner from direct responsibility for complex commercial operations. The Commissioner's veto power over all decisions germane to his responsibilities is, however, firmly established in section 16(a).

The name of the organization is selected to more accurately reflect its purposes and reduce stigmatization.

The composition of the board of directors was identified to maximize breadth of experience, allow for some flexibility in size and minimize administrative involvement by the state.

Regulation of the pattern of disbursement is fixed with the idea of providing a minimum realistic incentive to voluntary employment in the program. Individual contracts must be patterned to meet individual circumstances.

The board is more than an advisory board in name, though as a result of the commissioner's effective veto power, it is only slightly more than advisory in fact. An "Advisory" board, so identified, would tend to dampen the degree of commitment and personal responsibility of board members which will be necessary to make this enterprise work. Accordingly, this constitutes a possible departure from the specific recommendations of the MP. Note also that the board is appointed by the commissioner, not the governor. The intent of this change is to assure a close working relationship between board and commissioner, who will also be in the best position to identify volunteer support, and to vest in the commissioner the appropriate degree of responsibility for corporate activities - at least that he pick the very best directors.

Instead of identifying a "director" of the program, as a state employee, this proposal identifies a corporate president, an officer more analogous to the private industry model which the overall recommendation is supposed to follow. A state employee, with all the ramifications of state employment, is the wrong person and the wrong kind of personnel management system for a profit making enterprise. Our position on this point may be at variance with the views of the DOC.

There is also a difference of view concerning the staging of the introduction of the program. We believe that this legislation should be adopted as a first step; the DOC may have the view that experimental pilot programs be initiated over a period of time.

Justice Center Action Recommendations

1. That the following statute be adopted

Sec. 1. AS 33.30 is amended by adding new sections to read:

AS 33.30.012. ALASKA PRODUCTIVE TIME INDUSTRIES.

(a) Alaska Productive Time Industries is a public corporation of the state within the Department of Health and Social Services but has a legal existence independent of and separate from the state.

(b) The purposes of the corporation shall be

(1) to utilize the voluntary labor of persons committed to the custody of the commissioner pursuant to a judgment of conviction on a criminal offense in the production of goods and services for monetary gain;

(2) to give persons committed to the custody of the commissioner pursuant to a judgment of conviction on a criminal offense an opportunity to acquire or improve vocational skills;

(3) to provide a financial base for the support of families of persons committed to the custody of the commissioner, pursuant to a judgment of conviction on a criminal offense in appropriate cases to provide restitution, to provide maintenance funds for a person upon his release from custody, and to provide for all or a part of the non-custodial costs of room and board of the person.

(c) The corporation shall be administered by a board of directors of not more than eleven persons appointed by the commissioner to serve, at his pleasure, staggered terms of four years without compensation. The board may authorize a per diem for its members attending board meetings not to exceed the per diem paid state employees. The board

of directors shall include representatives of industry labor, retail sales, consumers, persons formerly employed by the corporation or by similar entities, an accountant, an attorney and the commissioner, who shall serve as chairman ex officio.

(d) The powers of the corporation shall include all powers granted to a business corporation under AS 10.05. The corporation may receive and expend legislative appropriations.

(e) Alaska Productive Time Industries Revolving Fund.

(1) Alaska Productive Time Industries may borrow, without further security, up to $1,000,000 from the treasury of the state to be repaid over twenty years upon interest rates fixed by the commissioner of revenue comparable to the lowest class of risk of state investment, to provide part or all of the initial operating capital of the corporation. The loan shall be repaid from the earnings of the corporation;

(2) all funds received by the corporation shall be kept in commercial accounts according to standard accounting practices.

(f) Employee accounts. The corporation shall keep an account (which may be consolidated with other similar accounts) showing the net earnings attributable to each employee. Each employee shall enter an agreement approved by the commissioner providing for allocation and disbursement of funds from the account in amounts or proportions fixed at the sole discretion of the commissioner according to the following order of priority:

(1) not less than 10 percent to be disbursed to the person upon his release from custody;

(2) such sums, if any, as are permitted by institutional rules for current personal expenses for clothing, commissary, etc.

(3) up to 90 percent for amounts essential to the care or support of persons for whom the person has a legal responsibility of support

(4) up to 90 percent for amounts meeting court ordered or voluntary restitution or reimbursement to the state of disbursements made by the violent crimes compensation board for his acts;

(5) up to 90 percent to meet the just debts of the person incurred prior to custody;

(6) reimbursement to the state for partial cost of room and board at a rate fixed by the commissioner, not to exceed 80 percent of state employees per diem for the community nearest which the person is situated.

(g) The corporation shall provide workmen's compensation insurance for its employees and comply with federal and state tax laws and health and safety regulations. Except to the extent which may be obliged under federal law, employees of the corporation are not subject to unemployment insurance or benefits.

AS 33.30.225, .270, .280, and .290 are repealed.

AS 33.30.014. DUTIES OF BOARD. (a) The board of directors shall

(1) determine or set standards governing the price of goods sold or services rendered to public entities or to purchasers from the private sector, which prices, when competitive sales are involved, shall not reflect any subsidy by the government not available to private parties;

(2) retain the services of a president who need not be in the custody of the commissioner, to serve as the principal executive officer of the corporation and contract for such other services as to the board seem necessary;

(3) fix the wages or categories of wages of employees which shall be comparable to wages for persons of similar skill levels in the private sector;

(4) identify those productive activities which shall be undertaken by the corporation;

(5) select productive activities to minimize the impact of competition on any particular private industry operating in the state, to maximize the utilization of existing skills and aptitudes of its employees, to maximize skills use which will be relevant to the Alaska private market and to emphasize the use of skills which will be of future use to employees;

(6) provide employment for as many persons committed to the custody of the commissioner as is possible;

(7) apply for and administer grants and contracts for the vocational training of persons in the custody of the

commissioner employed or to be employed by the corporation;

(8) adopt policies and procedures which will prevent the rise of discrimination with respect to race, age, sex, religion, national origin, or any other form of invidious discrimination; provided that nothing herein prohibits the corporation from discriminating in favor of persons in the custody of the commissioner or handicapped in employment by reason of recent custodial status;

(9) conduct an annual audit of the financial affairs of the corporation and present a report annually to the legislature concerning its finances and activities;

(10) adopt by-laws for the management of the corporation.

AS 33.30.016. DUTIES OF THE COMMISSIONER. (a) The commissioner shall determine in what manner in what places and to what extent operations of Alaska Productive Time Industries shall be carried on in facilities controlled by him or by persons committed to his custody.

(b) The commissioner may

(1) lease facilities and grounds under his control to private persons or to the corporation for the employment of persons in his custody.

AS 33.30.018. COOPERATION WITH STATE AGENCIES. (a) With the approval of the commissioner, any agency of the state may, without exchange of funds, transfer to the corporation property or equipment suitable to the purposes of the corporation;

(b) any agency or political subdivision of the state may purchase goods and services from Alaska Productive Time Industries provided that the price paid shall be not less than estimated approximate price of such goods and services as produced by the private market.

IX. M. P. Recommendation No. Nine (p 479). This recommendation asks that 1. the Office of Alcoholism be given authority to design and operate alcoholism treatment programs in this department's facilities; 2. that the office be given the authority (and funding) to establish sleep-off centers giving priority to those communities in which jails are now being used as sleep-off centers and to oversee their operation by contract.

Justice Center Comment. These powers appear to be adequately established by AS 47.37.020, .040, .140, .170 and .270 (as amended by Ch 17, SLA 1978) and the administrative authority of the commissioner.

Justice Center Action Recommendation. The commissioner should propose a program and budget.

X. M. P. Recommendation No. Ten (p 519) improved training.

Justice Center Comment. This is also a budget item only.

Justice Center Action Recommendations. The commissioner should propose budget items.

XI. M. P. Recommendation No. Eleven (pp 572, 573, 575, 205, 206). This recommendation calls for a restructuring of the parole board and expansion of its authority in some respects. Specifically 1. the parole board should be composed of three full time members, 2. the board members should be appointed from a panel

of candidates submitted by the commission; 3. the background of board members should be professional; 4. the board should represent the major ethic and minority groups of Alaska; 5. adequate compensation should be provided 6. the board should be located in Juneau; 7. the governor should appoint a member to be the executive of the board; 8. credit for successful time served on parole should be allowed at the board's discretion; 9. the board should establish a procedure to conduct a parole hearing within four months of commitment for persons sentenced to less than five years; 10. parole authorities should be able to assign individuals to prerelease programs.

Justice Center Comment. This group of recommendations should be considered in light of the action of the legislature in adopting presumptive sentencing and the progress of the courts in moving towards sentencing guidelines. As the report states (p 560), "if a sentencing guidelines model is adopted, eventually the need for parole as a means of adjusting for sentencing disparities may well disappear and at this point it will become necessary to consider the statutory abolishment (sic) of parole decisionmaking. . . ." "This point" was nearer than the MP draftman thought. Presumptive sentencing has removed some persons from the jurisdiction of the board effective January 1, 1980, and further limited its discretionary authority. In addition, the adoption of AS 12.55.088 allowing modification of sentence at any time allows an alternative form of relief for persons in custody. The parole recommendations also seem to have been prepared without

full reference to other sections of the Master Plan. For instance, the Community Services unit (p 68) seems to be proposed to carry out many of the additional duties proposed for the board (see p 68).

Under the circumstances (not anticipated in preparing the Master Plan), the restructuring of the board and the creation of a highly paid professional membership is not realistic. Statutory provisions relating to the parole board should be reconsidered in light of the new circumstances. The Master Plan may be obsolete already in this area. One possibility to be considered, for instance, would be to give adjudicative authority over early release decisions concerning sentenced persons to the three judge sentencing panel now provided in the statute or to the three judge court of criminal appeals proposed by the court system.

In keeping with the recommendations of the MP we have prepared a legislative proposal for subrecommendation paragraph 8. Since the MP offered no indication of the standard against which any discretionary authority was to be exercised in considering how much successful parole time should be credited, the reduction is tied to a non-discretionary fraction. Subrecommendation paragraph 9 is reflected in the legislation proposed under recommendation No. V. Subrecommendation paragraphs 10 and 11 can be accomplished by administrative action and had best be left to this route in light of question regarding the prospects for legislation upon which implementation of these recommendations depends.

Justice Center Action Recommendations. Adopt the following

statutes:

Sec. 1. AS 33.15.200 is amended to read:

AS 33.15.200. RETAKING OF PAROLE VIOLATOR. A warrant for the retaking of a state prisoner who violates his parole may be issued only by the board or a member of it and the warrant shall issue within the maximum term or terms to which the parolee was sentenced. A parole violator may be retaken with or without a warrant for violation of a term of parole. The unexpired term of imprisonment of the parolee shall be served and begins to run from the date he is returned to the custody of the commissioner under the warrant, and the time the prisoner was at liberty on parole diminishes [DOES NOT DIMINISH] the time he was sentenced to serve by the ratio of one day of diminution for every two days on parole.

Sec. 2. AS 33.15.080 is amended to read:

AS 33.15.080. GRANTING OF PAROLE. If it appears to the board from a review that a prisoner eligible for parole will, in reasonable probability, live and remain at liberty without violating the laws, or without violating the conditions imposed by the board, and if the board determines that his release on parole is not incompatible with the welfare of society, the board may authorize the release of the prisoner on parole. However, no prisoner may be released on parole who has not served at least one-third of the period of confinement to which he has been sentenced. The board may unconditionally discharge any person sentenced

to ten or more years after he has served at least two years on parole.