SPONSOR STATEMENT – CS SENATE BILL 56(JUD)
"An Act relating to criminal law and procedure, criminal sentences, and probation and parole; and providing for an effective date."

Senate Bill 56 modifies the laws governing the presumptive sentencing of felony offenders in Alaska, as a result of *Blakely v. State of Washington*, a United States Supreme Court decision issued in June 2004. The court struck down Washington's sentencing laws by finding that under the Sixth Amendment a defendant has the right to have a jury, not a judge, determine whether aggravating circumstances exist to justify increasing a defendant's sentence above the statutorily prescribed term. The requirements of *Blakely* directly affect Alaska's sentencing laws. Senate Bill 56 addresses the provisions that apply to Alaska's sentencing structure and will eliminate the great confusion created in Alaska's courts as a result of *Blakely*.

Alaska's current felony sentencing statutes set out presumptive terms establishing a specific fixed term of imprisonment that in essence acts as both the minimum and maximum sentences that can be imposed, unless the court finds specific statutory mitigating or aggravating factors. The current presumptive terms were developed in the late 1970s to limit the discretion of judges because of a perceived need to achieve greater uniformity in sentencing. For the most part, the current terms adequately reflect the seriousness of offenses to the extent that they establish a presumptive lower limit on sentences, but it is no longer appropriate to continue to use the same presumptive term to also set the upper limit. The current presumptive term does not take into account the many different crimes within each class of offenses that come before the court. Therefore, this legislation provides judges in felony cases with the ability to weigh all relevant factors as they consider a range of sentences to impose. It also gives judges more authority to impose appropriate periods of probation.

Senate Bill 56 gives judges broader sentencing discretion in felony cases, by allowing them to consider all relevant circumstances in setting a sentence within the ranges established in the legislation. It gives judges broader authority to impose a period of probation supervision, which in some cases they are not able to do under current Alaska law, thus providing better protection for the public and better assistance to the offender in reintegrating into the community.

For a judge to impose a sentence above the presumptive range, the state must comply with *Blakely v. Washington* and prove to a jury beyond a reasonable doubt the existence of certain statutory aggravating factors. Senate Bill 56 leaves it to the courts to develop procedures for presenting aggravating factors to the trial jury. In addition, because the rule in *Blakely* applies only at trial, the bill makes it clear that it is not necessary for the state to present aggravating factors to the grand jury.

Under this bill, a sentence cannot be reversed as excessive if it is imposed within a presumptive range or is required under consecutive sentencing legislation enacted last year. Over the last two decades the appellate courts in Alaska have developed a large body of case law that has resulted in *court-specified* "benchmark" sentences that often unnecessarily limit the discretion of sentencing judges. This bill replaces some of those court-imposed "benchmarks" in favor of legislatively enacted sentence ranges.

Senate Bill 56 also limits the ability of judges to impose "periodic" sentences, in which the judge allows the offender to periodically leave prison and then return to prison. This type of sentence significantly restricts the ability of prison officials to manage the prison population and to transfer prisoners so as to make the best and most efficient use of prison resources. To order "periodic" sentences is in essence allowing offenders to go on unsupervised furloughs. This is best left to prison officials, who can adopt equitable policies that take into account the specific security risks posed by each prisoner and the likely benefits of the furlough.

Senate Bill 56 addresses a judicial Memorandum Opinion Judgment (*Husky*) issued in 2004 making it clear that the courts and probation officers may continue using what is known as General Condition of Probation # 12. Under current practice an intermediate sanction is available to probations officers to invoke certain additional conditions such as curfew when supervision requires. It is nearly impossible for judges to anticipate every condition of probation that will be necessary during an offender's time under community supervision, this bill statutorily codifies the existing practice of judges delegating limited authority to probation officers.

Finally, Senate Bill 56 takes a practical approach to the supervision of persons on probation and parole, by giving police officers the explicit authority to detain or arrest offenders for certain types of violations of conditions imposed by the courts or the parole board. Under this bill, when a certified police officer has reasonable suspicion that a probationer or parolee is violating conditions, they can temporarily detain the person to investigate, and can arrest if there is probable cause that conditions were violated.