

Original sponsors: Rules Committee  
by request

Offered: 5/12/82  
Referred: Rules

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 575 (Judiciary) am S

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the criminal laws of the state;  
7 and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 11.41.200(a)(1) is amended to read:

10 (1) that person recklessly causes [WITH INTENT TO CAUSE]  
11 serious physical injury to another person [, HE CAUSES PHYSICAL INJURY  
12 TO ANY PERSON] by means of a dangerous instrument;

13 \* Sec. 2. AS 11.41.210(a) is repealed and reenacted to read:

14 (a) A person commits the crime of assault in the second degree if  
15 (1) with intent to cause physical injury to another person,  
16 that person causes physical injury to another person by means of a  
17 dangerous instrument; or

18 (2) that person recklessly causes serious physical injury to  
19 another person.

20 \* Sec. 3. AS 11.41.220(a) is amended to read:

21 (a) A person commits the crime of assault in the third degree if  
22 that person [HE] recklessly

23 (1) places another person in fear of imminent serious physi-  
24 cal injury by means of a dangerous instrument; or

25 (2) causes physical injury to another person by means of a  
26 dangerous instrument.

27 \* Sec. 4. AS 11.41.230(a)(3) is amended to read:

28 (3) by words or other conduct that person recklessly [HE  
29 INTENTIONALLY] places another person in fear of imminent physical

injury.

\* Sec. 5. AS 11.46.200 is amended by adding a new subsection to read:

(c) Notwithstanding the provisions of this section, it is lawful for a person to intercept satellite telecommunications if the interception is not for commercial advantage or is not done with the intent to defraud a commercial provider of a service listed in AS 11.81.900(b)(50).

\* Sec. 6. AS 11.46.482(a) is amended by adding a new paragraph to read:

(5) that person sells, leases, trades, or offers for sale, lease, or trade, any device designed to intercept cable, microwave, subscription, or pay television, or any other telecommunications service, with intent to defraud another of the lawful charges for the service.

\* Sec. 7. AS 11.46.482 is amended by adding a new subsection to read:

(c) Notwithstanding the provisions of (a) of this section, it is lawful for a person to sell a device for the interception of satellite telecommunications if the interception is not for commercial advantage or is not intended to defraud a commercial provider of a service listed in AS 11.81.900(b)(50).

\* Sec. 8. AS 11.81 is amended by adding a new section to read:

Sec. 11.81.635. MENTAL DISEASE OR DEFECT EXCLUDING RESPONSIBILITY.

(a) In a prosecution for a crime, it is an affirmative defense that when the defendant engaged in the criminal conduct, the defendant was unable, as a result of a mental disease, or defect, to appreciate the nature and quality of the conduct.

(b) If the defendant is acquitted on the ground of the affirmative defense of mental disease or defect excluding responsibility, as defined in (a) of this section, the verdict and the judgment shall so state.

(c) In this section, "mental disease or defect" means a disorder of thought or mood that substantially impairs judgment, behavior,

1 capacity to recognize reality, or ability to cope with the ordinary  
2 demands of life. "Mental disease or defect" also includes mental  
3 retardation, which means a significantly below average general intel-  
4 lectual functioning that impairs a person's ability to adapt to or  
5 cope with the ordinary demands of life.

6 \* Sec. 9. AS 11.81.900(b)(49) is repealed and reenacted to read:

7 (49) "serious physical injury" means

8 (A) physical injury caused by an act performed under  
9 circumstances which create a substantial risk of death; or

10 (B) physical injury which causes serious and protracted  
11 disfigurement, protracted impairment of health, or protracted loss  
12 or impairment of the function of a body member or organ, or which  
13 unlawfully terminates a pregnancy;

14 \* Sec. 10. AS 11.81.900(b)(50) is amended to read:

15 (50) "services" includes labor, professional services, trans-  
16 portation, telephone or other communications service, entertainment  
17 including cable, microwave, subscription, or pay television or any other  
18 telecommunications service, the supplying of food, lodging, or other  
19 accommodations in hotels, restaurants, or elsewhere, admissions to  
20 exhibitions, and the supplying of equipment for use;

21 \* Sec. 11. AS 12.45 is amended by adding a new section to read:

22 Sec. 12.45.082. GUILTY BUT MENTALLY ILL. (a) A defendant con-  
23 victed of a crime is guilty but mentally ill if, at the time of engaging  
24 in the criminal conduct, the defendant lacked, as a result of a mental  
25 disease or defect, the substantial capacity either to appreciate the  
26 wrongfulness of the conduct or to conform the conduct to the require-  
27 ments of law.

28 (b) If a defendant is convicted of a crime, the defendant, the  
29 prosecuting attorney, or the court on its own motion may raise the

1 issue of whether the defendant is guilty but mentally ill. A hearing  
2 must be held on this issue at or before the sentencing hearing. At  
3 the hearing the court shall determine whether the defendant has been  
4 shown to be guilty but mentally ill by a preponderance of the evidence  
5 presented at the hearing and any evidence relevant to the issue that  
6 was presented at trial.

7 (c) If a defendant pleads guilty but mentally ill, the court may  
8 not accept that plea until it holds the hearing and makes the determina-  
9 tion required by (b) of this section.

10 (d) If the court finds under this section that a defendant is  
11 guilty but mentally ill, the court shall sentence the defendant as  
12 provided by law and shall enter the finding of guilty but mentally ill  
13 as part of the judgment.

14 (e) The Department of Health and Social Services shall accept  
15 custody of and provide mental health treatment to a defendant found  
16 guilty but mentally ill. The treatment must continue until the defen-  
17 dant no longer suffers from a mental disease or defect that causes the  
18 defendant to be dangerous to the public peace or safety, or until the  
19 defendant's sentence is completed, whichever occurs first. The depart-  
20 ment shall determine the course of treatment. When treatment terminates  
21 under this subsection the defendant shall be required to serve the  
22 remainder of the sentence. This subsection authorizes the department to  
23 hold a defendant in custody as provided by the sentence that is imposed.

24 (f) Nothing in this section limits the discretion of the court  
25 to recommend, or of the Department of Health and Social Services to  
26 provide, psychiatrically indicated treatment for a defendant who is  
27 not adjudged guilty but mentally ill.

28 (g) In this section, "mental disease or defect" means a disorder  
29 of thought or mood that substantially impairs judgment, behavior,

1 capacity to recognize reality, or ability to cope with the ordinary  
2 demands of life. "Mental disease or defect" also includes mental  
3 retardation, which means a significantly below average general intel-  
4 lectual functioning that impairs a person's ability to adapt to or  
5 cope with the ordinary demands of life.

6 \* Sec. 12. AS 12.45.087(c)(4) is amended to read:

7 (4) if a notice of intention to rely on the defense of  
8 mental disease or defect excluding responsibility [IRRESPONSIBILITY]  
9 has been filed, an opinion as to the extent, if any, to which the  
10 capacity of the defendant to appreciate the nature and quality [WRONG-  
11 FULNESS] of the defendant's [HIS] conduct [OR TO CONFORM HIS CONDUCT TO  
12 THE REQUIREMENTS OF LAW] was impaired at the time of the criminal  
13 conduct charged; and

14 \* Sec. 13. AS 12.45.087(c) is amended by adding a new paragraph to read:

15 (6) if directed by the court, an opinion as to the extent,  
16 if any, to which the capacity of the defendant to appreciate the  
17 wrongfulness of the defendant's conduct or to conform that conduct to  
18 the requirements of the law was impaired at the time of the criminal  
19 conduct charged.

20 \* Sec. 14. AS 12.45.090 is amended to read:

21 Sec. 12.45.090. PROCEDURE AFTER RAISING DEFENSE OF MENTAL DISEASE  
22 OR DEFECT. (a) At the time the defendant files notice to raise the  
23 affirmative defense of mental disease or defect [AS] excluding respon-  
24 sibility, the defendant [HE] shall also file notice as to whether, if  
25 found not guilty by reason of mental disease or defect [AS] excluding  
26 responsibility, the defendant [HE] will assert that the defendant [HE]  
27 is not presently suffering from any [A] mental illness [DISEASE OR  
28 DEFECT] that causes the defendant [HIM] to be dangerous to the public  
29 peace or safety.

1 (b) If the defendant is found not guilty by reason of mental  
2 disease or defect [AS] excluding responsibility and [HE] has not filed  
3 the notice required under (a) of this section, the court shall immedi-  
4 ately commit the defendant [HIM] to the custody of the commissioner of  
5 health and social services.

6 (c) If the defendant is found not guilty by reason of mental  
7 disease or defect [AS] excluding responsibility, and the defendant [HE]  
8 has filed the notice required under (a) of this section, a hearing shall  
9 be held immediately after the verdict is returned to determine the  
10 necessity of further commitment. The hearing shall be held before the  
11 court sitting without a jury [SAME TRIER OF FACT AS THE UNDERLYING  
12 CHARGE, BUT IF A JURY WAS THE TRIER OF FACT, THE HEARING SHALL BE HELD  
13 BEFORE A JURY OF SIX DRAWN FROM THE ORIGINAL JURY IN ACCORDANCE WITH  
14 RULES ADOPTED BY THE SUPREME COURT]. At the hearing, the defendant has  
15 the burden of proving by clear and convincing [A PREPONDERANCE OF THE]  
16 evidence that the defendant [HE] is not presently suffering from any [A]  
17 mental illness [DISEASE OR DEFECT] that causes the defendant [HIM] to be  
18 dangerous to the public. If the court [OR JURY] determines that the  
19 defendant has failed to meet this [HIS] burden of proof, the court shall  
20 order the defendant committed to the custody of the commissioner of  
21 health and social services.

22 (d) A defendant committed under (b) or (c) of this section shall  
23 be held in custody for a period of time not to exceed the maximum term  
24 of imprisonment for the crime for which the defendant was acquitted  
25 under AS 11.81.635 [AS 12.45.083] or until the mental illness [DISEASE]  
26 is cured or [THE DEFECT] corrected as determined at a hearing under  
27 (e) of this section.

28 (e) A defendant committed under (b) or (c) of this section may  
29 have the need for [HIS] continued hospitalization determined or redeter-

1 mined by the court sitting without a jury under a petition filed in the  
2 superior court at intervals beginning no sooner than a year [SIX MONTHS]  
3 from the [HIS] initial commitment, and yearly thereafter. The burden  
4 and standard of proof at a hearing under this subsection is the same as  
5 at a hearing under (c) of this section [EXCEPT THAT THE DEFENDANT IS NOT  
6 ENTITLED TO A JURY UNLESS HE FILES A MOTION FOR A JURY NO LATER THAN 15  
7 DAYS BEFORE THE DATE SET FOR THE HEARING]. A copy of all petitions for  
8 release shall be served on the attorney general at Juneau, Alaska. A  
9 copy shall also be served upon the attorney of record, if the attorney  
10 of record [HE] is not the attorney general, who represented the state or  
11 a municipality at the time the defendant was first committed.

12 (f) Continued commitment following expiration of the maximum  
13 term of imprisonment for the crime for which the defendant was acquitted  
14 under AS 11.81.635 [AS 12.45.083] is governed by the standards pertain-  
15 ing to civil commitments as set out in AS 47.30.735.

16 (g) A person committed under this section may not be released  
17 during the term of commitment except upon court order following a  
18 hearing in accordance with (c) of this section. On the grounds that  
19 the defendant has been cured of any [THE] mental illness that would  
20 cause the defendant to be [DISEASE OR DEFECT AND IS NO LONGER] dangerous  
21 to the public peace or safety, the state may at any time request the  
22 court to hold a hearing to decide if the defendant should be released.

23 (h) The commissioner of health and social services or an [HIS] autho-  
24 rized representative of the commissioner shall submit periodic written  
25 reports to the court on the mental condition of a person committed under  
26 this section.

27 (i) An order entered under (c) or (e) of this section may be  
28 reviewed by the court of appeals on appeal brought by either the  
29 defendant or the state within 40 days from the entry of the order.

1           (1) In this section,

2           (1) "mental illness" means any mental condition that in-  
3 creases the propensity of the defendant to be dangerous to the public  
4 peace or safety; however, it is not required that the mental illness  
5 be sufficient to exclude criminal responsibility under AS 11.81.635,  
6 or that the mental illness presently suffered by the defendant be the  
7 same one the defendant suffered at the time of the criminal conduct;

8           (2) "dangerous" means a determination involving both the  
9 magnitude of the risk that the defendant will commit an act threatening  
10 the public peace or safety, as well as the magnitude of the harm that  
11 could be expected to result from this conduct; a finding that a defen-  
12 dant is "dangerous" may result from a great risk of relatively slight  
13 harm to persons or property, or may result from a relatively slight risk  
14 of substantial harm to persons or property.

15 \* Sec. 15. AS 12.55.155(c)(8) is repealed and reenacted to read:

16           (8) the defendant's prior criminal history includes conduct  
17 involving aggravated or repeated instances of assaultive behavior;

18 \* Sec. 16. AS 12.55.155(c) is amended by adding new paragraphs to read:

19           (19) the defendant's prior criminal history includes an ad-  
20 judication as a delinquent for conduct that would have been a felony if  
21 committed by an adult;

22           (20) the defendant knowingly directed the conduct consti-  
23 tuting the offense at a victim because of that person's race, sex, color,  
24 creed, ancestry, or national origin.

25 \* Sec. 17. AS 12.45.083 is repealed.

26 \* Sec. 18. This Act takes effect immediately in accordance with AS 01.10.-

27 070(c).