

Original sponsor: Rules/Governor

Offered: 5/29/82
Referred: Finance

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 535 (2d Judiciary)

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 and procedure of
7 the state; and changing Rule 35(a), (b), and (k), Rules
8 of Criminal Procedure; and providing for an effective
9 date."

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

11 * Section 1. AS 11.41.100 is amended by adding a new subsection to read:

12 (c) If more than one person dies as a result of a person committing
13 murder in the first degree, each death constitutes a separately punish-
14 able offense.

15 * Sec. 2. AS 11 41.110 is amended by adding a new subsection to read:

16 (c) If more than one person dies as a result of a person committing
17 murder in the second degree, each death constitutes a separately punish-
18 able offense.

19 * Sec. 3. AS 11.41.120 is amended by adding a new subsection to read:

20 (c) If more than one person dies as a result of a person committing
21 manslaughter, each death constitutes a separately punishable offense.

22 * Sec. 4. AS 11.41.130 is amended by adding a new subsection to read:

23 (c) If more than one person dies as a result of a person committing
24 criminally negligent homicide, each death constitutes a separately
25 punishable offense.

26 * Sec. 5. AS 11.41.200(a)(1) is amended to read:

27 (1) he recklessly causes [WITH INTENT TO CAUSE] serious
28 physical injury to another person [, HE CAUSES PHYSICAL INJURY TO ANY
29 PERSON] by means of a dangerous instrument;

1 * Sec. 6. AS 11.41.210(a)(2) is amended to read:

2 (2) [WITH INTENT TO CAUSE PHYSICAL INJURY TO ANOTHER PERSON,]
3 he recklessly causes serious physical injury to any person. [; OR]

4 * Sec. 7. AS 11.41.220(a) is amended to read:

5 (a) A person commits the crime of assault in the third degree if
6 he recklessly

7 (1) places another person in fear of imminent serious physical
8 injury by means of a dangerous instrument; or

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

11 * Sec. 8. AS 11.41.230(a)(3) is amended to read:

12 (3) by words or other conduct he recklessly [INTENTIONALLY]
13 places another person in fear of imminent physical injury.

14 * Sec. 9. AS 11.46.484(b) is amended to read:

15 (b) Except as provided in (c) of this section, criminal [CRIMINAL]
16 mischief in the third degree is a class A misdemeanor.

17 * Sec. 10. AS 11.46.484 is amended by adding a new subsection to read:

18 (c) A person convicted under (a)(2) of this section who has been
19 previously convicted under that paragraph or under AS 28.35.010 is
20 guilty of a class C felony.

21 * Sec. 11. AS 11.81.320 is amended by adding a new subsection to read:

22 (b) The justification allowed in (a) of this section is an affirma-
23 tive defense.

24 * Sec. 12. AS 11.81.900(a)(1) is amended to read:

25 (1) a person acts "intentionally" with respect to a result
26 described by a provision of law defining an offense when his conscious
27 objective is to cause that result; when intentionally causing a particu-
28 lar result is an element of an offense, that intent need not be the
29 person's only objective;

1 * Sec. 13. AS 11.81.900(b)(37) is amended to read:

2 (37) "organization" means a legal entity, including a corpora-
3 tion, company, association, firm, partnership, joint stock company,
4 foundation, institution, government, society, union, club, church, or
5 any other group of persons organized for any purpose;

6 * Sec. 14. AS 11.81.900(b)(44) is amended to read:

7 (44) "property" means a domestic pet or livestock regardless
8 of value, an article, substance, or thing of value, including money,
9 tangible and intangible personal property including data or informa-
10 tion stored in a computer program, system, or network, real property, a
11 credit card, choses-in-action, and evidence of debt or of contract, [,]
12 a commodity of a public utility such as gas, electricity, steam, or
13 water constitutes property but the supplying of such a commodity to
14 premises from an outside source by means of wires, pipes, conduits, or
15 other equipment is considered a rendition of a service rather than a
16 sale or delivery of property;

17 * Sec. 15. AS 11.81.900(b)(49) is amended to read:

18 (49) "serious physical injury" means

19 (A) physical injury caused by an act performed under
20 circumstances that create [WHICH CREATES] a substantial risk of
21 death; or

22 (B) physical injury that [WHICH] causes serious and
23 protracted disfigurement, protracted impairment of health, [OR]
24 protracted loss or impairment of the function of a body member or
25 organ, or that [PHYSICAL INJURY WHICH] unlawfully terminates a
26 pregnancy;

27 * Sec. 16. AS 12.45.083 is repealed and reenacted to read:

28 Sec. 12.45.083. INSANITY EXCLUDING RESPONSIBILITY. (a) In a
29 prosecution for a crime, it is an affirmative defense that when the

1 defendant engaged in the criminal conduct, he was unable, as a result of
2 a mental disease or defect, to appreciate the nature and quality of his
3 conduct.

4 (b) The affirmative defense set out in (a) of this section may not
5 be raised at trial unless the defendant, within 10 days of entering his
6 plea or such later time as the court may for good cause permit, files a
7 written notice of his intent to rely on the defense.

8 (c) Evidence of a mental disease or defect that is manifested only
9 by repeated criminal or other antisocial conduct is not sufficient to
10 establish the affirmative defense under (a) of this section.

11 (d) The affirmative defense specified in (a) of this section is
12 the affirmative defense of insanity. A defendant who successfully
13 raises the affirmative defense of insanity shall be found not guilty by
14 reason of insanity and the verdict shall so state.

15 * Sec. 17. AS 12.45.085 is repealed and reenacted to read:

16 Sec. 12.45.085. MENTAL DISEASE OR DEFECT NEGATING CULPABLE MENTAL
17 STATE. (a) Evidence that the defendant suffered from a mental disease
18 or defect is admissible whenever it is relevant to prove that the defen-
19 dant did or did not have a culpable mental state that is an element of
20 the crime. However, evidence of mental disease or defect that tends to
21 negate a culpable mental state is not admissible unless the defendant,
22 within 10 days of entering his plea or at such later time as the court
23 may for good cause permit, files a written notice of his intent to rely
24 on that defense.

25 (b) When the trier of fact finds that all other elements of the
26 crime have been proved but, as a result of mental disease or defect,
27 there is a reasonable doubt as to the existence of a culpable mental
28 state that is an element of the crime, it shall enter a verdict of not
29 guilty by reason of insanity. A defendant acquitted under this sub-

1 section, and not found guilty of a lesser included offense, shall auto-
2 matically be considered as if he had established the affirmative defense
3 of insanity under AS 12.45.083. The defendant is then subject to the
4 provisions of AS 12.45.090.

5 (c) If a verdict of not guilty by reason of insanity is reached
6 under (b) of this section, the trier of fact shall also consider whether
7 the defendant is guilty of any lesser included offense. If the defendant
8 is convicted of a lesser included offense, the defendant shall be sen-
9 tenced for that offense and shall automatically be considered guilty but
10 mentally ill for purposes of AS 12.47.030 and 12.47.050. Upon completion
11 of a sentence for a lesser included offense, a hearing shall be held
12 under AS 12.45.090(c) to determine the necessity of further commitment of
13 the defendant, based on the acquittal for the greater charge under (b)
14 of this section. If the defendant is committed under AS 12.45.090(c),
15 he is subject to the provisions of AS 12.45.090(d) - (j).

16 * Sec. 18. AS 12.45.087 is repealed and reenacted to read:

17 Sec. 12.45.087. PSYCHIATRIC EXAMINATION. (a) If a defendant has
18 filed a notice of intention to rely on the affirmative defense of insan-
19 nity under AS 12.45.083 or has filed notice under AS 12.45.085(a), or
20 there is reason to doubt his fitness to proceed, or there is reason to
21 believe that mental disease or defect of the defendant will otherwise
22 become an issue in the case, the court shall appoint at least two quali-
23 fied psychiatrists or two forensic psychologists certified by the
24 American Board of Forensic Psychology to examine and report upon the
25 mental condition of the defendant. If the court appoints psychiatrists,
26 the psychiatrists may select psychologists to provide assistance. If
27 the defendant has filed notice under AS 12.45.090(a), the report shall
28 consider whether the defendant can still be committed under AS 12.45.-
29 090(c). The court may order the defendant to be committed to a secure

1 facility for the purpose of the examination for not more than 60 days or
2 such longer period as the court determines to be necessary for the
3 purpose and may direct that a qualified psychiatrist retained by the
4 defendant be permitted to witness and participate in the examination.

5 (b) In an examination under (a) of this section, any method may be
6 employed which is accepted by the medical profession for the examination
7 of those alleged to be suffering from mental disease or defect.

8 (c) The report of an examination under (a) of this section, shall
9 include the following:

10 (1) a description of the nature of the examination;

11 (2) a diagnosis of the mental condition of the defendant;

12 (3) if the defendant suffers from a mental disease or defect,
13 an opinion as to his capacity to understand the proceedings against him
14 and to assist in his own defense;

15 (4) if a notice of intention to rely on the affirmative
16 defense of insanity under AS 12.45.083 has been filed, an opinion as to
17 the extent, if any, to which the capacity of the defendant to appreciate
18 the nature and quality of his conduct was impaired at the time of the
19 crime charged; and

20 (5) if notice has been filed under AS 12.45.085(a), an opinion
21 as to the capacity of the defendant to have a culpable mental state that
22 is an element of the crime charged.

23 (d) If the examination under (a) of this section cannot be con-
24 ducted by reason of the unwillingness of the defendant to participate in
25 it, the report shall so state and shall include, if possible, an opinion
26 as to whether the unwillingness of the defendant was the result of
27 mental disease or defect.

28 (e) The report of the examination under (a) of this section shall
29 be filed with the clerk of the court, who shall cause copies to be

1 delivered to the prosecuting attorney and to counsel for the defendant.

2 * Sec. 19. AS 12.45.090 is repealed and reenacted to read:

3 Sec. 12.45.090. PROCEDURE AFTER RAISING DEFENSE OF INSANITY. (a)

4 At the time the defendant files notice to raise the affirmative defense
5 of insanity under AS 12.45.083 or files notice under AS 12.45.085(a), he
6 shall also file notice as to whether, if found not guilty by reason of
7 insanity under AS 12.45.083 or 12.45.085(b), he will assert that he is
8 not presently suffering from any mental illness that causes him to be
9 dangerous to the public peace or safety.

10 (b) If the defendant is found not guilty by reason of insanity
11 under AS 12.45.083 or 12.45.085(b), and he has not filed the notice
12 required under (a) of this section, the court shall immediately commit
13 him to the custody of the commissioner of health and social services.

14 (c) If the defendant is found not guilty by reason of insanity
15 under AS 12.45.083 or 12.45.085(b), and he has filed the notice required
16 under (a) of this section, a hearing shall be held immediately after a
17 verdict of not guilty by reason of insanity to determine the necessity
18 of commitment. The hearing shall be held before the same trier of fact
19 as the underlying charge. At the hearing, the defendant has the burden
20 of proving by clear and convincing evidence that he is not presently
21 suffering from any mental illness that causes him to be dangerous to the
22 public. If the court or jury determines that the defendant has failed
23 to meet his burden of proof, the court shall order the defendant com-
24 mitted to the custody of the commissioner of health and social services.

25 (d) A defendant committed under (b) or (c) of this section shall
26 be held in custody for a period of time not to exceed the maximum term
27 of imprisonment for the crime for which the defendant was acquitted
28 under AS 12.45.083 or 12.45.085(b) or until the mental illness is cured
29 or corrected as determined at a hearing under (e) of this section.

1 (e) A defendant committed under (b) or (c) of this section may
2 have the need for his continued commitment under this section reviewed
3 by the court sitting with a jury of 12 under a petition filed in the
4 superior court at intervals beginning no sooner than a year from his
5 initial commitment, and yearly thereafter. The burden and standard of
6 proof at a hearing under this subsection are the same as at a hearing
7 under (c) of this section. A copy of all petitions for release shall be
8 served on the attorney general at Juneau, Alaska. A copy shall also be
9 served upon the attorney of record, if he is not the attorney general,
10 who represented the state or a municipality at the time the defendant
11 was first committed.

12 (f) Continued commitment following expiration of the maximum term
13 of imprisonment for the crime for which the defendant was acquitted
14 under AS 12.45.083 or 12.45.085(b) 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 hearing
18 in accordance with (e) of this section. On the grounds that the defen-
19 dant has been cured of any mental illness that would cause him to be
20 dangerous to the public peace or safety, the state may at any time
21 request the court to hold a hearing to decide if the defendant should be
22 released.

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

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

29 (j) In this section,

1 (1) "mental illness" means any mental condition that increases
2 the propensity of the defendant to be dangerous to the public peace or
3 safety, however, it is not required that the mental illness be sufficient
4 to exclude criminal responsibility under AS 12.45.083, or that the
5 mental illness presently suffered by the defendant be the same one he
6 suffered at the time of the criminal conduct;

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

14 * Sec. 20. AS 12.45.100 is amended to read:

15 Sec. 12.45.100. INCOMPETENCY TO PROCEED [DETERMINATION OF MENTAL
16 DISEASE OR DEFECT DURING TRIAL OR PROBATION]. (a) No person who as a
17 result of mental disease or defect lacks capacity to understand the
18 proceedings against him or to assist in his own defense may be tried,
19 convicted or sentenced for the commission of a crime [AN OFFENSE] so
20 long as the incapacity exists [ENDURES].

21 (b) When, after arrest and before the imposition of sentence or
22 before the expiration of any period of probation, the attorney general,
23 the prosecuting [DISTRICT] attorney, or the attorney for the accused has
24 reasonable cause to believe that a person charged with a crime [AN
25 OFFENSE] may be presently suffering mental disease or defect or is
26 otherwise so mentally incompetent that he is unable to understand the
27 proceedings against him or properly to assist in his own defense, he may
28 file a motion for a judicial determination of the mental competency of
29 the accused. Upon that motion or upon a similar motion in behalf of the

1 accused, or upon its own motion, the court shall have the accused,
2 whether or not previously admitted to bail, examined as to his mental
3 condition by at least one qualified psychiatrist, who shall report to
4 the court. For the purpose of the examination the court may order the
5 accused committed for a reasonable period as the court may determine to
6 a suitable hospital or other facility to be designated by the court. If
7 the report of the psychiatrist indicates a state of present mental
8 disease or defect or of other mental incompetency in the accused, the
9 court shall hold a hearing, upon due notice, at which evidence as to the
10 mental condition of the accused may be submitted, including that of the
11 reporting psychiatrist, and make a finding with respect to his mental
12 condition. No statement made by the accused in the course of an examina-
13 tion into his mental competency provided for by this section, whether
14 the examination is with or without the consent of the accused, may be
15 admitted in evidence against the accused on the issue of guilt in a
16 criminal proceeding unless the accused later relies on a defense based
17 on mental disease or defect at trial. A finding by the judge that the
18 accused is mentally competent to stand trial in no way prejudices the
19 accused in a defense based on insanity [MENTAL DISEASE OR DEFECT EXCLUD-
20 ING RESPONSIBILITY]; the finding may not be introduced in evidence on
21 that issue or otherwise be brought to the notice of the jury.

22 * Sec. 21. AS 12.45.110(b) is amended to read:

23 (b) On or before the expiration of the initial 90-day period of
24 commitment the court shall conduct a hearing to determine whether or not
25 the defendant remains incompetent. If the court finds by a preponderance
26 of the evidence that the defendant remains incompetent, the court may
27 recommit the defendant for a second period of 90 days. The court shall
28 determine at the expiration of the second 90-day period whether the
29 defendant has become competent. If at the expiration of the second

1 90-day period the court determines that the defendant continues to be
2 incompetent to stand trial, the charges against him shall be dismissed
3 without prejudice and continued commitment of the defendant shall be
4 governed by the provisions relating to civil commitments under AS 47.30.-
5 700 - 47.30.915 unless the defendant is charged with a crime involving
6 force against a person and the court finds that the defendant presents a
7 substantial danger of physical injury to other persons and that there is
8 a substantial probability that the defendant will regain competency
9 within a reasonable period of time, in which case the court may extend
10 the period of commitment for an additional six months. If the defendant
11 remains incompetent at the expiration of the additional six-month period,
12 the charges shall be dismissed without prejudice and either civil commit-
13 ment proceedings shall be instituted or the court shall order the release
14 of the defendant. If the defendant remains incompetent for five years
15 after the charges have been dismissed under this subsection, the defen-
16 dant may not be charged again for an offense arising out of the facts
17 alleged in the original charges, except if the original charge is a
18 class A felony or unclassified felony [MURDER].

19 * Sec. 22. AS 12.45.115(d) is amended to read:

20 (d) A finding by the court that the accused is mentally competent
21 to stand trial in no way prejudices the accused in a defense based on
22 insanity [MENTAL DISEASE OR DEFECT EXCLUDING RESPONSIBILITY]. This
23 finding may not be introduced in evidence on that issue or otherwise be
24 brought to the notice of the jury.

25 * Sec. 23. AS 12 is amended by adding a new chapter to read:

26 CHAPTER 47. INSANITY AND COMPETENCY TO STAND TRIAL.

27 Sec. 12.47.030. GUILTY BUT MENTALLY ILL. A defendant is guilty
28 but mentally ill if, when he engaged in the criminal conduct, he lacked,
29 as a result of a mental disease or defect, the substantial capacity

1 either to appreciate the wrongfulness of his conduct or to conform his
2 conduct to the requirements of law. A defendant found guilty but
3 mentally ill is not relieved of criminal responsibility for his conduct
4 and is subject to the provisions of AS 12.47.050.

5 Sec. 12.47.040. FORM OF VERDICT WHEN EVIDENCE OF MENTAL DISEASE OR
6 DEFECT ADMISSIBLE. (a) In a prosecution for a crime when the affirma-
7 tive defense of insanity is raised under AS 12.45.083, or when evidence
8 of a mental disease or defect of the defendant is otherwise admissible
9 at trial under AS 12.45.085, the trier of fact shall find, and the
10 verdict shall state whether the defendant is

- 11 (1) guilty;
- 12 (2) not guilty;
- 13 (3) not guilty by reason of insanity; or
- 14 (4) guilty but mentally ill.

15 (b) When the jury is instructed as to the verdicts under (a) of
16 this section, it shall also be instructed on the dispositions available
17 under AS 12.47.050 and AS 12.45.090.

18 (c) To return a verdict under (a)(4) of this section, the jury
19 must find beyond a reasonable doubt that the defendant committed the
20 crime and find by a preponderance of the evidence that when he committed
21 the crime he was guilty but mentally ill as set out in AS 12.47.030.

22 Sec. 12.47.050. DISPOSITION OF DEFENDANT FOUND GUILTY BUT MENTALLY
23 ILL. (a) If the trier of fact finds that a defendant is guilty but
24 mentally ill, the court shall sentence the defendant as provided by law
25 and shall enter the verdict of guilty but mentally ill as part of the
26 judgment.

27 (b) The Department of Health and Social Services shall provide
28 mental health treatment to a defendant found guilty but mentally ill.
29 The treatment must continue until the defendant no longer suffers from a

1 mental disease or defect that causes him to be dangerous to the public
2 peace or safety. Subject to (c) and (d) of this section, the department
3 shall determine the course of treatment.

4 (c) When treatment terminates under (b) of this section, the
5 defendant shall be required to serve the remainder of his sentence.

6 (d) Notwithstanding any contrary provision of law, a defendant
7 receiving treatment under (b) of this section may not be released on
8 furlough or work release under AS 33.30.150, 33.30.250, or AS 33.33.260
9 or on parole.

10 (e) Nothing in this section limits the discretion of the court to
11 recommend, or of the Department of Health and Social Services to provide,
12 psychiatrically indicated treatment for a defendant who is not adjudged
13 guilty but mentally ill.

14 (f) Not less than 30 days before the expiration of the sentence of
15 a defendant found guilty but mentally ill, the commissioner of health
16 and social services shall file a petition under AS 47.30.700 for a
17 screening investigation to determine the need for further treatment of
18 the defendant if:

19 (1) the defendant is still receiving treatment under (b) of
20 this section; and

21 (2) the commissioner has good cause to believe that the
22 defendant is suffering from a mental illness that causes him to be
23 dangerous to the public peace or safety; as used in this paragraph,
24 "mental illness" has the meaning ascribed to it in AS 47.30.915.

25 Sec. 12.47.060. POST CONVICTION DETERMINATION OF MENTAL ILLNESS.

26 (a) In a prosecution for a crime when the affirmative defense of insan-
27 ity is not raised and when evidence of mental disease or defect of the
28 defendant is not admitted at trial under AS 12.45.085, and the defendant
29 is convicted of a crime, the defendant, the prosecuting attorney, or the

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

7 (b) If the court finds that a defendant is guilty but mentally
8 ill, it shall sentence the defendant as provided by law and shall enter
9 the finding of guilty but mentally ill as part of the judgment.

10 (c) A defendant determined to be guilty but mentally ill under
11 this section is subject to the provisions of AS 12.47.050.

12 (d) As used in this section, guilty but mentally ill has the
13 meaning ascribed to it in AS 12.47.030.

14 Sec. 12.47.080. PROCEDURE UPON VERDICT OF NOT GUILTY. (a) If a
15 defendant is found not guilty under AS 12.47.040(a)(1), the district
16 attorney shall, within 24 hours, file a petition under AS 47.30.700 for
17 a screening investigation to determine the need for treatment if the
18 prosecuting attorney has good cause to believe that the defendant is
19 suffering from a mental illness and as a result is gravely disabled or
20 likely to cause serious harm to himself or others.

21 (b) In this section, "mental illness" has the meaning ascribed to
22 it in AS 47.30.915(12).

23 Sec. 12.47.130. DEFINITIONS. As used in this chapter

24 (1) "affirmative defense" has the meaning ascribed to it in
25 AS 11.81.900(b)(1);

26 (2) "mental disease or defect" means a disorder of thought or
27 mood that substantially impairs judgment, behavior, capacity to recognize
28 reality, or ability to cope with the ordinary demands of life; "mental
29 disease or defect" also includes mental retardation, which means a

1 significantly below average general intellectual functioning that impairs
2 a person's ability to adapt to or cope with the ordinary demands of
3 life.

4 * Sec. 24. AS 12.55.025(e) is amended to read:

5 (e) Except as provided in (g) of this section, if [IF] the defen-
6 dant is convicted of two or more crimes before judgment on either has
7 been entered, any sentences of imprisonment shall [MAY] run [CONCURRENTLY
8 OR] consecutively [, AS THE COURT PROVIDES. IF THE COURT DOES NOT
9 SPECIFY, THE SENTENCES OF IMPRISONMENT SHALL RUN CONCURRENTLY. IF THE
10 DEFENDANT IS IMPRISONED UPON A PREVIOUS JUDGMENT OF CONVICTION FOR A
11 CRIME, THE JUDGMENT MAY PROVIDE THAT THE IMPRISONMENT COMMENCES AT THE
12 EXPIRATION OF THE TERM LIMITED BY THE PREVIOUS JUDGMENT OR ON THE DATE
13 OF IMPOSITION OF SENTENCE].

14 * Sec. 25. AS 12.55.025 is amended by adding a new subsection to read:

15 (g) If the defendant is convicted of two or more crimes before the
16 judgment on either has been entered, any sentences of imprisonment may
17 run concurrently if

18 (1) the crimes violate similar societal interests;

19 (2) the crimes are part of a single, continuous criminal
20 episode;

21 (3) there was not a substantial difference in the nature of
22 the criminal objectives involved in the commission of the crime, includ-
23 ing a change in the parties to the crime, the property or type of pro-
24 perty right offended, or the persons offended;

25 (4) the crimes were not committed while the defendant
26 attempted to escape or avoid detection or apprehension after the commis-
27 sion of another crime;

28 (5) the sentence is not for violation of AS 11.41.100 -
29 11.41.140, 11.41.200 - 11.41.250, or 11.41.300 - 11.41.350;

1 (6) the sentence is not for a violation of AS 11.41.500 -
2 11.41.530 that results in physical injury or serious physical injury as
3 those terms are defined in AS 11.41.900; or

4 (7) the sentence is not for a violation of AS 11.41.410 -
5 11.41.455.

6 * Sec. 26. AS 12.50 is amended by adding a new section to read:

7 ARTICLE 3. WITNESSES.

8 Sec. 12.50.110. IMMUNITY OF WITNESSES. (a) If a witness refuses
9 on the basis of the privilege against self-incrimination to testify or
10 provide other information in a criminal proceeding before or ancillary
11 to a court or grand jury of this state, and a judge issues an order
12 under (b) of this section, the witness may not refuse to comply with the
13 order on the basis of the privilege against self-incrimination. If the
14 witness fully complies with the order, no testimony or other information
15 compelled under the order, or information directly or indirectly derived
16 from that testimony or other information, may be used against the witness
17 in a criminal case, except a prosecution based on perjury, giving a
18 false statement or otherwise knowingly providing false information, or
19 hindering prosecution.

20 (b) In the case of an individual who has been or may be called to
21 testify or provide other information in a criminal proceeding before or
22 ancillary to a court or a grand jury of this state, a superior or dis-
23 trict court for the judicial district in which the proceeding is or may
24 be held shall issue, upon the application of the attorney general or his
25 designee in accordance with (d) of this section, an order requiring the
26 individual to give testimony or provide other information that he refuses
27 to give or provide based on the privilege against self-incrimination.

28 (c) An order issued under (b) of this section is effective when
29 communicated to the individual specified in the order.

1 (d) The attorney general or his designee may apply for an order
2 under (b) of this section when, in the attorney general's judgment,

3 (1) the testimony or other information may be necessary to
4 the administration of criminal justice; and

5 (2) the individual who is the subject of the application has
6 refused or is likely to refuse to testify or to provide other information
7 on the basis of the privilege against self-incrimination.

8 (e) As used in this section, "other information" means books,
9 papers, documents, records, recordings, or other similar material.

10 * Sec. 27. AS 12.55.088(a) is amended to read:

11 (a) The court may modify or reduce a sentence by entering a written
12 order within 60 days of the original sentencing [AT ANY TIME DURING A
13 TERM OF IMPRISONMENT IF IT FINDS THAT CONDITIONS OR CIRCUMSTANCES HAVE
14 CHANGED SINCE THE ORIGINAL SENTENCING HEARING SUCH THAT THE PURPOSE OF
15 THE ORIGINAL SENTENCE IS NOT BEING FULFILLED].

16 * Sec. 28. AS 12.55.125(c)(1) is amended to read:

17 (1) if the offense is a first felony conviction [, OTHER THAN
18 FOR MANSLAUGHTER,] and, during the commission of the offense, the defen-
19 dant possessed or used a firearm or used a dangerous instrument or
20 caused serious physical injury, eight [DURING THE COMMISSION OF THE
21 OFFENSE, SIX] years;

22 * Sec. 29. AS 12.55.135(c) is amended to read:

23 (c) A defendant convicted of assault in the fourth [THIRD]
24 degree committed in violation of the provisions of an order issued under
25 AS 09.55.600 or 09.55.610 shall be sentenced to a minimum term of impri-
26 sonment of 20 [10] days. The execution of sentence may not be suspended
27 and probation or parole may not be granted until the minimum term of
28 imprisonment has been served. Imposition of sentence may not be sus-
29 pended, except upon condition that the defendant be [BY] imprisoned for

1 no less than the minimum term of imprisonment provided in this section,
2 and the minimum sentence provided for in this section may not be other-
3 wise reduced.

4 * Sec. 30. AS 12.55.145(a) is repealed and reenacted to read:

5 (a) For purposes of considering prior convictions in imposing
6 sentence under this chapter

7 (1) a prior conviction may not be considered if a period of
8 10 or more years has elapsed between the date of the defendant's uncon-
9 ditional discharge on the immediately preceding offense and commission
10 of the present offense unless the prior conviction was for an unclassi-
11 fied or class A felony;

12 (2) a conviction in this or another jurisdiction of an offense
13 having elements similar to those of a felony defined as such under
14 Alaska law is considered a prior felony conviction;

15 (3) two or more convictions for crimes violating similar
16 societal interests or arising out of a single, continuous criminal
17 episode are considered a single conviction unless

18 (A) there was a substantial change in the nature of the
19 criminal objective, including but not limited to a change in the
20 parties to the crimes, the property or type of property right
21 offended, or the persons offended;

22 (B) the crimes were committed while the defendant
23 attempted to escape or avoid detection or apprehension after the
24 commission of another crime;

25 (C) the sentence is for violation of AS 11.41.100 -
26 11.41.140, AS 11.41.200 - 11.41.250, AS 11.41.300 - 11.41.330, or
27 for a violation of AS 11.41.500 - 11.41.530 that results in physical
28 injury or serious physical injury as those terms are defined in
29 AS 11.41.900 to one or more persons; or

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

(D) the sentence is for violation of AS 11.41.410 -
11.41.455.

* Sec. 31. AS 12.55.145(b) is amended to read:

(b) When sentence is imposed under this chapter, 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 [10] days before the date set for imposition of sentence.

* Sec. 32. AS 12.55.145(c) is amended to read:

(c) If the defendant denies the authenticity of a prior judgment of conviction, that he is the person named in the judgment, that the elements of a prior offense committed in another jurisdiction are substantially identical to those of a felony defined as such under Alaska law, or that a prior conviction occurred within the period specified in (a)(1) of this section or if he alleges that two or more purportedly separate prior convictions should be considered a single conviction under (a)(3) of this section, the defendant shall file with the court and serve on the prosecuting attorney notice of denial no later than 10 [FIVE] days before the date set for imposition of sentence. The notice of denial shall include a concise statement of the grounds relied upon and may be supported by affidavit or other documentary evidence.

* Sec. 33. AS 12.55.145 is amended by adding a new subsection to read:

(f) When a defendant is convicted of a felony by a court of this state he shall place his fingerprints on the judgment of conviction in open court, on the record, at the time of sentencing. The defendant and the person administering the fingerprinting shall sign their names under the fingerprints.

* Sec. 34. AS 12.55.153(c)(8) is repealed and reenacted to read:

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

1 * Sec. 35. AS 12.55.155(c) is amended by adding new paragraphs to read:

2 (19) the defendant's prior criminal history includes an adjudi-
3 cation as a delinquent for conduct that would have been a felony if
4 committed by an adult;

5 (20) the defendant was on furlough under AS 33.30 or on parole
6 or probation for another felony charge or conviction;

7 (21) the defendant has a criminal history of repeated instances
8 of conduct violative of criminal laws, whether punishable as felonies or
9 misdemeanors, similar in nature to the offense for which the defendant
10 is being sentenced under this section.

11 * Sec. 36. AS 11.41.210(a)(3); AS 12.45.085; AS 12.55.025(e), 12.55.155-
12 (d)(8); AS 47.25.280, 47.25.403, 47.25.405, 47.25.600, 47.25.760, 47.25.950,
13 47.25.983, and 47.25.985(a)(3) are repealed.

14 * Sec. 37. AS 12.55.088(a), amended by sec. 27 of this Act, has the
15 effect of changing Rule 35(a), (b), and (k), Rules of Criminal Procedure, by
16 deleting the provisions for modification or reduction of sentence as a result
17 of changed circumstances and by decreasing from 120 to 60 days the period of
18 time in which a sentence otherwise may be modified or reduced.

19 * Sec. 38. This Act takes effect immediately in accordance with AS 01.10.-
20 070(c).