

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) am H

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 criminal law and procedure and
7 amending the revised criminal code; changing Rule 37,
8 Rules of Criminal Procedure and Rule 901, Alaska Rules
9 of Evidence."

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

11 * Section 1. AS 11.41 is amended by adding a new section to read:

12 Sec. AS 11.41.150. MULTIPLE DEATHS. If more than one person dies
13 as a result of a person committing conduct constituting a crime specified
14 in AS 11.41.100 - 11.41.130, each death constitutes a separately punish-
15 able offense.

16 * Sec. 2. AS 11.41.200(a)(1) is amended to read:

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

20 * Sec. 3. AS 11.41.210(a) is repealed and reenacted to read:

21 (a) A person commits the crime of assault in the second degree if
22 (1) with intent to cause physical injury to another person,
23 that person causes physical injury to another person by means of a
24 dangerous instrument; or

25 (2) that person recklessly causes serious physical injury to
26 another person.

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

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

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

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

5 * Sec. 5. AS 11.41.230(a)(3) is amended to read:

6 (3) by words or other conduct that person recklessly [HE
7 INTENTIONALLY] places another person in fear of imminent physical injury.

8 * Sec. 6. AS 11.41.410(b) is amended to read:

9 (b) Sexual assault in the first degree is an unclassified felony
10 and is punishable as provided in AS 12.55 [A CLASS A FELONY].

11 * Sec. 7. AS 11.46.484(b) is amended to read:

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

14 * Sec. 8. AS 11.46.484 is amended by adding a new subsection to read:

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

18 * Sec. 9. AS 11.81.250(a) is amended to read:

19 (a) For purposes of sentencing under AS 12.55, all offenses de-
20 fined in this title, except murder in the first and second degree, sex-
21 ual assault in the first degree, and kidnapping, are classified on the
22 basis of their seriousness, according to the type of injury character-
23 istically caused or risked by commission of the offense and the culpa-
24 bility of the offender. Except for murder in the first and second
25 degree, sexual assault in the first degree, and kidnapping, the offenses
26 in this title are classified into the following categories:

27 (1) class A felonies, which characteristically involve conduct
28 resulting in serious physical injury or a substantial risk of serious
29 physical injury to a person;

1 (2) class B felonies, which characteristically involve conduct
2 resulting in less severe violence against a person than class A felonies,
3 aggravated offenses against property interests, or aggravated offenses
4 against public administration or order;

5 (3) class C felonies, which characteristically involve conduct
6 serious enough to deserve felony classification but not serious enough
7 to be classified as A or B felonies;

8 (4) class A misdemeanors, which characteristically involve
9 less severe violence against a person, less serious offenses against
10 property interests, less serious offenses against public administration
11 or order, or less serious offenses against public health and decency
12 than felonies;

13 (5) class B misdemeanors, which characteristically involve a
14 minor risk of physical injury to a person, minor offenses against prop-
15 erty interests, minor offenses against public administration or order, or
16 minor offenses against public health and decency;

17 (6) violations, which characteristically involve conduct in-
18 appropriate to an orderly society but which do not denote criminality in
19 their commission.

20 * Sec. 10. AS 11.81.250(b) is amended to read:

21 (b) The classification of each felony defined in this title,
22 except murder in the first and second degree, sexual assault in the
23 first degree, and kidnapping, is designated in the section defining it.
24 A felony under Alaska law defined outside this title for which no penalty
25 is specifically provided is a class C felony.

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

27 (b) The justification specified in (a) of this section is an
28 affirmative defense.

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

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

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

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

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

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

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

23 (49) "serious physical injury" means

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

27 (B) physical injury that [WHICH] causes serious and
28 protracted disfigurement, protracted impairment of health, [OR]
29 protracted loss or impairment of the function of a body member or

1 organ, or that [PHYSICAL INJURY WHICH] unlawfully terminates a
2 pregnancy;

3 * Sec. 16. AS 12.30.020(a) is amended to read:

4 (a) A person charged with an offense shall, at his first appearance
5 before a judicial officer, be ordered released pending trial on his
6 personal recognizance or upon the execution of an unsecured appearance
7 bond in an amount specified by the judicial officer unless the offense
8 is an unclassified felony or class A felony or unless the officer deter-
9 mines that the release of the person will not reasonably assure the
10 appearance of the person as required, or will pose a danger to other
11 persons and the community. If the offense with which a person is charged
12 is a felony, on motion of the prosecuting attorney, the judicial officer
13 may allow the prosecuting attorney up to 48 hours to demonstrate that
14 release of the person on his personal recognizance or upon the execution
15 of an unsecured appearance bond will not reasonably assure the appearance
16 of the person, or will pose a danger to other persons and the community.

17 * Sec. 17. AS 12.35.010 is amended by adding a new subsection to read:

18 (b) A judicial officer may issue a search warrant upon the sworn
19 oral testimony of a person communicated by telephone or other appropri-
20 ate means in accordance with AS 12.35.015.

21 * Sec. 18. AS 12.35 is amended by adding a new section to read:

22 Sec. 12.35.015. ISSUANCE OF SEARCH WARRANT UPON SWORN ORAL TESTI-
23 MONY COMMUNICATED BY TELEPHONE OR OTHER APPROPRIATE MEANS. (a) A
24 judicial officer may issue a search warrant upon the sworn oral testi-
25 mony of a person communicated by telephone or other appropriate means
26 if the judicial officer finds that there is probable cause to believe
27 that

28 (1) the presentation of the applicant's affidavit or testi-
29 mony personally before the judicial officer would result in delay in

1 obtaining a search warrant and in executing the search; and

2 (2) the delay might result in loss or destruction of the
3 evidence subject to seizure.

4 (b) A judicial officer shall place under oath each person whose
5 testimony forms a basis of the application and each person applying for
6 the search warrant. The judicial officer shall record the proceeding by
7 using a voice recording device.

8 (c) The applicant for the search warrant shall prepare a document
9 to be known as a duplicate original warrant and shall read it verbatim
10 to the judicial officer. The judicial officer shall enter, verbatim, on
11 an original search warrant what is read to him. The judicial officer
12 may direct that the duplicate original search warrant be modified.

13 (d) If a search warrant is issued under this section, the judicial
14 officer shall orally authorize the applicant to sign the judicial offi-
15 cer's name on the duplicate original search warrant. The judicial
16 officer shall immediately sign the original search warrant and enter on
17 the face of the original search warrant the exact time when the search
18 warrant was ordered to be issued.

19 (e) The person who executes a search warrant issued under this
20 section shall enter the exact time of execution on the face of the
21 duplicate original search warrant.

22 (f) Absent a finding of bad faith, evidence obtained under a
23 warrant issued under this section is not subject to a motion to suppress
24 on the ground that the circumstances did not support its issuance under
25 (a) of this section.

26 * Sec. 19. AS 12.35.025 is amended by adding new subsections to read:

27 (b) When property is seized under this chapter, the peace officer
28 taking the property shall give to the person from whom or from whose
29 premises the property was taken a copy of the warrant, a copy of the

1 supporting affidavit, and a receipt for the property taken, or shall
2 leave the copies and the receipt at the place from which the property
3 was taken.

4 (c) The return of the warrant to the court shall be made promptly
5 and shall be accompanied by a written inventory of the property taken.
6 The inventory shall be made in the presence of the applicant for the
7 warrant and the person from whose possession or premises the property
8 was taken, if they are present, or in the presence of at least one other
9 person as witness.

10 (d) The inventory required by (c) of this section shall be signed
11 by the peace officer under penalty of perjury under AS 09.63.020. The
12 judge or magistrate shall, upon request, deliver a copy of the inventory
13 to the person from whom or from whose premises the property was taken
14 and to the applicant for the warrant.

15 * Sec. 20. AS 12.35.120 is amended to read:

16 Sec. 12.35.120. DEFINITION OF SEARCH WARRANT. A search warrant is
17 an order in writing, signed by a judge or magistrate or signed at the
18 direction of a judicial officer in accordance with AS 12.35.015, directed
19 to a peace officer, commanding him to search for personal property and
20 bring it before the judge or magistrate.

21 * Sec. 21. AS 12 is amended by adding a new chapter to read:

22 CHAPTER 36. DISPOSITION OF RECOVERED OR SEIZED PROPERTY.

23 Sec. 12.36.010. PROPERTY DISPOSITION. When property not belonging
24 to a law enforcement agency comes into the custody of the agency, the
25 property shall be disposed of in accordance with this chapter.

26 Sec. 12.36.020. RETURN OF PROPERTY. (a) A law enforcement agency
27 may return property in its custody to the owner or the agent of the
28 owner if

29 (1) the property is not in custody in connection with a

1 children's court proceeding, a criminal proceeding, or an official
2 investigation of a crime; and

3 (2) the property in custody is not subject to forfeiture
4 under the laws of the state.

5 (b) In a criminal proceeding or a children's court proceeding
6 involving the wrongful taking or damaging of property where photographs
7 of the property are used as evidence in place of the property, the
8 prosecuting attorney may release the property to the owner upon presenta-
9 tion of satisfactory proof of ownership.

10 (c) If wrongfully taken or damaged property is not photographed
11 and authenticated under AS 12.80.050 and the property is used as evi-
12 dence in a criminal proceeding or a children's court proceeding, the law
13 enforcement agency in possession of the property shall return it to the
14 owner upon presentation of satisfactory proof of ownership within 60
15 days after the final disposition of the case.

16 Sec. 12.36.030. DISPOSAL OF UNCLAIMED PROPERTY USED AS EVIDENCE.

17 (a) If property that is used as evidence in a criminal proceeding or a
18 children's court proceeding, including wrongfully taken or damaged
19 property, is not claimed by the owner within one year after the final
20 disposition of the case, the law enforcement agency having custody of
21 the property shall dispose of it under (b) of this section.

22 (b) If the property to be disposed of is money, the law enforce-
23 ment agency shall deposit it in the court or, if it is property other
24 than money, sell it in the same manner as a sale upon execution. After
25 paying the expenses of the sale and the preservation of the property,
26 the law enforcement agency shall dispose of the proceeds of the sale in
27 the same manner as money collected upon a judgment in favor of the
28 state.

29 Sec. 12.36.040. DISPOSAL OF PROPERTY WHEN OWNER UNKNOWN. When the

1 owner of property is unknown and the property comes into the possession
2 of a law enforcement agency as suspected evidence of a crime but is not
3 used in a criminal proceeding or a children's court proceeding, or when
4 the property comes into the possession of a law enforcement agency by
5 other means, the property shall be held for two years. If the property
6 is not claimed within two years of the date it comes into the possession
7 of a law enforcement agency, the property shall be disposed of as pro-
8 vided in AS 12.36.030(b).

9 Sec. 12.36.090. DEFINITIONS. In this chapter,

10 (1) "final disposition of a case" means the time when all
11 appeals have been exhausted or the time when all appeals that could have
12 been taken has expired;

13 (2) "law enforcement agency" means a public agency that
14 performs as one of its principal functions an activity relating to crime
15 prevention, control, or reduction or relating to the enforcement of the
16 criminal law; "law enforcement agency" does not include a court;

17 (3) "peace officer" means a public servant vested by law with
18 a duty to maintain public order or to make arrests, whether the duty
19 extends to all offenses or is limited to a specific class of offenses or
20 offenders.

21 * Sec. 22. AS 12 is amended by adding a new chapter to read:

22 CHAPTER 47. INSANITY AND COMPETENCY TO STAND TRIAL.

23 Sec. 12.47.010. INSANITY EXCLUDING RESPONSIBILITY. (a) In a
24 prosecution for a crime, it is an affirmative defense that when the
25 defendant engaged in the criminal conduct, he was unable, as a result of
26 a mental disease or defect, to appreciate the nature and quality of his
27 conduct.

28 (b) The affirmative defense defined in (a) of this section may not
29 be raised at trial unless the defendant, within 10 days of entering his

1 plea or such later time as the court may for good cause permit, files a
2 written notice of his intent to rely on the defense.

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

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

10 Sec. 12.47.020. MENTAL DISEASE OR DEFECT NEGATING CULPABLE MENTAL
11 STATE. (a) Evidence that the defendant suffered from a mental disease
12 or defect is admissible whenever it is relevant to prove that the defen-
13 dant did or did not have a culpable mental state which is an element of
14 the crime. However, evidence of mental disease or defect that tends to
15 negate a culpable mental state is not admissible unless the defendant,
16 within 10 days of entering his plea, or at such later time as the court
17 may for good cause permit, files a written notice of his intent to rely
18 on that defense.

19 (b) When the trier of fact finds that all other elements of the
20 crime have been proved but, as a result of mental disease or defect,
21 there is a reasonable doubt as to the existence of a culpable mental
22 state that is an element of the crime, it shall enter a verdict of not
23 guilty by reason of insanity. A defendant acquitted under this sub-
24 section, and not found guilty of a lesser included offense, shall auto-
25 matically be considered as if he had established the affirmative defense
26 of insanity under AS 12.47.010. The defendant is then subject to the
27 provisions of AS 12.47.090.

28 (c) If a verdict of not guilty by reason of insanity is reached
29 under (b) of this section, the trier of fact shall also consider whether

1 the defendant is guilty of any lesser included offense. If the defend-
2 ant is convicted of a lesser included offense, the defendant shall be
3 sentenced for that offense and shall automatically be considered guilty
4 but mentally ill under AS 12.47.030 and AS 12.47.050. Upon completion
5 of a sentence for a lesser included offense, a hearing shall be held
6 under AS 12.47.090(c) to determine the necessity of further commitment
7 of the defendant, based on the acquittal for the greater charge under
8 (b) of this section. If the defendant is committed under AS 12.47.-
9 090(c), he is subject to the provisions of AS 12.47.090(d) - (j).

10 Sec. 12.47.030. GUILTY BUT MENTALLY ILL. (a) A defendant is
11 guilty but mentally ill if, when he engaged in the criminal conduct, he
12 lacked, as a result of a mental disease or defect, the substantial
13 capacity either to appreciate the wrongfulness of his conduct or to
14 conform his conduct to the requirements of law. A defendant found
15 guilty but mentally ill is not relieved of criminal responsibility for
16 his conduct and is subject to the provisions of AS 12.47.050.

17 (b) Evidence of a mental disease or defect that is manifested only
18 by repeated criminal or antisocial conduct is not sufficient to estab-
19 lish the defense under (a) of this section.

20 Sec. 12.47.040. FORM OF VERDICT WHEN EVIDENCE OF MENTAL DISEASE OR
21 DEFECT ADMISSIBLE. (a) In a prosecution for a crime when the affirma-
22 tive defense of insanity is raised under AS 12.47.010, or when evidence
23 of a mental disease or defect of the defendant is otherwise admissible
24 at trial under AS 12.47.020, the trier of fact shall find, and the
25 verdict shall state, whether the defendant is

- 26 (1) guilty;
27 (2) not guilty;
28 (3) not guilty by reason of insanity; or
29 (4) guilty but mentally ill.

1 (b) To return a verdict under (a)(4) of this section, the jury
2 must find beyond a reasonable doubt that the defendant committed the
3 crime and find by a preponderance of the evidence that when he committed
4 the crime he was guilty but mentally ill as defined in AS 12.47.030.

5 (c) When the jury is instructed as to the verdicts under (a) of
6 this section, it shall also be instructed on the dispositions available
7 under AS 12.47.050 and AS 12.47.090.

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

13 (b) The Department of Health and Social Services shall provide
14 mental health treatment to a defendant found guilty but mentally ill.
15 The treatment must continue until the defendant no longer suffers from a
16 mental disease or defect that causes him to be dangerous to the public
17 peace or safety. Subject to (c) and (d) of this section, the department
18 shall determine the course of treatment.

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

21 (d) Notwithstanding any contrary provision of law, a defendant
22 receiving treatment under (b) of this section may not be released on
23 furlough or work release under AS 33.30.250, AS 33.30.150, or AS 33.30.-
24 260 or on parole.

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

29 (f) Not less than 30 days before the expiration of the sentence of

1 a defendant found guilty but mentally ill, the commissioner of health
2 and social services shall file a petition under AS 47.30.700 for a
3 screening investigation to determine the need for further treatment of
4 the defendant if

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

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

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

12 (a) In a prosecution for a crime when the affirmative defense of insanity
13 is not raised and when evidence of mental disease or defect of the
14 defendant is not admitted at trial under AS 12.47.020, and the defendant
15 is convicted of a crime, the defendant, the prosecuting attorney, or the
16 court on its own motion may raise the issue of whether the defendant is
17 guilty but mentally ill. A hearing must be held on this issue at or
18 before the sentencing hearing. At the hearing the court shall determine
19 whether the defendant has been shown to be guilty but mentally ill by a
20 preponderance of the evidence presented at the hearing and any evidence
21 relevant to the issue that was presented at trial.

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

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

27 (d) As used in this section, guilty but mentally ill has the mean-
28 ing ascribed to it in AS 12.47.030.

29 Sec. 12.47.070. PSYCHIATRIC EXAMINATION. (a) If a defendant has

1 filed a notice of intention to rely on the affirmative defense of
2 insanity under AS 12.47.010 or has filed notice under AS 12.47.020(a), or
3 there is reason to doubt his fitness to proceed, or there is reason to
4 believe that a mental disease or defect of the defendant will otherwise
5 become an issue in the case, the court shall appoint at least two quali-
6 fied psychiatrists or two forensic psychologists certified by the
7 American Board of Forensic Psychology to examine and report upon the
8 mental condition of the defendant. If the court appoints psychiatrists,
9 the psychiatrists may select psychologists to provide assistance. If
10 the defendant has filed notice under AS 12.47.090(a), the report shall
11 consider whether the defendant can still be committed under AS 12.47.-
12 090(c). The court may order the defendant to be committed to a secure
13 facility for the purpose of the examination for not more than 60 days or
14 such longer period as the court determines to be necessary for the
15 purpose and may direct that a qualified psychiatrist retained by the
16 defendant be permitted to witness and participate in the examination.

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

20 (c) The report of an examination under (a) of this section shall
21 include the following:

22 (1) a description of the nature of the examination;
23 (2) a diagnosis of the mental condition of the defendant;
24 (3) if the defendant suffers from a mental disease or defect,
25 an opinion as to his capacity to understand the proceedings against him
26 and to assist in his own defense;

27 (4) if a notice of intention to rely on the affirmative
28 defense of insanity under AS 12.47.010(b) has been filed, an opinion as
29 to the extent, if any, to which the capacity of the defendant to appre-

1 ciate the nature and quality of his conduct was impaired at the time of
2 the crime charged; and

3 (5) if notice has been filed under AS 47.47.020(a), an opinion
4 as to the capacity of the defendant to have a culpable mental state
5 which is an element of the crime charged.

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

11 (e) The report of the examination under (a) of this section shall
12 be filed with the clerk of the court, who shall cause copies to be
13 delivered to the prosecuting attorney and to counsel for the defendant.

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 prosecuting
16 attorney shall, within 24 hours, file a petition under AS 47.30.700 for a
17 screening investigation to determine the need for treatment if the prose-
18 cuting attorney has good cause to believe that the defendant is suffer-
19 ing from a mental illness and as a result is gravely disabled or likely
20 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. 12.47.090. PROCEDURE AFTER RAISING DEFENSE OF INSANITY. (a)
24 At the time the defendant files notice to raise the affirmative defense
25 of insanity under AS 12.47.010 or files notice under AS 12.47.020(a),
26 he shall also file notice as to whether, if found not guilty by reason
27 of insanity under AS 12.47.010 or AS 12.47.020(b), he will assert that
28 he is not presently suffering from any mental illness that causes him to
29 be dangerous to the public peace or safety.

1 (b) If the defendant is found not guilty by reason of insanity
2 under AS 12.47.010 or AS 12.47.020(b), and he has not filed the notice
3 required under (a) of this section, the court shall immediately commit
4 him to the custody of the commissioner of health and social services.

5 (c) If the defendant is found not guilty by reason of insanity
6 under AS 12.47.010 or AS 12.47.020(b), and he has filed the notice
7 required under (a) of this section, a hearing shall be held immediately
8 after a verdict of not guilty by reason of insanity to determine the
9 necessity of commitment. The hearing shall be held before the same
10 trier of fact as heard the underlying charge. At the hearing, the
11 defendant has the burden of proving by clear and convincing evidence
12 that he is not presently suffering from any mental illness that causes
13 him to be dangerous to the public. If the court or jury determines that
14 the defendant has failed to meet his burden of proof, the court shall
15 order the defendant committed to the custody of the commissioner of
16 health and social services. If the hearing is before a jury, the ver-
17 dict must be unanimous.

18 (d) A defendant committed under (b) or (c) of this section shall
19 be held in custody for a period of time not to exceed the maximum term
20 of imprisonment for the crime for which the defendant was acquitted
21 under AS 12.47.010 or AS 12.47.020(b) or until the mental illness is
22 cured or corrected as determined at a hearing under (e) of this section.

23 (e) A defendant committed under (b) or (c) of this section may
24 have the need for his continued commitment under this section reviewed
25 by the court sitting without a jury under a petition filed in the
26 superior court at intervals beginning no sooner than a year from his
27 initial commitment, and yearly thereafter. The burden and standard of
28 proof at a hearing under this subsection are the same as at a hearing
29 under (c) of this section. A copy of all petitions for release shall be

1 served on the attorney general at Juneau, Alaska. A copy shall also be
2 served upon the attorney of record, if he is not the attorney general,
3 who represented the state or a municipality at the time the defendant
4 was first committed.

5 (f) Continued commitment following expiration of the maximum term
6 of imprisonment for the crime for which the defendant was acquitted
7 under AS 12.47.010 or AS 12.47.020(b) is governed by the standards per-
8 taining to civil commitments as set out in AS 47.30.735.

9 (g) A person committed under this section may not be released
10 during the term of commitment except upon court order following a hear-
11 ing in accordance with (e) of this section. On the grounds that the
12 defendant has been cured of any mental illness that would cause him to
13 be dangerous to the public peace or safety, the state may at any time
14 request the court to hold a hearing to decide if the defendant should be
15 released.

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

19 (i) An order entered under (c) or (e) of this section may be re-
20 viewed by the court of appeals on appeal brought by either the defendant
21 or the state within 40 days from the entry of the order.

22 (j) In this section,

23 (1) "mental illness" means any mental condition that increases
24 the propensity of the defendant to be dangerous to the public peace or
25 safety; however, it is not required that the mental illness be sufficient
26 to exclude criminal responsibility under AS 12.47.010, or that the
27 mental illness presently suffered by the defendant be the same one he
28 suffered at the time of the criminal conduct;

29 (2) "dangerous" means a determination involving both the

1 magnitude of the risk that the defendant will commit an act threatening
2 the public peace or safety, as well as the magnitude of the harm that
3 could be expected to result from this conduct; a finding that a defen-
4 dant is "dangerous" may result from a great risk of relatively slight
5 harm to persons or property, or may result from a relatively slight risk
6 of substantial harm to persons or property.

7 Sec. 12.47.100. INCOMPETENCY TO PROCEED. (a) A person who as a
8 result of mental disease or defect lacks capacity to understand the
9 proceedings against him or to assist in his own defense may not be tried,
10 convicted, or sentenced for the commission of a crime so long as the in-
11 capacity exists.

12 (b) When, after arrest and before the imposition of sentence or
13 before the expiration of any period of probation, the attorney general,
14 the prosecuting attorney, or the attorney for the accused has reasonable
15 cause to believe that a person charged with a crime may be presently
16 suffering from a mental disease or defect or is otherwise so mentally
17 incompetent that he is unable to understand the proceedings against him
18 or to properly assist in his own defense, he may file a motion for a
19 judicial determination of the mental competency of the accused. Upon
20 that motion or upon a similar motion on behalf of the accused, or upon
21 its own motion, the court shall have the accused, whether or not previ-
22 ously admitted to bail, examined as to his mental condition by at least
23 one qualified psychiatrist, who shall report to the court. For the
24 purpose of the examination the court may order the accused committed for
25 a reasonable period as the court may determine to a suitable hospital or
26 other facility to be designated by the court. If the report of the
27 psychiatrist indicates a state of present mental disease or defect or of
28 other mental incompetency in the accused, the court shall hold a hearing,
29 upon due notice, at which evidence as to the mental condition of the

1 accused may be submitted, including that of the reporting psychiatrist,
2 and make a finding with respect to his mental condition. No statement
3 made by the accused in the course of an examination into his mental
4 competency provided for by this section, whether the examination is with
5 or without the consent of the accused, may be admitted in evidence
6 against the accused on the issue of guilt in a criminal proceeding
7 unless the accused later relies on a defense under AS 12.47.010 or 12.47.
8 020. A finding by the judge that the accused is mentally competent to
9 stand trial in no way prejudices the accused in a defense based on
10 insanity; the finding may not be introduced in evidence on that issue or
11 otherwise be brought to the notice of the jury.

12 Sec. 12.47.110. COMMITMENT ON FINDING OF INCOMPETENCY. (a) When
13 the trial court determines by a preponderance of the evidence, in
14 accordance with AS 12.47.100, that a defendant is so mentally incompe-
15 tent that he is unable to understand the proceedings against him or
16 properly to assist in his own defense, the court shall order the pro-
17 ceedings against him stayed, except as provided in (d) of this section,
18 and may commit the defendant to the custody of the commissioner of
19 health and social services or his authorized representative for further
20 evaluation and treatment until the defendant is mentally competent to
21 stand trial, or until the pending charges against him are disposed of
22 according to law, but in no event longer than 90 days.

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 90-

1 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 with-
9 in a reasonable period of time, in which case the court may extend the
10 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 defend-
16 and 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 class
18 A felony or unclassified felony.

19 (c) The defendant is not responsible for the expenses of hospitali-
20 zation or transportation incurred as a result of his commitment under
21 this section. Liability for payment under AS 47.30.910 does not apply to
22 commitments under this section.

23 (d) A defendant receiving medication for either a physical or a
24 mental condition may not be prohibited from standing trial, if the medi-
25 cation either enables him to understand the proceedings against him and
26 to properly assist in his own defense or does not disable him from under-
27 standing the proceedings and assisting in his own defense.

28 Sec. 12.47.120. DETERMINATION OF SANITY AFTER COMMITMENT. (a)
29 When, in the medical judgment of the custodian of an accused person com-

1 mitted under AS 12.47.110, the accused is considered to be mentally com-
2 petent to stand trial, the committing court shall hold a hearing, after
3 due notice, as soon as conveniently possible. At the hearing, evidence
4 as to the mental condition of the accused may be submitted including
5 reports by the custodian to whom the accused was committed for care.

6 (b) If at the hearing the court determines that the accused is
7 presently mentally competent to understand the nature of the proceedings
8 against him and to assist in his own defense, appropriate criminal
9 proceedings may be commenced against the accused.

10 (c) If at the hearing the court determines that the accused is
11 still presently mentally incompetent, the court shall recommit the
12 accused in accordance with AS 12.47.110.

13 (d) A finding by the court that the accused is mentally competent
14 to stand trial in no way prejudices the accused in a defense based on
15 mental disease or defect excluding responsibility. This finding may not
16 be introduced in evidence on that issue or otherwise brought to the
17 notice of the jury.

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

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

21 (2) "culpable mental state" has the meaning ascribed to it
22 in AS 11.81.900(b)(10);

23 (3) "mental disease or defect" means a disorder of thought or
24 mood that substantially impairs judgment, behavior, capacity to recognize
25 reality, or ability to cope with the ordinary demands of life; "mental
26 disease or defect" also includes mental retardation, which means a signi-
27 ficantly below average general intellectual functioning that impairs a
28 person's ability to adapt to or cope with the ordinary demands of life.

29 * Sec. 23. AS 12.50 is amended by adding a new section to read:

1 ARTICLE 3. WITNESSES.

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

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

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

24 (d) The attorney general or his designee may apply for an order
25 under (b) of this section when, in the judgment of the attorney general
26 or his designee,

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

29 (2) the individual who is the subject of the application has

1 refused or is likely to refuse to testify or to provide other informa-
2 tion on the basis of the privilege against self-incrimination.

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

5 * Sec. 24. AS 12.55.025(e) is repealed and reenacted to read:

6 (e) Except as provided in (g) of this section, if the defendant
7 has been convicted of two or more crimes, sentences of imprisonment
8 shall run consecutively. If the defendant is imprisoned upon a previous
9 judgment of conviction for a crime, the judgment shall provide that the
10 imprisonment commences at the expiration of the term imposed by the
11 previous judgment.

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

13 (g) If the defendant has been convicted of two or more crimes
14 before the judgment on either has been entered, any sentences of impris-
15 onment may run concurrently if

16 (1) the crimes violate similar societal interests;

17 (2) the crimes are part of a single, continuous criminal
18 episode;

19 (3) there was not a substantial change in the objective of
20 the criminal episode, including a change in the parties to the crime,
21 the property or type of property right offended, or the persons offended;

22 (4) the crimes were not committed while the defendant attempt-
23 ed to escape or avoid detection or apprehension after the commission of
24 another crime;

25 (5) the sentence is not for a violation of AS 11.41.100 -
26 11.41.140, AS 11.41.200 - 11.41.250, or AS 11.41.300 - 11.41.350;

27 (6) the sentence is not for a violation of AS 11.41.500 -
28 11.41.530 that results in physical injury or serious physical injury as
29 those terms are defined in AS 11.81.900; or

1 (7) the sentence is not for a violation of AS 11.41.410 -
2 11.41.455.

3 * Sec. 26. AS 12.55.035(b)(1) is amended to read:

4 (1) \$75,000 for murder in the first or second degree, sexual
5 assault in the first degree, or kidnapping;

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

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

12 * Sec. 28. AS 12.55.125(c) is repealed and reenacted to read:

13 (c) A defendant convicted of a class A felony may be sentenced to
14 a definite term of imprisonment of not more than 20 years, and shall be
15 sentenced to the following presumptive terms, subject to adjustment as
16 provided in AS 12.55.155 - 12.55.175:

17 (1) if the offense is a first felony conviction and does not
18 involve circumstances described in (2) of this subsection, five years;

19 (2) if the offense is a first felony conviction, other than
20 for manslaughter, and the defendant possessed a firearm, used a danger-
21 ous instrument, or caused serious physical injury during the commission
22 of the offense, seven years;

23 (3) if the offense is a second felony conviction, 10 years;

24 (4) if the offense is a third felony conviction, 15 years.

25 * Sec. 29. AS 12.55.125(g) is amended to read:

26 (g) If a defendant is sentenced under (c) [(c)(1), (c)(2), (c)(3)],
27 (d)(1), (d)(2), (e)(1), [OR] (e)(2), or (i) of this section, except to
28 the extent permitted under AS 12.55.155 - 12.55.175,

29 (1) imprisonment may not be suspended under AS 12.55.080

1 [AS 12.55.80];

2 (2) imposition of sentence may not be suspended under AS 12.-
3 55.085 [AS 12.55.85];

4 (3) terms of imprisonment may not be otherwise reduced.

5 * Sec. 30. AS 12.55.125 is amended by adding a new subsection to read:

6 (i) A defendant convicted of sexual assault in the first degree
7 may be sentenced to a definite term of imprisonment of not more than 30
8 years, and shall be sentenced to the following presumptive terms,
9 subject to adjustment as provided in AS 12.55.155 - 12.55.175:

10 (1) if the offense is a first felony conviction and does not
11 involve circumstances described in (2) of this subsection, eight
12 years;

13 (2) if the offense is a first felony conviction, and the
14 defendant possessed a firearm, used a dangerous instrument, or caused
15 serious physical injury during the commission of the offense, 10 years;

16 (3) if the offense is a second felony conviction, 15 years;

17 (4) if the offense is third felony conviction, 25 years.

18 * Sec. 31. AS 12.55.135(c) is amended to read:

19 (c) A defendant convicted of assault in the fourth [THIRD] degree
20 committed in violation of the provisions of an order issued under
21 AS 09.55.600 or 09.55.610 shall be sentenced to a minimum term of impris-
22 onment of 20 [10] days. The execution of sentence may not be suspended
23 and probation or parole may not be granted until the minimum term of
24 imprisonment has been served. Imposition of sentence may not be sus-
25 pended, except upon condition that the defendant be [BY] imprisoned for
26 no less than the minimum term of imprisonment provided in this section,
27 and the minimum sentence provided for in this section may not be other-
28 wise reduced.

29 * Sec. 32. AS 12.55.145 is repealed and reenacted to read:

1 Sec. 12.55.145. PRIOR CONVICTIONS. (a) For purposes of consider-
2 ing prior convictions in imposing sentence under AS 12.55.125(c), (d)(1),
3 (d)(2), (e)(1), (e)(2) or (i)

4 (1) a prior conviction may not be considered if a period of
5 10 or more years has elapsed between the date of the defendant's uncon-
6 ditional discharge on the immediately preceding offense and commission
7 of the present offense unless the prior conviction was for an unclassi-
8 fied or class A felony;

9 (2) a conviction in this or another jurisdiction of an offense
10 having elements similar to those of a felony defined as such under Alaska
11 law at the time the offense was committed is considered a prior felony
12 conviction;

13 (3) two or more convictions arising out of a single, contin-
14 uous criminal episode during which there was no substantial change in the
15 nature of the criminal objective are considered a single conviction un-
16 less the defendant was sentenced to consecutive sentences for the crimes;
17 offenses committed while attempting to escape or avoid detection or
18 apprehension after the commission of another offense are not part of the
19 same criminal episode or objective.

20 * Sec. 33. AS 12.55.145(b) is amended to read:

21 (b) When sentence is imposed under this chapter, prior convictions
22 not expressly admitted by the defendant must be proved by authenticated
23 copies of court records served on the defendant or his counsel at least
24 20 [10] days before the date set for imposition of sentence.

25 * Sec. 34. AS 12.55.145(c) is amended to read:

26 (c) If the defendant denies the authenticity of a prior judgment
27 of conviction, that he is the person named in the judgment, that the
28 elements of a prior offense committed in another jurisdiction are sub-
29 stantially identical to those of a felony defined as such under Alaska

1 law, or that a prior conviction occurred within the period specified in
2 (a)(1) of this section or if he alleges that two or more purportedly
3 separate prior convictions should be considered a single conviction
4 under (a)(3) of this section, the defendant shall file with the court
5 and serve on the prosecuting attorney notice of denial no later than 10
6 [FIVE] days before the date set for imposition of sentence. The notice
7 of denial shall include a concise statement of the grounds relied upon
8 and may be supported by affidavit or other documentary evidence.

9 * Sec. 35. AS 12.55.145 is amended by adding a new subsection to read:

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

15 * Sec. 36. AS 12.55.155(a) is amended to read:

16 (a) If a defendant is convicted of an offense and is subject to
17 sentencing under AS 12.55.125(c) [AS 12.55.125(c)(1), (c)(2), (c)(3)],
18 (d)(1), (d)(2), (e)(1), [OR] (e)(2), or (1) and

19 (1) the presumptive term is four years or less, the court may
20 decrease the presumptive term by an amount as great as the presumptive
21 term for factors in mitigation or may increase the presumptive term up
22 to the maximum term of imprisonment for factors in aggravation;

23 (2) the presumptive term of imprisonment is more than four
24 years, the court may decrease the presumptive term by an amount as great
25 as 50 percent of the presumptive term for factors in mitigation or may
26 increase the presumptive term up to the maximum term of imprisonment for
27 factors in aggravation.

28 * Sec. 37. AS 12.55.165 is amended to read:

29 Sec. 12.55.165. EXTRAORDINARY CIRCUMSTANCES. If the defendant is

1 subject to sentencing under AS 12.55.125(c) [AS 12.55.125(c)(1), (c)(2),
2 (c)(3)], (d)(1), (d)(2), (e)(1), [OR] (e)(2), or (i) and the court finds
3 by clear and convincing evidence that manifest injustice would result
4 from failure to consider relevant aggravating or mitigating factors not
5 specifically included in AS 12.55.155 or from imposition of the presump-
6 tive term, whether or not adjusted for aggravating or mitigating factors,
7 the court shall enter findings and conclusions and cause a record of the
8 proceedings to be transmitted to a three-judge panel for sentencing
9 under AS 12.55.175.

10 * Sec. 38. AS 12.55.155(c)(8) is repealed and reenacted to read:

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

13 * Sec. 39. AS 12.55.155(c) is amended by adding new paragraphs to read:

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

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

19 (21) the defendant has a criminal history of repeated instances
20 of conduct violative of criminal laws, whether punishable as felonies or
21 misdemeanors, similar in nature to the offense for which the defendant
22 is being sentenced under this section;

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

26 * Sec. 40. AS 12.80 is amended by adding a new section to read:

27 Sec. 12.80.050. PHOTOGRAPHIC EVIDENCE OF PROPERTY WRONGFULLY TAKEN
28 OR DAMAGED. (a) In a criminal proceeding or a children's court proceed-
29 ing involving the wrongful taking or damaging of property, photographs

1 of the property are competent evidence of the property and are admissible
2 in the proceeding to the same extent as if the property had been intro-
3 duced as evidence.

4 (b) Photographs of property that are to be introduced as evidence
5 under this section shall be accompanied by a written description of the
6 property, the name of the owner of the property, the location where the
7 alleged crime occurred, the name of the investigating peace officer, the
8 date the photograph was taken, and the name and signature of the photo-
9 grapher. The written description shall be signed by the investigating
10 peace officer under penalty of perjury under AS 09.63.020.

11 * Sec. 41. AS 33.15.180 is amended to read:

12 Sec. 33.15.180. PERSONS ELIGIBLE FOR PAROLE. (a) A state prisoner
13 other than a juvenile delinquent, wherever confined and serving a de-
14 finite term of over 180 days or a term the minimum of which is at least
15 181 days, and who is not imprisoned in accordance with AS 12.55.125(c)
16 [AS 12.55.125(c)(1), (c)(2), (c)(3)], (d)(1), (d)(2), (e)(1), [OR]
17 (e)(2), or (i), whose record shows that he has observed the rules of the
18 institution in which he is confined, may, in the discretion of the
19 board, be released on parole, subject to the limitation prescribed in
20 AS 33.15.080 and 33.15.230(a)(1).

21 (b) A state prisoner who has been imprisoned in accordance with
22 AS 12.55.125(a) or (b) may not be released on parole until he has served
23 at least the prescribed minimum term of imprisonment.

24 (c) A state prisoner imprisoned in accordance with AS 12.55.125(c)
25 [AS 12.55.125(c)(1), (c)(2), (c)(3)], (d)(1), (d)(2), (e)(1), [OR]
26 (e)(2), or (i) who is released under AS 33.20.030 shall be placed on
27 parole for the period specified in the certificate of deduction, subject
28 to written rules and conditions imposed by the board or his parole
29 officer.

1 * Sec. 42. AS 12.35.050, 12.35.080 - 12.35.110; AS 12.45.083 - 12.45.115;
2 AS 12.55.025(e), 12.55.155(d)(8); AS 47.25.280, 47.25.403, 47.25.405, 47.25.-
3 600, 47.25.760, 47.25.950, 47.25.983, and 47.25.985(a)(3) are repealed.

4 * Sec. 43. AS 12.35.015, added by sec. 18 of this Act, has the effect of
5 changing Rule 37, Rules of Criminal Procedure, by allowing search warrants to
6 be issued upon sworn oral testimony communicated by telephone or other appro-
7 priate means.

8 * Sec. 44. AS 12.80.050, added in sec. 40 of this Act, has the effect of
9 amending Rule 901, Alaska Rules of Evidence, by specifying requirements for
10 the authentication of photographic evidence of property unlawfully taken or
11 damaged.

12 * Sec. 45., The Alaska Code Revision Commission shall, after consultation
13 with the Department of Law and the division of telecommunications systems,
14 conduct a comprehensive study of laws relating to computers and telecommunica-
15 tions systems. The commission shall make recommendations to the First
16 Session of the Thirteenth Legislature concerning offenses involving computer
17 equipment, offenses against intellectual property, and privacy implications
18 of computer and telecommunications uses.