

CS FOR HOUSE BILL NO. 555 (HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 5/6/92

Referred: Judiciary, Finance

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to criminal law and procedure; relating to proceedings regarding
2 delinquent minors; and amending Alaska Supreme Court Rule of Appellate Procedure 215,
3 Alaska Supreme Court Rules of Criminal Procedure 6, 11, 24, and 35, Alaska Supreme
4 Court Delinquency Rule 10, and Alaska Supreme Court Rules of Evidence 609 and 704;
5 and providing for an effective date."

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 * **Section 1.** AS 11.16.110 is amended by adding a new subsection to read:

8 (b) When causing a particular result is an element of an offense, a person who aids or
9 abets another in planning or committing the offense is legally accountable for the conduct of the
10 other if the person acts with the culpable mental state with respect to the result that is sufficient
11 for the commission of the offense.

12 * **Sec. 2.** AS 11.56.770(a) is amended to read:

13 (a) A person commits the crime of hindering prosecution in the first degree if the person

1 renders assistance to a person who has been charged with or has committed a crime punishable
2 as a felony with intent to

3 (1) hinder the apprehension, prosecution, conviction, or punishment of that person;

4 or

5 (2) assist that person in profiting or benefiting from the commission of the crime.

6 * Sec. 3. AS 11.56.780(a) is amended to read:

7 (a) A person commits the crime of hindering prosecution in the second degree if the
8 person renders assistance to another who has been charged with or has committed a crime
9 punishable by imprisonment for more than 90 days, with intent to

10 (1) hinder the apprehension, prosecution, conviction, or punishment of the other
11 person; or

12 (2) assist the other person in profiting or benefiting from the commission of the
13 crime.

14 * Sec. 4. AS 12.30.040(b) is amended to read:

15 (b) Notwithstanding the provisions of (a) of this section,

16 (1) if a person has been convicted of an offense that [WHICH] is an unclassified
17 felony or a class A felony, the person may not be released on bail either before sentencing or
18 pending appeal;

19 (2) if a person has been convicted of any offense and has applied for post-
20 conviction relief, the person may not be released on bail unless the court rules on the merits
21 of the application and finds that the person is entitled to post-conviction relief.

22 * Sec. 5. AS 12.30.060 is amended to read:

23 Sec. 12.30.060. VIOLATION OF CONDITIONS. A person released under the provisions
24 of this chapter who wilfully fails to appear before a court or judicial officer as required forfeits
25 [SHALL INCUR A FORFEITURE OF] any security that [WHICH] was given or pledged for
26 the person's release and if the person was released

27 (1) in connection with a charge of felony, or while awaiting sentence or pending
28 appeal after conviction of an offense, is guilty of a class C felony [AND UPON CONVICTION
29 IS PUNISHABLE BY A FINE OF NOT MORE THAN \$5,000 OR BY IMPRISONMENT FOR
30 NOT MORE THAN FIVE YEARS, OR BY BOTH];

31 (2) in connection with a charge of misdemeanor, is guilty of a class A

1 misdemeanor [AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE
2 THAN THE MAXIMUM PROVIDED FOR THE MISDEMEANOR, OR BY IMPRISONMENT
3 FOR NOT MORE THAN ONE YEAR, OR BY BOTH]; or

4 (3) for appearance as a material witness, is guilty of a class A misdemeanor
5 [AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN \$1,000,
6 OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH].

7 * Sec. 6. AS 12.30.060 is amended by adding a new subsection to read:

8 (b) A person released under the provisions of this chapter who wilfully violates a
9 condition of release forfeits any security that was given or pledged for the person's release, and
10 is guilty of a class A misdemeanor.

11 * Sec. 7. AS 12.40.110(a) is amended to read:

12 (a) In a criminal prosecution [FOR AN OFFENSE UNDER AS 11.41.410 - 11.41.440
13 OR 11.41.455], hearsay evidence of a statement related to the offense, not otherwise admissible,
14 [MADE BY A CHILD WHO IS THE VICTIM OF THE OFFENSE] may be admitted into
15 evidence before the grand jury if

16 (1) the circumstances of the statement indicate its reliability; and

17 (2) [THE CHILD IS UNDER 10 YEARS OF AGE WHEN THE HEARSAY
18 EVIDENCE IS SOUGHT TO BE ADMITTED;

19 (3) ADDITIONAL EVIDENCE IS INTRODUCED TO CORROBORATE THE
20 STATEMENT; AND

21 (4) the witness [CHILD] testifies at the grand jury proceeding or the witness
22 [CHILD] will be available to testify at trial.

23 * Sec. 8. AS 12.40.110 is amended by adding a new subsection to read:

24 (c) The prosecuting attorney shall advise the grand jury that it may require the
25 prosecuting attorney to produce the witness whose statement is being introduced into evidence.

26 * Sec. 9. AS 12.47.110(b) is amended to read:

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

1 expiration of the second 90-day period the court determines that the defendant continues to be
2 incompetent to stand trial, the charges against the defendant shall be dismissed without prejudice
3 and continued commitment of the defendant shall be governed by the provisions relating to civil
4 commitments under AS 47.30.700 - 47.30.915 unless the defendant is charged with a crime
5 involving force against a person and the court finds that the defendant presents a substantial
6 danger of physical injury to other persons and that there is a substantial probability that the
7 defendant will regain competency within a reasonable period of time, in which case the court
8 may extend the period of commitment for an additional six months. If the defendant remains
9 incompetent at the expiration of the additional six-month period, the charges shall be dismissed
10 without prejudice and either civil commitment proceedings shall be instituted or the court shall
11 order the release of the defendant. If the defendant remains incompetent for five years after the
12 charges have been dismissed under this subsection, the defendant may not be charged again for
13 an offense arising out of the facts alleged in the original charges, except if the original charge
14 is a class A felony or unclassified felony. If the defendant is civilly committed under this
15 section, the victim of the crime and the prosecuting attorney's office shall be notified by the
16 commissioner of health and social services 30 days before the defendant is discharged. With
17 respect to the notice provided to the victim, the procedures specified in AS 12.47.100(b) -
18 (d) apply.

19 * Sec. 10. AS 12.55.085(a) is amended to read:

20 (a) Except as provided in (f) of this section, if it appears that there are circumstances in
21 mitigation of the punishment [,] or that the ends of justice will be served, the court may, in its
22 discretion, suspend the imposition of sentence and may direct that the suspension continue for
23 a period of time, not exceeding the maximum term of sentence that may be imposed or a period
24 of one year, whichever is greater, and upon the terms and conditions that the court determines,
25 and shall place the person on probation, under the charge and supervision of the probation officer
26 of the court during the suspension.

27 * Sec. 11. AS 12.55.085(c) is amended to read:

28 (c) Upon the revocation and termination of the probation, the court may pronounce
29 sentence at any time within the maximum probation period authorized by this section
30 [AFTER THE SUSPENSION OF THE SENTENCE WITHIN THE LONGEST PERIOD FOR
31 WHICH THE DEFENDANT MIGHT HAVE BEEN SENTENCED], subject to the limitation

1 specified in AS 12.55.086(c).

2 * Sec. 12. AS 12.55.120(a) is amended to read:

3 (a) A sentence of imprisonment lawfully imposed by the superior court for a term or for
4 aggregate terms of one year or more may be appealed to the court of appeals by the defendant
5 on the ground that the sentence is excessive, unless the sentence was imposed in accordance
6 with a plea agreement establishing either a specific or maximum sentence to be served by
7 the defendant. If a plea agreement provided for a minimum sentence, the defendant may
8 appeal only that portion of the sentence that exceeds the minimum sentence provided for
9 in the plea agreement. By appealing a sentence under this section, the defendant waives the
10 right to plead that by a revision of the sentence resulting from the appeal the defendant has been
11 twice placed in jeopardy for the same offense.

12 * Sec. 13. AS 12.55.120(d) is amended to read:

13 (d) A sentence of imprisonment lawfully imposed by the district court for a term or for
14 aggregate terms exceeding 90 days may be appealed to the superior court by the defendant on
15 the ground that the sentence is excessive, unless the sentence was imposed in accordance with
16 a plea agreement establishing either a specific or maximum sentence to be served by the
17 defendant. If a plea agreement provided for a minimum sentence, the defendant may
18 appeal only that portion of the sentence that exceeds the minimum sentence provided for
19 in the plea agreement. By appealing a sentence under this section, the defendant waives the
20 right to plead that by a revision of the sentence resulting from the appeal the defendant has been
21 twice placed in jeopardy for the same offense. A sentence of imprisonment lawfully imposed
22 by the district court may be appealed to the superior court by the state on the ground that the
23 sentence is too lenient; however, when a sentence is appealed by the state, the court may not
24 increase the sentence but may express its approval or disapproval of the sentence and its reasons
25 in a written opinion.

26 * Sec. 14. AS 12.55.145(c) is amended to read:

27 (c) If the defendant denies the authenticity of a prior judgment of conviction, that the
28 defendant is the person named in the judgment, that the elements of a prior offense committed
29 in another jurisdiction are substantially identical to those of a felony defined as such under
30 Alaska law, or that a prior conviction occurred within the period specified in (a)(1) of this section
31 or if the defendant alleges that two or more purportedly separate prior convictions should be

1 considered a single conviction under (a)(3) of this section, the defendant shall file with the court
2 and serve on the prosecuting attorney notice of denial no later than 10 days before the date set
3 for imposition of sentence. The notice of denial shall be made under oath and must include
4 a concise statement of the grounds relied upon. The notice of denial [AND] may be supported
5 by affidavit or other documentary evidence.

6 * Sec. 15. AS 12.55.155(c)(18) is amended to read:

7 (18) the offense was a crime

8 (A) specified in AS 11.41 and was committed against a spouse, a former
9 spouse, or a member or former member of the social unit comprised of those living
10 together in the same dwelling as the defendant; or

11 (B) specified in AS 11.41.410 - 11.41.460 and was committed against a
12 minor, and the defendant has engaged in the same or similar conduct involving the same
13 or another victim who was a minor;

14 * Sec. 16. AS 18.85.120(c) is amended to read:

15 (c) Upon the person's conviction, the court may enter a judgment that a person for whom
16 counsel is appointed pay for the necessary services and facilities of representation and court costs
17 [, BUT EXECUTION OF THE JUDGMENT MAY NOT COMMENCE UNTIL THREE YEARS
18 AFTER RELEASE OF THE DEFENDANT FROM INCARCERATION UNLESS FOR GOOD
19 CAUSE SHOWN, THE COURT CONSIDERS IT APPROPRIATE TO EXECUTE EARLIER].
20 Upon a showing of financial hardship, the court shall allow a person subject to a judgment
21 entered under this subsection to make payments under a payment schedule. Payments made
22 under this subsection shall be paid into the state general fund.

23 * Sec. 17. AS 33.16.100(d) is amended to read:

24 (d) A prisoner who is sentenced for a term under AS 12.55.125(a), (b), (c), or (i) may
25 not be released on discretionary parole until the prisoner has served the mandatory minimum or
26 presumptive term under AS 12.55.125(a), (b), (c), or (i), at least one-third of the period of
27 confinement imposed, or any minimum term set under AS 12.55.115 at sentencing, whichever
28 is greater.

29 * Sec. 18. AS 47.10.140(c) is amended to read:

30 (c) The court shall immediately, and in no event more than 48 hours later, hold a hearing
31 at which the minor and the minor's parents or guardian if they can be found shall be present.

1 **The court shall determine whether probable cause exists for believing the minor to be delinquent.**
2 **The court shall inform the minor of the reasons alleged to constitute probable cause and the**
3 **reasons alleged to authorize the minor's detention. The minor is entitled to counsel and to**
4 **confrontation of adverse witnesses, except as otherwise provided in this section.**

5 * **Sec. 19. AS 47.10.140 is amended by adding new subsections to read:**

6 **(h) In a hearing under this section relating to an offense described in AS 11.41.410 -**
7 **11.41.440 or 11.41.455, hearsay evidence of a statement related to the offense, not otherwise**
8 **admissible, made by a child who is the victim of the offense, may be admitted into evidence in**
9 **the probable cause portion of that hearing if**

- 10 **(1) the circumstances of the statement indicate its reliability;**
11 **(2) the child who made the statement is under 10 years of age when the hearsay**
12 **evidence is sought to be admitted;**
13 **(3) additional evidence is introduced to corroborate the statement; and**
14 **(4) the child who made the statement testifies at the probable cause portion of the**
15 **hearing or will be available to testify at trial.**

16 **(i) In this section, "statement" means an oral or written assertion or nonverbal conduct**
17 **if the nonverbal conduct is intended as an assertion.**

18 * **Sec. 20. Rule 215, Alaska Rules of Appellate Procedure, is repealed and readopted to read:**

19 **Rule 215. SENTENCE APPEAL. (a) NOTIFICATION OF RIGHT TO APPEAL**
20 **SENTENCE. At the time of imposition of any sentence of imprisonment of 45 days or more,**
21 **the judge shall inform the defendant as follows:**

22 **(1) If a sentence was imposed pursuant to a plea agreement under Criminal Rule**
23 **11(e)(1)(A) or (B), or if an agreed-upon minimum sentence was imposed pursuant to a plea**
24 **agreement under Criminal Rule 11(e)(1)(C), that the defendant has no right to appeal the**
25 **sentence;**

26 **(2) If a sentence was imposed that is greater than the minimum sentence agreed**
27 **upon pursuant to a plea agreement under Criminal Rule 11(e)(1)(C),**

28 **(A) that the defendant may appeal as excessive only that portion of the**
29 **sentence that exceeds the minimum sentence provided for in the plea agreement;**

30 **(B) that, upon such an appeal, the appellate court may reduce or increase**
31 **the sentence and that, by appealing the sentence under this rule, the defendant waives the**

1 right to plead that a revision of the sentence resulting from the appeal places the
2 defendant twice in jeopardy for the same offense; and

3 (C) that if the defendant wants counsel and is unable to pay for the
4 services of an attorney, the court will appoint an attorney to represent the defendant on
5 the appeal;

6 (3) If there was no plea agreement under Criminal Rule 11(e)(1)(A), (B), or (C),

7 (A) that the sentence may be appealed on the ground that it is excessive;

8 (B) that upon such an appeal the appellate court may reduce or increase
9 the sentence, and that by appealing the sentence under this rule, the defendant waives the
10 right to plead that a revision of the sentence resulting from the appeal places the
11 defendant twice in jeopardy for the same offense; and

12 (C) that if the defendant wants counsel and is unable to pay for the
13 services of an attorney, the court will appoint an attorney to represent the defendant on
14 the appeal.

15 * Sec. 21. Rule 6, Alaska Rules of Criminal Procedure, is amended by adding a new paragraph to
16 read:

17 (u) TELEPHONIC TESTIMONY.

18 (1) A witness may participate telephonically in grand jury proceedings.

19 (2) If a witness participates telephonically in grand jury proceedings, after the
20 witness is sworn, the prosecuting attorney shall require the witness to

21 (A) state the location from which the witness is testifying and verify that
22 the witness is alone in a private room with the door closed;

23 (B) verify that all extensions for the telephone from which the witness is
24 testifying are not in use; and

25 (C) confirm that the witness will notify the grand jury immediately if any
26 person enters the room while the witness is testifying or if the witness becomes aware
27 that an extension for the telephone is put into use while the witness is participating
28 telephonically.

29 * Sec. 22. Rule 11(e)(1), Alaska Rules of Criminal Procedure, is amended to read:

30 (1) In General. The attorney for the state and the attorney for the defendant or
31 the defendant when acting pro se may engage in discussions with a view toward reaching an

1 agreement that, upon the entering of a plea of guilty or nolo contendere to a charged offense or
2 to a lesser or related offense, the attorney for the state will move for dismissal of other charges,
3 or will recommend or agree not to oppose the imposition of a particular sentence, with the
4 understanding that such a recommendation or request is not binding upon the court. The
5 parties may also reach an agreement that

6 (A) a specific sentence is the appropriate disposition of the case;

7 (B) a sentence equal to or less than a specified maximum is the
8 appropriate disposition; or

9 (C) a sentence equal to or greater than a specified minimum is the
10 appropriate disposition [OR WILL DO BOTH].

11 * Sec. 23. Rule 11(e)(2), Alaska Rules of Criminal Procedure, is amended to read:

12 (2) Notice of Such Agreement. If the parties reach a plea agreement whereby a
13 plea of guilty or nolo contendere will be entered by the defendant in the expectation that a
14 specific sentence will be imposed or other charges before the court will be dismissed, then the
15 court shall require the disclosure of the agreement in open court at the time the plea is offered.
16 If the agreement is of the type specified in subparagraphs (e)(1)(A), (B), or (C), [ONCE THE
17 AGREEMENT HAS BEEN DISCLOSED] the court may accept or reject the agreement, or may
18 defer its decision to accept or reject the agreement until there has been an opportunity to
19 consider the [RECEIPT OF A] presentence report. If the agreement provides that the
20 attorney for the state will recommend a particular sentence or not oppose the defendant's
21 request for a particular sentence, the court shall advise the defendant that if the court does
22 not accept the recommendation or request, the defendant nevertheless has no right to
23 withdraw the plea.

24 * Sec. 24. Rule 11(e)(3), Alaska Rules of Criminal Procedure, is amended to read:

25 (3) Acceptance of Plea. If the court accepts the plea agreement, the court shall
26 inform the defendant that the judgment and sentence will embody [EITHER] the disposition
27 provided for in the plea agreement. If the agreement is of the type specified in subparagraph
28 (e)(1)(A) or (B), the court shall advise the defendant that the defendant waives the right to
29 appeal the sentence as excessive and waives the right to seek reduction of the sentence
30 under Criminal Rule 35(a). If the agreement is of the type specified in subparagraph
31 (e)(1)(C), the court shall advise the defendant that the defendant waives the right to appeal

1 as excessive that portion of the sentence that does not exceed the agreed-upon minimum and
2 that the defendant waives the right to seek reduction of the sentence below the agreed-upon
3 minimum [OR ANOTHER DISPOSITION MORE FAVORABLE TO THE DEFENDANT].

4 * Sec. 25. Rule 11(e)(4), Alaska Rules of Criminal Procedure, is amended to read:

5 (4) Rejection of Plea. If the court rejects the plea agreement, the court shall inform the
6 parties of this fact and advise the attorney for the state and the defendant personally in open
7 court that the court is not bound by the plea agreement. If the court concludes that the case
8 warrants a harsher sentence than that provided for in the plea agreement, the [THE] court
9 shall then afford the defendant the opportunity to withdraw his plea, and advise the defendant that
10 if he persists in his plea of guilty or nolo contendere, the disposition of the case may be less
11 favorable to the defendant than that contemplated by the plea agreement. If the court concludes
12 that the case warrants a more lenient sentence than that provided for in the plea agreement,
13 the court shall then afford the state the opportunity to withdraw from the agreement and
14 advise the state that, if the state does not withdraw, the disposition of the case may be more
15 favorable to the defendant than that contemplated by the plea agreement.

16 * Sec. 26. Rule 24(d), Alaska Rules of Criminal Procedure, is amended to read:

17 (d) PEREMPTORY CHALLENGES. A party who waives peremptory challenge as to
18 the jurors in the box does not thereby lose the challenge but may exercise it as to new jurors who
19 may be called. A juror peremptorily challenged is excused without cause. If the offense is
20 punishable by imprisonment for more than one year, each side [THE STATE] is entitled to 6
21 peremptory challenges [AND THE DEFENDANT OR DEFENDANTS JOINTLY TO 10
22 PEREMPTORY CHALLENGES]. If the offense charged is punishable by imprisonment for not
23 more than one year, or by fine or both, each side is entitled to 3 peremptory challenges. If there
24 is more than one defendant, the court may allow the defendants additional peremptory challenges
25 and permit them to be exercised separately or jointly.

26 * Sec. 27. Rule 35(a), Alaska Rules of Criminal Procedure, is amended to read:

27 (a) CORRECTION OR REDUCTION OF SENTENCE. The court may correct an illegal
28 sentence at any time. The court may reduce a sentence, other than one imposed under
29 Criminal Rule 11(e)(1)(A) or (B), within 120 days of the day it is imposed. If the defendant
30 takes an appeal, and the judgment is affirmed or the appeal is dismissed, the court also may
31 reduce a sentence within 120 days of the day on which jurisdiction over the case is returned to

1 the trial court under Appellate Rule 507(b), unless the defendant petitions the United States
2 Supreme Court for certiorari, in which case the 120 days commences on the day that the Supreme
3 Court denies relief. No sentence imposed pursuant to a plea agreement under Criminal Rule
4 11(e)(1)(A) or (B) may be reduced under this rule. No sentence imposed pursuant to a plea
5 agreement under Criminal Rule 11(e)(1)(C) may be reduced below the minimum specified
6 in the plea agreement.

7 * Sec. 28. Rule 10(c), Alaska Delinquency Rules, is amended to read:

8 (c) TEMPORARY DETENTION HEARING. Hearsay evidence of a statement which
9 is not otherwise admissible under the Evidence Rules is not admissible to prove probable cause
10 at a temporary detention hearing. In this paragraph, "statement" means an oral or written
11 assertion or nonverbal conduct if the nonverbal conduct is intended as an assertion.

12 However,

13 (1) otherwise inadmissible hearsay evidence of a statement may be admitted
14 under the standard stated in paragraph (b) of this rule on the issue of whether the minor should
15 be removed from the home or detained; and

16 (2) in a hearing for an offense under AS 11.41.410 - 11.41.440 or 11.41.455,
17 hearsay evidence of a statement related to the offense, not otherwise admissible, made by
18 a child who is the victim of the offense, may be admitted into evidence in the probable
19 cause portion of the hearing if

20 (A) the circumstances of the statement indicate its reliability;

21 (B) the child who made the statement is under 10 years of age when
22 the hearsay evidence is sought to be admitted;

23 (C) additional evidence is introduced to corroborate the statement;

24 and

25 (D) the child who made the statement testifies at the probable cause
26 portion of the hearing or will be available to testify at the adjudication hearing.

27 * Sec. 29. Rule 609(b), Alaska Rules of Evidence, is amended to read:

28 (b) TIME LIMIT. Evidence of a conviction under this rule is inadmissible if a period
29 of more than ten [FIVE] years has elapsed since the date of the person's unconditional
30 discharge on the offense [CONVICTION]. The court may, however, allow evidence of the
31 conviction of the witness other than the accused in a criminal case after more than ten [FIVE]

1 years have elapsed if the court is satisfied that admission in evidence is necessary for a fair
2 determination of the case.

3 * Sec. 30. Rule 704, Alaska Rules of Evidence, is amended to read:

4 Rule 704. OPINION ON ULTIMATE ISSUE. Testimony in the form of an opinion or
5 inference otherwise admissible is not objectionable because it embraces an ultimate issue to be
6 decided by the trier of fact. However, an expert witness testifying as to the mental state or
7 condition of a defendant in a criminal case may not state or imply an opinion as to whether
8 the defendant did or did not have the mental state or condition constituting an element of
9 the crime charged or of a defense. This issue is to be determined by the trier of fact.

10 * Sec. 31. The provisions of sec. 7 of this Act have the effect of amending Rule 6(r), Alaska Rules
11 of Criminal Procedure, by changing the circumstances under which hearsay evidence may be introduced
12 in grand jury proceedings.

13 * Sec. 32. Section 7 and secs. 20 - 31 of this Act take effect only if sec. 7 and secs. 20 - 31 of this
14 Act receive the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the
15 State of Alaska.

16 * Sec. 33. This Act takes effect July 1, 1992.