SENATE BILL NO. 445

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/24/92
Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) if a person has been convicted of an offense which is an unclassified felony or a class A felony, the person may not be released on bail either before sentencing or pending appeal**;**

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

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

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

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

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

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

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

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

* **Sec. 6.** AS 12.40.110 is amended to read:

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

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

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

(3) [ADDITIONAL EVIDENCE IS INTRODUCED TO CORROBORATE THE STATEMENT]; and

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

(b) In this section "statement" means an oral or written assertion or nonverbal conduct if the nonverbal conduct is intended as an assertion.

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

* **Sec. 7.** AS 12.47.100(a) is amended to read:

(a) A defendant who as a result of mental disease or defect lacks capacity to understand the proceedings against the defendant or to assist in the defendant's own defense may not be tried, convicted, or sentenced for the commission of a crime so long as the incapacity exists, **except as provided in AS 12.47.125**.

* **Sec. 8.** AS 12.47.110(b) is amended to read:

(b) On or before the expiration of the initial 90-day period of commitment the court shall conduct a hearing to determine whether or not the defendant remains incompetent. If the court finds by a preponderance of the evidence that the defendant remains incompetent, the court may recommit the defendant for a second period of 90 days. The court shall determine at the expiration of the second 90-day period whether the defendant has become competent. If at the expiration of the second 90-day period the court determines that the defendant continues to be incompetent to stand trial, the charges against the defendant shall be dismissed without prejudice and continued commitment of the defendant shall be governed by the provisions relating to civil commitments under AS 47.30.700 - 47.30.915 unless the defendant is charged with a crime involving force against a person and the court finds that the defendant presents a substantial danger of physical injury to other persons [AND THAT THERE IS A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT WILL REGAIN COMPETENCY WITHIN A REASONABLE PERIOD OF TIME], in which case the court may extend the period of commitment for an additional six months. If the defendant remains incompetent at the expiration of the additional six-month period, **a hearing to determine the permanent incompetence of the defendant shall be held under AS 12.47.125** [THE CHARGES SHALL BE DISMISSED WITHOUT PREJUDICE AND EITHER CIVIL COMMITMENT PROCEEDINGS SHALL BE INSTITUTED OR THE COURT SHALL ORDER THE RELEASE OF THE DEFENDANT. IF THE DEFENDANT REMAINS INCOMPETENT FOR FIVE YEARS AFTER THE CHARGES HAVE BEEN DISMISSED UNDER THIS SUBSECTION, THE DEFENDANT MAY NOT BE CHARGED AGAIN FOR AN OFFENSE ARISING OUT OF THE FACTS ALLEGED IN THE ORIGINAL CHARGES, EXCEPT IF THE ORIGINAL CHARGE IS A CLASS A FELONY OR UNCLASSIFIED FELONY].

* **Sec. 9.** AS 12.47 is amended by adding a new section to read:

Sec. 12.47.125. DISPOSITION OF PERMANENTLY INCOMPETENT DEFENDANTS. (a) A defendant who has been charged with a crime involving force against a person and who presents a substantial danger of physical injury to other persons may be adjudged permanently incompetent to stand trial if the defendant has previously been adjudged incompetent under AS 12.47.110 and there is no substantial probability that the defendant will become mentally competent to stand trial within the foreseeable future.

(b) The court shall hold a hearing to determine the permanent incompetence of the defendant to stand trial when the issue is raised by a psychiatrist's report or at the end of the additional six-month period of commitment authorized by AS 12.47.110(b). At the hearing, the court shall determine whether there is a substantial probability that the defendant will become mentally competent to stand trial within the foreseeable future. The defendant has the right to adequate notice of and time to prepare for the hearing, including timely disclosure of psychiatrists' reports. The defendant also has the right to be present at the hearing, to confront and fully cross-examine witnesses, to call independent expert witnesses, and to have compulsory process for the attendance of witnesses. Evidence presented at the hearing shall conform to the rules of evidence applicable to criminal cases. If the defendant is found by a preponderance of the evidence to be permanently incompetent to stand trial, the court shall hold an adjudication to determine if the defendant committed the charged offense.

(c) Court rules, including the rules of evidence, applicable in a criminal trial apply at the adjudication of a permanently incompetent defendant. The right not to be tried while incompetent does not apply to this adjudication. All other constitutional rights generally applicable to defendants at criminal trials apply. The prosecuting attorney has the burden of proving beyond a reasonable doubt each element of the charged offense. If the finder of fact determines that the prosecuting attorney failed to establish beyond a reasonable doubt any element of the offense charged, the defendant shall be acquitted of the charged offense. If the finder of fact determines that the prosecuting attorney established beyond a reasonable doubt all elements of the charged offense, then the defendant shall be committed to the custody of the commissioner of health and social services under AS 12.47.090 as though the defendant had been found not guilty by reason of insanity under AS 12.47.010 or 12.47.020(b). An accused person committed under this subsection is entitled the same rights and procedures applicable to those persons found not guilty by reason of insanity under this chapter.

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

(a) Except as provided in (f) of this section, if it appears that there are circumstances in mitigation of the punishment, or that the ends of justice will be served, the court may, in its discretion, suspend the imposition of sentence and may direct that the suspension continue for a period of time, not exceeding the maximum term of sentence that may be imposed **or a period of one year, whichever is greater**, and upon the terms and conditions that the court determines,

and shall place the person on probation, under the charge and supervision of the probation officer of the court during the suspension.

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

(c) Upon the revocation and termination of the probation, the court may pronounce sentence at any time **within the maximum probation period authorized by this section** [AFTER THE SUSPENSION OF THE SENTENCE WITHIN THE LONGEST PERIOD FOR WHICH THE DEFENDANT MIGHT HAVE BEEN SENTENCED], subject to the limitation specified in as 12.55.086(c).

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

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

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

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

in a written opinion.

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

(c) If the defendant denies the authenticity of a prior judgment of conviction, that the defendant 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 the defendant 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 days before the date set for imposition of sentence. The notice of denial must **be made under oath and must** include a concise statement of the grounds relied upon. **The notice of denial** [AND] may be supported by affidavit or other documentary evidence.

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

(18) the offense was a crime

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

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

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

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

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

(d) A prisoner who is sentenced for a term under AS 12.55.125(a), (b), (c), or (i) may

not be released on discretionary parole until the prisoner has served the mandatory minimum **or presumptive** term under AS 12.55.125(a), (b), (c), or (i), at least one-third of the period of confinement imposed, or any minimum term set under AS 12.55.115 at sentencing, whichever is greater.

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

(c) The court shall immediately, and in no event more than 48 hours later, hold a hearing at which the minor and the minor's parents or guardian if they can be found shall be present. The court shall determine whether probable cause exists for believing the minor to be delinquent. The court shall inform the minor of the reasons alleged to constitute probable cause and the reasons alleged to authorize the minor's detention. The minor is entitled to counsel and to confrontation of adverse witnesses**, except as otherwise provided in this section**.

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

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

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

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

(3) additional evidence is introduced to corroborate the statement; and

(4) the child who made the statement testifies at the probable cause portion of the hearing or will be available to testify at trial.

(g) In this section "statement" means an oral or written assertion or nonverbal conduct if the nonverbal conduct is intended as an assertion.

*** Sec. 20.** Alaska Supreme Court Rule of Appellate Procedure 215 is repealed and readopted to read:

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

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

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

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

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

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

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

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

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

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

*** Sec. 21.** Alaska Supreme Court Rule of Criminal Procedure 11(e) is amended to read:

(e) PLEA AGREEMENT PROCEDURE.

(1) In General. The attorney for the state and the attorney for the defendant **or the defendant when acting pro se** may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere to a charged offense or to a lesser or related offense, the attorney for the state will move for dismissal of other charges, or will recommend or **agree** not **to** oppose the imposition of a particular sentence, [OR WILL DO BOTH] **with the understanding that such a recommendation or request is not binding upon the court. The parties may also reach an agreement that**

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

(B) a sentence equal to or less than a specified maximum is the appro-

priate disposition; or

(C) a sentence equal to or greater than a specified minimum is the appropriate disposition.

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

(3) Acceptance of Plea. If the court accepts the plea agreement, the court shall inform the defendant that the judgment and sentence will embody [EITHER] the disposition provided for in the plea agreement [OR ANOTHER DISPOSITION MORE FAVORABLE TO THE DEFENDANT]. If the agreement is of the type specified in subparagraph (e)(1)(A) or (B), the court shall advise the defendant that the defendant waives the right to appeal the sentence as excessive and waives the right to seek reduction of the sentence under Criminal Rule 35(a). If the agreement is of the type specified in subparagraph (e)(1)(C), the court shall advise the defendant that the defendant waives the right to appeal as excessive that portion of the sentence that does not exceed the agreed-upon minimum and that the defendant waives the right to seek reduction of the sentence below the agreed-upon minimum.

(4) Rejection of Plea. If the court rejects the plea agreement, the court shall inform the parties of this fact and advise the attorney for the state and the defendant personally in open court that the court is not bound by the plea agreement. If the court concludes that the case warrants a harsher sentence than that provided for in the plea agreement, the [THE] court shall then afford the defendant the opportunity to withdraw his plea, and advise the defendant that

if he persists in his plea of guilty or nolo contendere, the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement. **If the court concludes that the case warrants a more lenient sentence than that provided for in the plea agreement, the court shall then afford the state the opportunity to withdraw from the agreement, and advise the state that if the state does not withdraw, the disposition of the case may be more favorable to the defendant than that contemplated by the plea agreement.**

*** Sec. 22.** Alaska Supreme Court Rule of Criminal Procedure 24(d) is amended to read:

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

*** Sec. 23.** Alaska Supreme Court Rule of Criminal Procedure 35(a) is amended to read:

(a) CORRECTION OR REDUCTION OF SENTENCE. The court may correct an illegal sentence at any time. The court may reduce a sentence**, other than one imposed under Criminal Rule 11(e)(1)(A) or (B),** within 120 days of the day it is imposed. If the defendant takes an appeal, and the judgment is affirmed or the appeal is dismissed, the court also may reduce a sentence within 120 days of the day on which jurisdiction over the case is returned to the trial court under Appellate Rule 507(b), unless the defendant petitions the United States Supreme Court for certiorari, in which case the 120 days commences on the day that the Supreme Court denies relief. **No sentence imposed pursuant to a plea agreement under Criminal Rule 11(e)(1)(A) or (B) may be reduced under this rule. No sentence imposed pursuant to a plea agreement under Criminal Rule 11(e)(1)(C) may be reduced below the minimum specified in the plea agreement.**

*** Sec. 24.** Alaska Supreme Court Delinquency Rule 10(c) is amended to read:

(c) TEMPORARY DETENTION HEARING. Hearsay **evidence of a statement** which is not otherwise admissible under the Evidence Rules is not admissible to prove probable cause

at a temporary detention hearing. **In this paragraph, "statement" means an oral or written assertion or nonverbal conduct if the nonverbal conduct is intended as an assertion.** However,

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

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

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

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

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

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

*** Sec. 25.** Alaska Supreme Court Rule of Evidence 609(b) is amended to read:

(b) TIME LIMIT. Evidence of a conviction under this rule is inadmissible if a period of more than **ten** [FIVE] years has elapsed since the date of the **person's unconditional discharge on the offense** [CONVICTION]. The court may, however, allow evidence of the conviction of the witness other than the accused in a criminal case after more than **ten** [FIVE] years have elapsed if the court is satisfied that admission in evidence is necessary for a fair determination of the case.

*** Sec. 26.** Alaska Supreme Court Rule of Evidence 704 is amended to read:

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

*** Sec. 27.** The provisions of sec. 6 of this Act have the effect of amending Rule 6(r), Alaska Rules of Criminal Procedure, by changing the circumstances under which hearsay evidence may be introduced in grand jury proceedings.

*** Sec. 28.** Section 6 and secs. 20 - 27 of this Act take effect July 1, 1992 only if sec. 6 and secs. 20 - 27 of this Act receive the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

*** Sec. 29.** This Act takes effect July 1, 1992.