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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 24, 1992

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that will improve our criminal justice system by making a series of tailored amendments to the state's laws governing criminal prosecutions.

Section 1 amends the state's accomplice liability statute to provide that an accomplice is liable for the conduct of the person the accomplice aids or abets if the accomplice acts with the culpable mental state with respect to the result that is sufficient for the commission of the crime. This amendment is in response to the court of appeals' recent decision in Echols v. State, Op. No. 1164 (Alaska App. Oct. 4, 1991), which makes it more difficult to prosecute an accomplice than it is to prosecute the principal. The court ruled that, even though a principal may be liable for recklessly causing serious physical injury, a person who aids and abets the principal can be criminally liable only if the person intended the principal to cause serious physical injury.

Sections 2 and 3 amend the state's hindering prosecution statutes to make it criminal to render assistance, not just to a person known to have committed a crime, but also to a person known to have been charged with a crime. This amendment will halt those persons who have hindered a prosecution from arguing that, although they knew the person they were assisting was charged with a crime, they did not believe that the person was guilty.

Section 4 prevents a convicted, incarcerated person from securing a release on bail simply by filing an application for post-conviction relief. Instead, the amendment would require the court to rule on the merits of the application and to find that the person is entitled to relief before the person may be released.

Section 5 makes a defendant's violation of conditions of release a misdemeanor offense. Not only will this encourage greater compliance by a defendant with court-ordered conditions, but it may also prompt courts to release a defendant on bail more frequently, knowing that the defendant has good reason to comply with the conditions the court imposes. This amendment could help ease the state's prison over-crowding situation.

Gov's Transmittal Letter

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Sections 6 and 27 expand the permissible cases in which hearsay evidence may be presented in a grand jury proceeding from prosecutions for sexual offenses to all felony cases. Circumstances must indicate that the statement is reliable and the witness must either testify at the proceedings or be available to testify at trial. Furthermore, the grand jury is given the ability to require the prosecuting attorney to produce the witness whose statement is being offered into evidence. For years, federal courts have permitted hearsay in grand jury proceedings; this bill would allow the same practice in state proceedings.

Sections 7, 8, and 9 amend state law to address the proceedings against a defendant who is permanently incompetent to stand trial. Existing law allows courts to commit for as long as 180 days any defendant who is incompetent to stand trial. At the end of that time, if the charged offense does not involve force, it must be dismissed and the state may proceed with civil commitment proceedings if the state considers it appropriate. If the charge does involve force and the defendant presents a substantial danger to others, the court may continue the defendant's commitment for an additional six months. At the end of that time, the charges must be dismissed and the defendant may be civilly committed. Under existing law, whenever the defendant becomes competent, the charges may be reinstated.

This bill amends the law for permanently incompetent defendants who present a substantial danger to others and who are charged with a crime involving force. At the end of the additional six-month commitment authorized by present AS 12.47.110(b), the court is required to hold a hearing to determine whether the defendant is permanently incompetent. If the defendant is found permanently incompetent, the case against the defendant on the underlying charges proceeds to adjudication, despite the defendant's incompetency. If the state proves the charges beyond a reasonable doubt, the defendant is then committed as though he had been found not guilty by reason of insanity under existing law. Thereafter, the rights and procedures applicable to those found not guilty by reason of insanity will apply to the defendant.

This new procedure, which is recommended by the Model Penal Code, accomplishes two ends. First, it resolves the charges against the defendant within a year; a committed defendant may no longer be tried years after the charges were filed. Second, this procedure provides a more appropriate disposition for permanently incompetent defendants who present a danger to others and have been found guilty of a serious violent crime. The civil commitment, which is appropriate for persons who are not dangerous, is replaced by the commitment proceedings applied to a defendant found not guilty by reason of insanity. The defendant may be held in custody by the commissioner of health and social services for as long as the defendant could have been imprisoned on the criminal charges. The defendant may be released upon proving that he or she no longer suffers from a mental illness that causes the defendant to be dangerous to the public. The defendant may also be conditionally released if he or she can be adequately controlled and treated in the community with proper supervision.

Sections 10 and 11 amend the statute governing suspended impositions of sentence. Current law allows a court to suspend the imposition of sentence, and place the defendant on probation, for a period of time equal to the maximum period of imprisonment that could be imposed for the offense. This means that, when a court suspends imposition of sentence for a class B misdemeanor offense, the court may do so for only 90 days. This makes some courts reluctant to grant a suspended imposition of sentence for class B misdemeanors, because the defendant can be placed on probation for only such a short period of time. Section 10 amends the law to allow imposition of a sentence to be suspended for as long as one year, even if the maximum period of imprisonment that could be imposed is less than one year. Section 11 clarifies confusing language in AS 12.55.085(c), governing the period during which the court may impose sentence following the revocation of a suspended imposition of sentence.

Sections 12, 13, 21, and 23 change the laws governing plea agreements between defendants and the state. Under existing law, if a defendant enters into an agreement with the state that he or she should receive a particular sentence, the court may respond in any of three ways: First, it may accept the agreement and sentence the defendant accordingly; second, it may reject the agreement and allow the defendant to withdraw his or her plea and proceed to trial; and third, it may accept the agreement but impose a lesser sentence than was agreed to by the parties. These sections remove the third option so that, if the court concludes that the agreed-upon sentence is too harsh, the court may only reject the agreement and return the parties to their earlier positions. These sections also clarify that a defendant who agrees to a particular sentence cannot appeal that sentence as being excessive, nor may he or she seek post-conviction modification for a reduction of the sentence from the trial court.

Section 14 concerns defendants who are subject to presumptive sentencing because of their prior convictions. Under current law, if a defendant denies the prior convictions, a hearing is scheduled before the court to resolve the matter. This amendment simply requires the defendant to make the denial under oath. This is intended to eliminate frivolous denials, which are more readily made when the defendant is not under oath and thus not subject to prosecution for perjury.

Section 15 addresses the sentencing aggravator set out in AS 12.55.155(c)(18)(A), which applies in assault cases when the offense was committed against a spouse, a former spouse, or a member of the social unit comprised of those living together in the same dwelling as the defendant. This section adds former members of the household to the statute's list, to keep parity with the statute's inclusion of former spouses.

Section 16 amends AS 18.85.120(c), which governs judgments entered by the court against indigent criminal defendants for the cost of defense counsel provided by the state. This section removes the provision in the statute that prohibits the state from executing on a judgment against an incarcerated defendant until three years following the defendant's release unless the state

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petitions the court for a special order and shows good cause for it. There does not appear to be any reason to categorically delay for three years any recovery on the court's judgment.

Section 17 corrects an oversight in the discretionary parole statute, which prohibits a prisoner from being released until the prisoner has served any mandatory sentence or a presumptive sentence imposed for a class A or unclassified felony offense. Although citing the statutes for both mandatory minimum and presumptive sentences for class A and unclassified felony offenses, AS 33.16.100(d) refers only to the mandatory minimum sentences. This amendment makes an explicit reference to the presumptive sentences, as well.

Sections 18, 19, and 24 authorize the use of hearsay evidence in the portion of a hearing to determine whether probable cause exists that a minor is delinquent in connection with certain sexual offenses. This is analogous to the use of hearsay evidence in grand jury proceedings against adults. Existing law authorizes the use of hearsay evidence at grand jury proceedings on sexual offenses.

Section 22 amends Rule of Criminal Procedure 24(d) to give defendants the same number of peremptory challenges in felony cases as the state has. Currently, defendants are given 10, compared with the state's six. The amendment does not change the provision in Rule 24(d) that authorizes courts to allow defendants additional peremptory challenges when two or more defendants are joined together for trial.

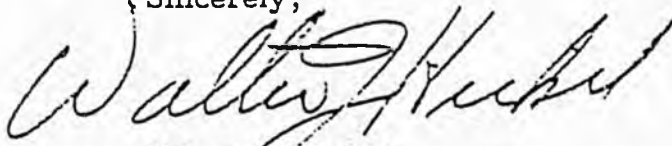
Section 25 amends Rule of Evidence 609(b) to extend from five to ten years the period of time during which a witness's conviction for a crime of dishonesty may be used to impeach the witness. It also measures the time period from the date of the person's unconditional discharge on the offense, rather than from the date of the conviction.

Section 26 amends the court rules to prohibit an expert witness from offering an opinion on the ultimate issue of fact as to whether a defendant did or did not have the necessary mental state or condition to commit the crime charged or to constitute a defense to the crime charged. Instead, this issue is to be left to the trier of fact.

These amendments are all designed to make criminal prosecutions fairer and more effective in this state. Many, if not all, do nothing more than level the playing field for the state. This is an appropriate time to do so.

I urge your favorable action on the bill.

Sincerely,



Walter J. Hickel
Governor

AN OVERVIEW OF HB 554 AND 555—THE GOVERNOR'S CRIME BILLS

HB 554 will provide important tools in the war against drugs.

The bill

creates a new crime of conspiracy for murder, kidnapping and felony drug offenses. Conspiracy has been a useful tool in the federal war on drugs and it could prove effective in Alaska, as well. (Sections 1 and 2)

creates a new crime targeting small drug rings, by making it a class A felony to be involved in three or more drug offenses committed with two or more other people under your direction. In other words, this makes it a crime to be the leader of a three-person drug ring. Much of the drug activity in Alaska is conducted by these small rings. Existing law only deals with larger drug rings involving five or more drug offenses committed with five or more additional people. Creating this lesser offense will give the state greater flexibility in dealing with small drug rings. (Section 3)

provides increased penalties in cases of large amounts of drugs. The bill raises the penalty for sale of cocaine (and related offenses) from a class B to a class A felony offense when the quantity exceeds 500 grams (over one pound). It also makes it a class A felony to deliver five grams (about 40 dosage units) or more of "crack." (Section 3) The bill also raises the penalty for sale of marijuana (and related offenses) from a class C to a class B felony offense when the quantity exceeds 10 kilograms (over 20 pounds). (Section 4) These types of quantity-specific offenses are used successfully in federal prosecutions.

creates a new crime of money laundering, making it a felony to deal with money known to be derived from drug violations. This hits drug traffickers where it hurts—in the pocketbook. If drug dealers cannot find anyone who will take their money, because of the risk of criminal prosecution and forfeiture of assets, their enterprises will become far less profitable and less desirable. (Section 5)

prohibits possession of drugs by consumption, by defining "possession" ~~for~~ so that a person who has ingested drugs is subject to prosecution to the same extent as those who are found with drugs in their pockets, cars or at their house. This will have the effect of reversing a court of appeals decision, which held that a person cannot be prosecuted for "possession by consumption." As the Legislative Affairs Agency has noted, "it seems illogical to punish a person possessing a drug for personal use before it is used, but not to punish that person when he or she has just used it." *Legislative Affairs Agency Report to the Seventeenth State Legislature (October 1991)*. (Section 6)

Wednesday
8:30 a.m.
Home HESS (Room 106)

AN OVERVIEW OF HB 554 AND 555—THE GOVERNOR'S CRIME BILLS

HB 555 improves the criminal justice system and "levels the playing field" for the state by making a series of amendments to laws governing criminal prosecutions.

The bill

amends court rules to give the state the same number of peremptory juror challenges in felony cases as the defendant. Defendants are now given ten; the state only six. (Section 22)

makes it easier to collect court-ordered costs from criminal defendants. (Section 16)

makes needed changes in the laws governing plea agreements between defendants and the state, and provides that a defendant who agrees to a particular sentence cannot appeal that sentence as being excessive, or seek post-conviction modification for a reduction of the sentence. (Sections 12, 13, 21, and 23)

reverses a recent court of appeals decision that has made it more difficult to prosecute an accomplice than it is to prosecute the person who committed the crime. (Section 1)

prevents a convicted, incarcerated person from securing a release on bail simply by filing an application for post-conviction relief. (Section 4)

makes it a crime to violate conditions of release. Not only will this encourage greater compliance by a defendant with court-ordered conditions, but it may also prompt courts to release a defendant on bail more frequently, and thus reduce jail overcrowding, knowing that the defendant has good reason to comply with the conditions the court imposes. (Section 5)

expands the permissible cases in which reliable hearsay evidence may be presented in a grand jury proceeding. Circumstances must indicate that the statement is reliable and the witness must either testify at the proceedings or be available to testify at trial. For years, federal courts have permitted hearsay in grand jury proceedings; this bill would allow the same practice in state proceedings. (Sections 6 and 27) The bill also authorizes the use of reliable hearsay evidence to determine whether probable cause exists that a minor is delinquent in connection with certain sexual offenses. (Sections 18, 19, and 24)

The bill also

corrects problems encountered in dealing with defendants who are permanently incompetent to stand trial. (Sections 7, 8, and 9) gives courts additional flexibility in suspending imposition of sentence in minor criminal matters. (Sections 10 and 11) amends the state's hindering prosecution statutes to make it criminal to render assistance, not just to a person known to have committed a crime, but also to a person known to have been charged with a crime. (Sections 2 and 3) simplifies some sentencing proceedings by creating a disincentive for defendants to lie about their prior criminal record. (Section 14) expands current law to make it an aggravated offense to assault former household members. (Section 15) amends court rules to extend from five to ten years the period of time during which a witness's conviction for a crime of dishonesty may be used to impeach the witness. (Section 25)

This bill makes criminal prosecutions fairer and more effective.

Department of Law
Proposed Amendment to HB 555
April 30, 1992

Delete Sections 7, 8, and 9 (page 3, line 27 to page 5, line 25) and replace with:

* Sec. 7. 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 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. **If the defendant is civilly committed under this section, the victim of the crime and the prosecuting attorney's office shall be notified by the commissioner of health and social services 30 days before the defendant is discharged. With respect to the notice provided to the victim, the procedures specified in AS 12.47.100(b) -(d) shall apply.**



Alaska Action Trust

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POSITION PAPER

HOUSE BILL NO. 555

(Governor Hickel's Crime Bill No. 2)

With certain exceptions discussed in this Position Paper, the Alaska Action Trust opposes House Bill No. 555.

SECTION 1: This Section is intended to overrule the decision by the Alaska Court of Appeals in Echols v. State, ____ P.2d ____ (Alaska App. 1991). The purpose of this amendment is to lessen the proof required to convict someone as an accomplice to a crime. It will inevitably result in greater numbers of people being prosecuted as accomplices to crime. The law as it is written now, and construed in Echols, is that the prosecutor must prove that the accomplice has intended the acts which make up the crime rather than acting with a lesser mental state.

As presently written, the law is the fair way to convict of crimes a person who does not actually commit the act, but is instead guilty because he was a helper of someone who committed the act. Because his culpability is less than the actual person who committed the criminal act, he should not be found criminally liable unless he intended the act to occur which was a crime.

Even as written, the law does not, and should not, require the state to prove that the helper intended to commit a

crime. Instead, all that is required is that the helper intended for particular acts to be done, which acts had been defined by the law as criminal acts.

No change to AS 11.16.110 is necessary. The law works well as written and fairly differentiates between those who commit criminal acts, and those who help people who commit criminal acts. Certainly, this section is better than adopting any of the conspiracy bills being proposed, but even this section goes too far.

SECTION 2: The Alaska Action Trust has no opposition to the changes proposed in Section 2 which amend AS 11.56.770(a).

SECTION 3: The Alaska Action Trust has no opposition to the Section 3 with the proposed amendments to AS 11.56.780(a).

SECTION 4: Section 4 should not be adopted by the legislature. This Section is very poorly drafted and it is unclear whether the bill would act to deny bail to all people pending appeal, or only to people who have had their appeals denied and are filing Criminal Rule 35 motions. In any case, as presently written under AS 12.30.040(b) a person who is convicted of an unclassified felony or a Class A felony is already denied bail after his conviction even if he files a Rule 35 motion. There is absolutely no reason to deny bail to all individuals convicted of a crime, however minor, including, apparently misdemeanors, and who are no

danger to their communities. The law as written provides adequate protection against the release after conviction of dangerous offenders.

As it is, post-conviction bail for individuals convicted of less serious crimes is not a matter of right. Very few individuals who have lost their appeals and have been ordered to serve their sentences would be granted bail pending a Rule 35 motion. For those rare individuals convicted of Class B and less serious offenses who have a possibly meritorious Rule 35 motion, a judge should have discretion to grant bail. Otherwise they would serve their entire sentence before a decision could be made on the merits of the motion.

SECTION 5: The proposed amendment AS 12.30.060(a)(1) makes clear that punishment for failure to appear on a felony is a Class C felony, and therefore, subject to presumptive sentencing. To the extent that this amendment changes language from a generalized sentence of not more than five years to a sentence to a Class C felony, the Trust has no opposition to the amendment.

The proposed amendment to AS 12.30.060(a)(2) is a bad idea. To make the punishment for failure to appear on a Class B misdemeanor (subject to a maximum sentence of 90 days), a sentence of one year is arbitrary and unfair. A person should not be punished more harshly for failure to appear for a minor misdemeanor than the maximum sentence if convicted of the misdemeanor itself.

The amendment proposed in AS 12.30.030(b) is a very bad idea and should be rejected. It should remain discretionary with the judge hearing the facts and extenuating circumstances to decide whether an individual should forfeit his security for any violation of a condition of release. These provisions will make bail bondsmen much less willing to underwrite bail because of the increased likelihood the bail will be forfeited. Inevitably, this provision will cause tremendous and totally unnecessary overcrowding of the jails. Bondsmen will be unwilling to run the risk of losing a bond for any minor violation of a condition of release.

Even a minor violation of bail would result in a person losing their bail, and being charged with a new crime. Anytime a new crime is created, more people go to jail.

A person who substantially violates bail is already subject to be remanded to custody. This risk of a remand to custody is an adequate deterrent to individuals who might consider violating bail. Making it a new crime to violate bail, no matter how minor the violation, is unfair and unnecessary. In addition, it is very likely that this statute will not be applied fairly to all defendants, but will be used to discriminate against certain groups, likely having such discrimination based on lifestyle and location. It will much more likely result in a greater number of prosecutions for bail violations for rural Alaskans whose precise whereabouts and the conditions of bail are known to most people within the small rural community.

SECTION 6: The Alaska Action Trust vigorously opposes permitting the citizens of Alaska to be indicted for felony crimes where the only information heard by the grand jury is hearsay. In most instances, hearsay evidence is excluded from trial and grand jury because of the recognized fact that it is unreliable. To the extent it is reliable, hearsay is already admitted under the exceptions to the hearsay rule as set out in Evidence Rule 801, 802, 803, and 804.

There is absolutely no justification for permitting the indictment of a citizen in a case where the grand jury has no opportunity to hear the evidence being used against a person and thus, judge for itself whether the evidence is strong enough to merit a felony prosecution. This Section greatly increases the risk that citizens of this state will be prosecuted based on untrue, unreliable evidence which would not be adequate to justify prosecution if the grand jurors heard for themselves the testimony from those who have first hand knowledge of the facts.

This Section would violate the protection provided in Alaska's Constitution that an individual can only be charged with a felony if a grand jury finds there is sufficient evidence to charge an individual with a felony. The grand jury's most important job is to screen out cases where there is not sufficient evidence to justify a conviction. If government agents are permitted to come in and tell second and third hand their version

of what the evidence may be, innocent people will be wrongly prosecuted.

This amendment will not lessen any financial burden to the state. This is so because Criminal Rule 6 already permits telephonic testimony of out-of-town witnesses. In addition, expert reports can already be presented without the expense of requiring the expert to testify.

SECTION 7 through 9: These proposed revision create a new category of "permanently incompetent defendants." These proposed amendments are a major change from current law, which requires civil commitment procedures if a person remains incompetent.

The proposed amendment unnecessarily complicates a difficult area and offers no viable solution. Essentially, the result of the proposed amendments is that incompetent individuals would be forced to be tried on the charges and, if convicted, be committed and treated as if found not guilty by reason of insanity.

The proposed charges are very likely unconstitutional. They would result in incompetent individuals being required to go to trial and defend against the cases against them. Since the law clearly prohibits the trial of incompetent individuals, this effort to circumvent that law would fail on constitutional grounds.

SECTIONS 10 THROUGH 13: The Alaska Action Trust has no oppositions to the amendments proposed in Sections 10 through 13.

SECTION 14: The Alaska Action Trust opposes the proposed amendments to AS 12.55.145(c). Most denials of prior convictions are made by counsel and are based on legal arguments concerning the invalidity of the prior conviction. Included among grounds for denying the validity of the prior conviction are that the elements are not the same as the elements of a felony under Alaska law, that the defendant did not waive his right to counsel in the prior case, and that the defendant was denied his right to a jury trial in the prior case. There are many other similar legal grounds for denying the validity of a prior conviction. It is unclear how the oath requirement would apply to legal denials. The proposed amendment would add nothing and would unnecessarily confuse this procedure.

SECTION 15: The Alaska Action Trust has no opposition to the amendment to AS 12.55.155(c)(18) proposed in Section 15.

SECTION 16: The Alaska Action Trust has no opposition to the amendment proposed in Section 16.

SECTION 17: The Alaska Action Trust has no opposition to the amendment to AS 33.16.100(b) proposed in Section 17.

SECTIONS 18 AND 19: The Alaska Action Trust has no position on the proposed amendments to AS 47.10.140 proposed in Sections 18 and 19.

SECTION 20: The Alaska Action Trust has no opposition to the amendment to the Appellate Rules proposed in Section 20.

SECTION 21: The Alaska Action Trust has no opposition to the amendment to Criminal Rule 11(e) proposed in Section 21.

SECTION 22: The Alaska Action Trust vigorously opposes the proposed amendment to Criminal Rule 24(d) proposed in Section 22. Criminal Rule 24, which allows the state six peremptory challenges and the defense ten peremptory challenges in felony jury trials is based on Federal Criminal Rule 24, which also allows the same number of peremptory challenges to the prosecution and to the defense.

Over the years, in 1962 and 1976, recommendations have been made to Congress that it give these same number of peremptory challenges to the prosecution as to the defense by reducing from ten to six the number of peremptory challenges allowed to the defense. Congress rejected the proposal.

The House Judiciary Committee noted that prosecutors used the peremptory challenge to systematically exclude classes of people. The defense did not. Therefore, Congress concluded that providing each side with an equal number of peremptory challenges was a bad idea. See the Notes from the House Judiciary Committee, 95 Congress 1st Session (1977).

It is not often that the defense must use all ten peremptory challenges. They are only used in cases where there is extreme publicity which causes the jury panel to be prejudiced against a particular defendant or in small communities where many members of the jury panel will already know the defendant and know

the allegations against him through community news sources. Elimination of the additional peremptory challenges will mean that defense attorneys will be required to rely to a much greater extent on challenges for cause. The process for challenging a juror for cause is very time consuming. Eliminating the number of peremptory challenges will lengthen jury selection, not shorten it.

SECTION 23: The Alaska Action Trust opposes the amendments to Criminal Rule 35(a) proposed in Section 23. This Rule prohibits any modification to a plea bargained sentence. The problem is that sometimes the state and the defense agree to certain modifications of sentence. In cases where both sides agree that a modification to a plea bargained sentence is appropriate, perhaps to provide for a circumstance overlooked by the parties at the time of the plea bargain, a modification would be impossible.

This amendment is unnecessary because plea bargained sentences are never modified over the prosecutions objection. If an amendment is deemed necessary, it should specifically allow modifications where both the state and the defense agree to the modification.

SECTION 24: The Alaska Action Trust has no position on the amendments to Court Delinquency Rule 10(c) as proposed in Section 24.

SECTION 25: The Alaska Action Trust vigorously opposes the amendments to Evidence Rule 609(b) as proposed in Section 25. This proposal applies to both civil and criminal trials. Currently

Alaska Evidence Rule 609 provides that evidence of a conviction of a crime of dishonesty or false statement is admissible if no more than five years have elapsed since the date of conviction. If necessary for a fair determination of the case, evidence of older convictions may be admitted with respect to witnesses other than the defendant.

The Commentary to Evidence Rule 609 tells that the drafters of the evidence rule thoughtfully and carefully considered all available time dates and determined that convictions more than five years old are generally stale and not probative of a witnesses credibility. The drafters told a time limit shorter than the federal time because they concluded a shorter time was a current reflection of the constitutional right to privacy enjoyed by the citizens of Alaska.

The proposed amendment would be extremely detrimental to civil plaintiffs. For example, the victim of an automobile accident, the victim of a physical or a sexual assault, and the victim of other kinds of negligent or intentional misconduct should not be forced to explain away to a jury an old, irrelevant conviction. The jury should focus on the issues at trial, not on some skeleton from a ten year old closet. The same is true for criminal defendants, and for witnesses for all sides.

SECTION 26: The Alaska Action Trust has no opposition to the amendments to Evidence Rule 704 proposed in Section 26.

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(7)

HOUSE COMMITTEE REPORT

Date Referred: February 24, 1992

FURTHER REFERRALS:

5/6
Judiciary
Finance

Date of Committee Action: 5/5/92

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 555

HOUSE BILL NO. 555

CRIMINAL LAW AND PROCEDURE

"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."

RECOMMENDATIONS:

be replaced with CS HB 555 (HES) the same title a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) 2) Admin 2/24, 1) corrections 2/24, 1) LAW 2/24, 1) PS 2/24

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Cheri Davis</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>		<input checked="" type="checkbox"/>	
<i>J. C. Gonzalez</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>			
<i>May Miller</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>		<input checked="" type="checkbox"/>	
		<i>Betty Davis</i>			<input checked="" type="checkbox"/>

[Signature]
CHAIRMAN'S SIGNATURE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: _____

Title: 'An Act relating to criminal law and procedure: ...'

Sponsor: Governor

Requestor: Rules Committee

Department Affected: Administration

BRU: Office of Public Advocacy

Component: Office of Public Advocacy

COMPONENT SERIAL NO.

		4	3
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Brant McGee, Director
Division: Office of Public Advocacy

Phone: 274-1684
Date: January 22, 1992

Approved by Commissioner: Nancy Bear Usefa
Agency: Administration

Date: 1/27/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

*Public Advocacy
FN & Admin.*

STATE OF ALASKA
1992 LEGISLATIVE SESSION

FISCAL NOTE

Bill version: RB 555
(H) Publish Date: 2-24-92

Revision Date: _____
Title: "An Act relating to criminal law and proceedings regarding delinquent minors; and amending Alaska Supreme Court Rule of Appellate Procedure 215 . . ."
Sponsor: _____
Requestor: _____

Department Affected: Administration
BRU: Public Defender Agency
Component: Public Defender Agency

COMPONENT SERIAL NO.

1	6	3	1
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

While some fiscal impact may be felt with respect to public counsel services, no hard figures can be generated. As such, a zero fiscal note is being submitted.

Prepared by: John B. Salemi Public Defender
Division: Public Defender Agency

Phone: 279-7541
Date: February 4, 1992

Approved by Commissioner: Nancy Bear Usara
Agency: Administration

Date: 2/13/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

*Public Defender
FN & Admin*

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill Version: _____
(H) Publish Date: 2-24-92

Revision Date: _____ Department Affected: Corrections
 Title: "An Act relating to criminal law and procedure..." BRU: Statewide Operations
 Sponsor: By Request of the Governor Component: Various
 Requestor: Office of the Governor COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Carl Nickel, Director *Carl Nickel* Phone: 465-3376
 Division: Administrative Services Date: 01/24/92
 Approved by Commissioner: Lloyd James, Commissioner *Lloyd James*
 Agency: Department of Corrections Date: 01/24/92

FN & Corrections

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Department of Law
Title: "relating to criminal law and
procedure...amending...Court Rules..." BRU: Prosecution
Sponsor: Rules by Request of Governor Component: All
Requestor: Office of the Governor COMPONENT SERIAL NO.

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85 through 91

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
FUND SOURCE:						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Richard L. Pegues

Prepared By: Richard L. Pegues, Director Phone: 465-3672
Division: Administrative Services / Legal / RDR Date: February 18, 1992
Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law Date: February 18, 1992

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. _____

The bill deals with tailored amendments to the state laws governing criminal prosecutions. Some amendments were proposed by this department to respond to court cases. All of the amendments were designed to make criminal prosecutions fairer and more effective in the state. The bill is designed to level the playing field between state and criminal defendants. The end result is to give the public more confidence in the state's abilities to prosecute criminal defendants. The department's section-by-section analysis follows below.

Section 1. Section 1 amends Alaska's accomplice liability statute to provide that an accomplice is liable for the conduct of the person he aids or abets if he acts with the culpable mental state with respect to the result that is sufficient for the commission of the crime. This amendment is in response to the court of appeals' recent decision in Echols v. State, Op. No. 1164 (Alaska App. Oct. 4, 1991), which now makes it more difficult to prosecute an accomplice than it is to prosecute the principal. The effect of the amendment is to reverse the court's decision and, therefore, this change will not have any fiscal impact on the department.

Sections 2 and 3. Sections 2 and 3 amend the state's hindering prosecution statutes to make it criminal to render assistance, not just to a person known to have committed a crime, but also to a person known to have been charged with a crime. This will halt those who have hindered a prosecution from arguing that, although they knew the person they were assisting was charged with a crime, they did not believe that the person was guilty. This amendment is not significant enough to have a fiscal impact on the department.

Section 4. Section 4 prevents a convicted, incarcerated person from securing a release on bail simply by filing an application for post-conviction relief. Instead, the court must rule on the merits of the application and find that the person is entitled to relief before the person may be released. This is a custody provision and will not have a fiscal impact on the department.

Section 5. Section 5 makes a defendant's violation of conditions of release a misdemeanor offense. Not only will this encourage greater compliance by defendants with court-ordered conditions, but it may also prompt courts to release defendants on bail more frequently, knowing that the defendant has good reason to comply with the conditions it imposes. This could help ease the state's prison over-crowding situation. This is a sentencing provision. It will not have an impact on the Department of Law.

Sections 6 and 26. Sections 6 and 27 expand the permissible cases in which hearsay evidence may be presented in a grand jury proceeding from prosecutions for sexual offenses to all felony

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. _____

cases. Circumstances must indicate that the statement is reliable and the witness must either testify at the proceedings or be available to testify at trial. Furthermore, the grand jury is given the ability to require the prosecuting attorney to produce the witness whose testimony is being offered into evidence. Federal courts have for years permitted hearsay in grand jury proceedings; this would allow the same practice in state proceedings. This is a procedural provision and will not have a fiscal impact on the department.

Sections 7, 8 and 9. Sections 7, 8, and 9 amend Alaska law to address the proceedings against a defendant who is permanently incompetent to stand trial. Existing law allows courts to commit for as long as 180 days any defendant who is incompetent to stand trial. At the end of that time, if the charged offense does not involve violence, it must be dismissed and the state may proceed with civil commitment proceedings if it deems it appropriate. If the charge does involve violence and the defendant presents a substantial danger to others, the court may continue the defendant's commitment for an additional six months. At the end of that time, the charges must be dismissed and the defendant may be civilly committed. Under existing law, whenever the defendant becomes competent, the charges may be reinstated.

This bill amends the law for permanently incompetent defendants who present a substantial danger to others and who are charged with a felony involving force. At the end of the additional six-month commitment authorized by AS 12.47.110(b), the court is required to hold a hearing to determine whether the defendant is permanently incompetent. If the defendant is found permanently incompetent, the case against the defendant on the underlying charges proceeds to trial, despite the defendant's incompetency. If the state proves the charges beyond a reasonable doubt, the defendant is then committed as though he had been found not guilty by reason of insanity under existing law. Thereafter, the rights and procedures applicable to those found not guilty by reason of insanity will apply to the defendant.

This new procedure, which is recommended by the Model Penal Code, accomplishes two ends. First, it resolves the charges against the defendant within a year; a committed defendant may no longer be tried years after the charges were filed. Second, this procedure provides a more appropriate disposition for permanently incompetent defendants who present a danger to others and have been found guilty of a serious violent crime. The civil commitment, which is appropriate for persons who are not dangerous, is replaced by the commitment proceedings applied to defendants found not guilty by reason of insanity. The defendant may be held in custody

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. _____

by the commissioner of health and social services for as long as the defendant could have been imprisoned on the criminal charges. The defendant may be released upon proving that he no longer suffers from a mental illness that causes him to be dangerous to the public. The defendant may also be conditionally released if he or she can be adequately controlled and treated in the community with proper supervision. These amendments provide for more orderly and appropriate handling of criminal charges against permanently incompetent defendants and should not have a fiscal impact on the department."

Sections 10 and 11. Sections 10 and 11 amend the statute governing suspended impositions of sentence. Current law allows a court to suspend the imposition of sentence, and place the defendant on probation, for a period of time equal to the maximum period of imprisonment that could be imposed for the offense. This means that, when a court suspends imposition of sentence for a class B misdemeanor offense, it may do so for only 90 days. This makes some courts reluctant to grant an SIS for class B misdemeanors, because the defendant can be placed on probation for only such a short period of time. Section 10 amends the statute to extend the minimum length of time that imposition of a sentence may suspended to a period of one year. Section 11 clarifies confusing language in AS 12.55.085(c), governing the period during which the court may impose sentence following the revocation of an SIS. These SIS procedural changes will not have a fiscal impact.

Sections 12, 13, 21, and 23. Sections 12, 13, 21, and 23 change the laws governing plea agreements between defendants and the state. Under existing law, if a defendant enters into an agreement with the state that he should receive a particular sentence, the court may respond in any of three ways: First, it may accept the agreement and sentence the defendant accordingly; second, it may reject the agreement and allow the defendant to withdraw his plea and proceed to trial; and third, it may accept the agreement, but impose a lesser sentence than was agreed to by the parties. These sections remove the third option so that, if the court believes that the agreed-upon sentence is too harsh, it may only reject the agreement and return the parties to their earlier positions. These sections also clarify that a defendant who agrees to a particular sentence cannot appeal that sentence as being excessive, nor may he or she seek post-conviction modification (reduction) of the sentence from the trial court. These changes will not have a significant fiscal impact on the department.

Section 14. Section 14 concerns defendants who are subject to presumptive sentencing because of their prior convictions. Under current law, if a defendant denies the prior convictions, a hearing is scheduled before the court to resolve the matter. This

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. _____

amendment simply requires the defendant to make the denial under oath. This is intended to eliminate frivolous denials, which are more readily made when the defendant is not under oath and thus not subject to prosecution for perjury. This procedural amendment will not have a fiscal impact.

Section 15. Section 15 addresses the sentencing aggravator set out in AS 12.55.155(c)(18)(A), which applies in assault cases when the offense was committed against a spouse, a former spouse, or a member of the social unit comprised of those living together in the same dwelling as the defendant. This section adds former members of the household to the statute's list, to keep parity with the statute's inclusion of former spouses. This is a sentencing provision and it will not have a fiscal impact on the department.

Section 16. Section 16 amends AS 18.85.120(c), which governs judgments entered by the court against indigent criminal defendants for the cost of defense counsel provided by the state. This section removes the provision in the statute that prohibits the state from executing on a judgment against an incarcerated defendant until three years following the defendant's release unless the state petitions the court for a special order and show good cause for it. There does not appear to be any reason to categorically delay for three years any recovery on the court's judgment. This amendment will not have a fiscal impact on the department. It should enhance recoveries for the state treasury.

Section 17. Section 17 corrects an oversight in the discretionary parole statute, which prohibits a prisoner from being released until the prisoner has served any mandatory sentence or a presumptive sentence imposed for a class A or unclassified offense. Although citing the statutes for both mandatory minimum and presumptive sentences for class A and unclassified offenses, AS 33.16.100(d) refers only to the mandatory minimum sentences. This amendment makes an explicit reference to the presumptive sentences, as well. This is a technical amendment and will not have a fiscal impact.

Sections 18, 19 and 24. Sections 18, 19, and 24 authorize the use of hearsay evidence in the probable cause portion of a detention hearing against a juvenile being prosecuted for a sexual offense. This is analogous to the use of hearsay evidence in grand jury proceedings against adults. Existing law authorizes the use of hearsay evidence at grand jury proceedings on sexual offenses. This amendment will not have a fiscal impact on the department.

Section 22. Section 22 amends Criminal Rule 24(d) to give defendants the same number of peremptory challenges in felony cases as the state has. Currently, defendants are given ten, compared

#4
HB555

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. _____

with the state's six. The amendment does not change the provision in Rule 24(d) that authorizes courts to allow defendants additional peremptory challenges when two or more are joined together for trial. This is a procedural amendment, and it will not have a fiscal impact on the department.

Section 25. Section 25 extends from five to ten years the period of time during which a witness's conviction for a crime of dishonesty may be used to impeach the witness. It also measures the time period from the date of the person's unconditional discharge on the offense, rather than from the date of the conviction. This is a procedural amendment. There will not be a fiscal impact on the department.

Section 26. Section 26 amends the Rules of Evidence to prohibit an expert witness from offering an opinion on the ultimate issue of fact as to whether a defendant did or did not have the necessary mental state or condition to commit the crime charged or to constitute a defense to the crime charged. Instead, this issue is to be left to the trier of fact. This is a procedural amendment and it will not have a fiscal impact.

**STATE OF ALASKA
1992 LEGISLATIVE SESSION**

Bill version: HB 559
(H) Publish Date: 2-24-92

Revision Date: _____ Department Affected: Public Safety
 Title: Criminal Prosecution BRU: Alaska State Troopers
 Amendments: _____ Component: Detachments
 Sponsor: Rules
 Requestor: Governor COMPONENT SERIAL NO.

7	9	9
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EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
FUND SOURCE:						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

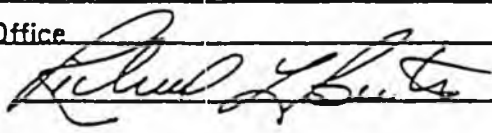
POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Most of the changes made in this bill are procedural, and are not expected to have a fiscal impact on the Department of Public Safety.

Prepared By: Gayle A. Horetski Phone: 465-4322
 Division: Commissioner's Office Date: 1/30/92
 Approved by Commissioner:  Richard L. Burton
 Agency: Department of Public Safety Date: 1/30/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

7-GH2067D
Casey
5/4/92

CS FOR HOUSE BILL NO. 555 ()

IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

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 appeal 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.