

H B

5 5 5

HOUSE COMMITTEE REPORT

(7)
Date Referred: May 6, 1992

FURTHER REFERRAL:

Finance

Date of Committee Action: 5.9.92

The JUDICIARY 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 (JUD) 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)

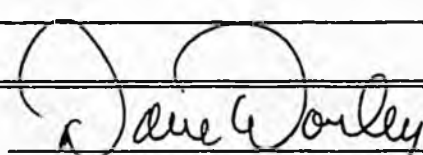
APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact _____

fiscal note(s) _____
Admin (62), Corrections, Law, DPS
 zero fiscal note(s) (ALL DATED 2.24.92)

zero fiscal note _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Dave Orley</i>	✓	<i>Mr. J. Grentz</i>		✓	
<i>Larry Marshall</i>	✓				
<i>Nike Miller</i>	✓				
<i>Mark Stanley</i>	✓				



 CHAIRMAN'S SIGNATURE

FISCAL NOTE

No. 5
 Bill Version: HB 555
 (H) Publish Date: 2-24-92

STATE OF ALASKA
 1992 LEGISLATIVE SESSION

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
---	---	---

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 FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-
-------------------------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

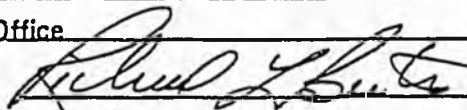
GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

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

FISCAL NOTE

No. 4
 Bill Version: HB 555
 (H) Publish Date: 2-24-92

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.

--	--	--	--

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						
---------	--	--	--	--	--	--

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 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 be 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

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

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.

--	--	--	--

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						
---------	--	--	--	--	--	--

REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

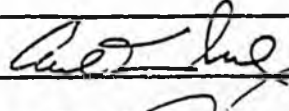
GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
FUND SOURCE:						
TOTAL						

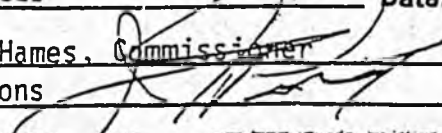
POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Carl Nickel, Director  Phone: 465-3376
Division: Administrative Services Date: 01/24/92

Approved by Commissioner: Lloyd Hames, Commissioner
Agency: Department of Corrections  Date: 01/24/92

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

FISCAL NOTE

No. 2
 Bill Version: HB 555
 (H) Publish Date: 2-24-92

STATE OF ALASKA
 1992 LEGISLATIVE SESSION

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
---	---	---	---

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
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

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 Usera
 Agency: Administration

Date: 2/13/92

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

FISCAL NOTE

No. 1
 Bill Version: HB 555
 (H) Publish Date: 2-24-92

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
--	--	---	---

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
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

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 Usher
 Agency: Administration

Date: 1/27/92

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

B

(7)

HOUSE COMMITTEE REPORT

5/6

Date Referred: February 24, 1992

FURTHER REFERRALS:

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 553 (HES) [x] the same title [] a new title

[] have attached amendments(s)

[x] 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) _____

[x] zero fiscal note _____

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

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Cheri Davis		[Signature]			
J. L. Gonzalez		[Signature]			
Mary Miller		[Signature]			
		[Signature]			

[Signature]
CHAIRMAN'S SIGNATURE

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.



Alaska Action Trust

P.O. Box 102323 • Anchorage, Alaska 99510
Office: 540 L Street, Suite 104 • Anchorage
(907) 258-4040

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 prosecution's 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.