HB 244

MADD
Activism | Victim Services | Education

Mothers Against Drunk Driving
JUNEAU CHAPTER
211 4th St., Suite 314
Juneau, AK 99801
Phone (907)463-2562
Fax (907)463-2540
madd@alaska.net
www.madd.org/ak/juneau

Mothers Against Drunk Driving (MADD) supports CSSB 170 for House Bill 244.

MADD supports consecutive jail time for each death in a drunk driving crash in order for restorative justice to take place within our communities.

As a victim in the State v. Glaser case, I cannot begin to explain the unnecessary bitterness and frustration our families struggle with because of the court decision which refused to consider the multiple deaths in the drunk driving tragedy. Currently in Alaska, a loved one's life is less valuable than a stolen automobile in a felony case; this sends a dangerous message out to all Alaskans. Each life torn from us by drunk driving is certainly worth taking into individual consideration; to do otherwise would create additional heartache and trauma for victims of this violent crime.

MADD also supports the right for communities to adopt lower limits of alcohol possession and importation in order to increase the health and safety of their people.

MADD supports stricter drunk driving sanctions for high risk drivers. Habitual drunk drivers who have repeatedly chosen to endanger themselves and everyone else who shares their road system must be held accountable for their crimes.

About one-third of all drivers arrested or convicted of driving under the influence are repeat offenders. These drivers are 40% more likely to be involved in a fatal crash than those without prior DUIs.

MADD supports increased penalties for those whose choice to drink and drive results in the serious injury of an innocent victim or victims.

People who drink and drive are unable to determine if they are sober before arriving at their destination. If a person chooses to drink and drive then that person has committed a crime and should be held accountable for his/her actions.

MADD supports the recommended changes in CSSB 170 for House Bill224 as a way of deterring further drunk driving tragedies and improving Alaska's restorative justice system.

Sincerely,

Cindy Cashen

Cindy Cashen
Executive Director

CS for HOUSE BILL 244(2d JUD)

(April 14, 2004)

Sectional Summary

Sections 1 - 4 allow communities to adopt, as part of a local option, lower amounts of alcohol that may be possessed or imported into the community than may currently be possessed or imported, and still presumed to be for personal use rather than for sale. Certain communities have already adopted lower limits by ordinance. If it is part of a local option, however, state law enforcement authorities can help communities enforce these lower limits.

Section 5 raises the penalty for furnishing alcohol to a person under 21 years of age from a class A misdemeanor to a class C felony, if the offense occurs in a village or municipality that has adopted a local option, unless the village or municipality opts out of the class C felony application as part of their local option.

Sections 6 allows for the forfeiture of money used in bootlegging offenses.

Section 7 also allows the state to share with municipal law enforcement agencies that participate in the arrest or conviction of a bootlegger the proceeds from forfeited property.

Section 8 is a conforming amendment to the change described in **Section 13.**

Section 9 expands the felony-murder rule so that an offender who commits a dangerous crime can be charged with second-degree murder if an accomplice is killed, except if the death of the participant is the direct result the felony criminal conduct by a nonparticipant. The current felony-murder rule allows an offender to be charged with second-degree murder if a person, such as a bystander, is killed during the commission of the crime, even if the offender did not directly cause the death. The purpose of the felony-murder rule is to discourage serious crimes. It will be more effective if it also applies to the death of a participant in the crime.

Section 10 closes a loophole in our assault statutes by making criminally negligent conduct that causes serious physical injury with a dangerous instrument a class C felony. Under current law there is no statute addressing this conduct. The injury must be the kind that causes serious and protracted disfigurement, protracted impairment of health, protracted loss or impairment of the function of a body member or organ, or that unlawfully terminates a pregnancy. One example of this conduct is a person who is partially impaired (but not enough to be DUI), drives in a dangerous manner, and causes serious physical injury to another person.

Sections 11 - 12 increase the penalty for sexual abuse of young children by teenagers from a class A misdemeanor to a class C felony.

Section 13 adopts a new crime - that of violating a person's duty as a third party custodian. It applies to a person who agrees to be a third party custodian, but does not report to authorities if the person in custody violates release conditions. It is either a class A or class B misdemeanor, depending on the crime with which the person released is charged.

Section 14 disallows self-defense if the force applied resulted from use of a deadly weapon by the person claiming the defense, and the state proves that the defendant was furthering his own felony criminal objectives or those of a gang, or was participating in a felony drug deal.

Section 15 amends the law in the state that requires the trial judge to give an instruction that allows the jury to find self-defense, even if the evidence supporting it is "weak or implausible." *Folger v. State*, 648 P.2d 111 (Alaska App. 1982). Federal law, by contrast, requires the defendant to produce enough evidence in support of self-defense that a rational jury could find that the defendant acted in self-defense. *United States v. Jackson*, 726 F.2d 1466 (9th Cir. 1984). The bill changes the law to allow the judge to instruct the jury only if there is plausible evidence of self-defense.

Section 16 makes it clear that it is the defendant's right to request an attorney immediately after an arrest. An attorney may not interrupt an interview that the defendant has consented to, unless the defendant has requested the lawyer's consultation.

Section 17 is a conforming section to **Section 13.**

Section 18 requires the court to issue written or oral findings addressing the need to place a person charged with a crime in the custody of a third-party custodian as a condition of the defendant's release.

Sections 19 - 21 and 24 adopt a fair and uniform procedure to determine if a witness has a valid Fifth Amendment privilege against self-incrimination. An attorney is appointed for the witness, and the court makes the determination in a closed proceeding outside the presence of the prosecution. If the court finds that the witness has a valid Fifth Amendment privilege, the court will inform an attorney designated by the attorney general of that finding, and whether the privilege applies to a higher-level felony (an unclassified or class A felony), a lower-level felony (a class B or C felony), or misdemeanor. If the designated attorney decides that granting immunity is appropriate, he or she shall by letter inform the witness or the attorney for the witness. The designated attorney may not disclose the category of offense to anyone.

Sections 22 - 23 and 30 - 31 give direction to courts in sentencing a defendant for more than one crime. Current law appears to require consecutive sentences, but was not interpreted that way because of bad drafting. This clarifies that for most crimes a court may impose sentences that are concurrent or partially concurrent. However, for homicides, kidnapping, and serious sex offenses, this section specifies the minimum amount of consecutive time that must be imposed. For example, for two counts of first-degree murder, the court must require

the mandatory minimum term of the second offense to be served consecutively. For manslaughter and kidnapping, at least the period of the presumptive term of the second offense must be served consecutively.

Sections 25, 27, and 29 disallow the "big gulp" defense in drunk driving cases. It reverses a recent court decision, *Conrad v. State,* 60 P.3d 701 (Alaska App. 2002), that allows a driver to claim that he drank alcohol just before driving, and was able to drive before the alcohol affected his perceptions. This case is a major step back in the state's efforts to reduce drunk driving, and requires expert testimony about alcohol assimilation rates and other issues confusing to jurors. The legislature, in prohibiting driving with .08 blood alcohol, as determined by a chemical test taken within four hours of driving, intended to avoid this battle of chemical experts.

Sections 26 and 28 provide that once a person has been convicted of felony drunk driving or felony refusal to submit to a chemical test, a subsequent drunk driving or refusal offense will also be a felony if it occurs within 20 years of the previous felony conviction.

Section 32 allows for greater disclosure to the public by a state or municipal agency of information about juvenile sex offenders, if necessary to protect children or vulnerable adults.

Section 33 provides conforming repealers.

Sections 34 and 35 include applicability and effective date provisions.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: CSHB 244(2d JUD)
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Administration
Title: An Act relating to murder in the second degree,...
BRU: Legal and Advocacy Service
Component: Public Defender Agency
Sponsor: Rules Committee at Governor's Reque
Requester: HouseFinance
Component No.: 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	74.5	74.5	74.5	74.5	74.5	74.5
Travel	2.1	2.1	2.1	2.1	2.1	2.1
Contractual	6.5	6.5	6.5	6.5	6.5	6.5
Supplies	1.0	1.0	1.0	1.0	1.0	1.0
Equipment	6.7	0.7	0.7	0.7	0.7	0.7
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	90.8	84.8	84.8	84.8	84.8	84.8
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	90.8	84.8	84.8	84.8	84.8	84.8
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	90.8	84.8	84.8	84.8	84.8	84.8

Estimate of any current year (FY2004) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

The Public Defender's operations will be fiscally affected by this proposed legislation if it becomes law. In sections 1-7, if established villages and municipalities adopt lower amounts of alcohol for local option purposes than established in Title 4 that would increase the number of prosecutions per year, depending upon the number of local option areas that adopt lower amounts. The Ageny cannot predict how many local option areas will lower the amounts, so the fiscal impact cannot be quantified. Expanding the circumstances under which the offense of furnishing alcohol to a minor is a class C felony instead of a class A misdemeanor, to include violations that occur within the boundaries of a local option area will

See attached page.

Prepared by: Linda K. Wilson, Deputy Director
Phone (907)-334-4416
Division: Public Defender Agency
Date/Time 4/22/04 7:46 AM
Approved by: Kevin Jardell, Assistant Commissioner
Date 4/22/2004
Agency: Department of Administration

FISCAL NOTE

STATE OF ALASKA **BILL NO.** CS HB 244(2d JUD)
2004 LEGISLATIVE SESSION

ANALYSIS CONTINUATION

have a fiscal impact on the operation of the Agency. Increasing what was a misdemeanor to a felony increases the workload of the Agency. Felonies are more difficult cases and often require more work, investigation, and resources to defend, especially in rural areas, that would be most impacted by this change. Allowing the forfeiture of money and other items used in financial transactions derived from prohibited activity violative of local or n laws, will have a fiscal impact on the operations of the Agency, because there will be more hearings on the issue c feiture involving potential claims by lienholders, owners, and others with an interest in the property subject to forfeitu.

Section 10 expands the crime of assault in the third degree, a class C felony, to include when a person with criminal negligence causes serious physical injury by means of a dangerous instrument. This conduct is currently an A misdemeanor. Expanding the crime of third degree assault, a C felony, to include causing serious physical injury with criminal negligence, by means of a dangerous instrument, most likely a vehicle, will certainly have a fiscal impact on Agency operations. Increasing what is now a misdemeanor to a felony level offense increases the workload of the Agency. Felonies are more difficult cases that require more resources to defend. It cannot be accurately predicted however what the increased number of cases from misdemeanor to felony will be, that are the target of this section.

Section 13 (with conforming Sections 8, 17, and 33(a)) seeks to increase the penalties for and create a new criminal offense for violations of a court-ordered third party custodian's duty. Changing what is now a contempt violation to a charge for a class A or B misdemeanor with significantly stiffer penalties will result in less clients getting out of jail on bail, which will increase the need to more quickly prepare a case for trial and then go to trial more quickly for these clients to ensure their right to a speedy trial. It will also increase the Public Defender Agency's caseloads because it may be appointed to represent many of these custodians charged with these misdemeanors for failing to immediately report a violation.

Section 14 will have a fiscal affect on the Agency operations because more cases will be prosecuted where self-defense used to be legitimately raised, but now will be disallowed, however, it is impossible to accurately predict how many of these new prosecutions will result.

Section 15 proposes changing the quantum of proof that the defendant must produce to the satisfaction of the judge, sitting without a jury, in order to raise self-defense or defense of others to the jury. Instead of "some evidence" as currently required, Section 15 proposes "some plausible evidence."

Sections 22-23, 30-31, and 33(b) seek to amend the sentencing statutes to expand the situations in which consecutive sentencing is mandated and to eliminate or restrict the court's ability to determine the appropriate amount of consecutive time to be imposed for certain crimes. This change in the sentencing statutes will likely result in the inability to resolve cases short of trial, when the case is one in which conviction of more than one count would otherwise have been an appropriate resolution, now would be forced to go to trial because of the exposure to mandatory consecutive sentences. This fiscal impact is not easily determined, but inevitable.

Sections 25-28 concern drunk driving and refusal laws under Title 28. It broadens felony DUI and refusal to include a person driving under the influence who has a prior conviction for felony DUI or refusal within the last 20 years. Making any subsequent DUI or refusal a felony if there is a prior conviction for felony DUI or refusal within 20 years will impact the operations of the agency, probably not immediately, but in the future. It is unknown how many people convicted of felony DUI or refusal will allegedly reoffend after 10 years has elapsed. Since the enactment of felony DUI and refusal in 1996, the number of these cases handled by the Agency has increased every year, In FY 99 the Agency handled appoximately 125 felony DUI and refusals, but in FY02 it handled over 300. Felony prosecutions are more difficult cases and require more work, investigation, and resources to defend, especially in rural areas.

For all of the above reasons, one full time investigator is required in the Anchorage office to meet the fiscal challenges this bill will have on the operations of the Agency.

23-GH1024\S.1
Luckhaupt
4/20/04

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE CROFT

TO: CSHB 244(2d JUD)

Page 1, line 2:

Delete "**rights of arrested persons,**"

Page 9, lines 3 - 10:

Delete all material.

Renumber the following bill sections accordingly.

Page 17, lines 19 - 20:

Delete "22, 23, 30, 31, and 33(b)"

Insert "21, 22, 29, 30, and 32(b)"

Page 17, line 22:

Delete "25, 26, and 28"

Insert "24, 25, and 27"

Page 17, line 24:

Delete "26"

Insert "25"

Page 17, line 25:

Delete "28"

Insert "27"

Page 17, line 26:

Delete "26 and 28"

Insert "25 and 27"

Page 17, line 27:

Delete "17"

Insert "16"

Page 17, line 30:

Delete "16, 19 - 21, 27, and 30"

Insert "18 - 20, 26, and 29"

Page 18, line 1:

Delete "32"

Insert "31"

23-GH1024\S.2
Luckhaupt
4/20/04

AMENDMENT 2

OFFERED IN THE HOUSE BY REPRESENTATIVE CROFT

TO: CSHB 244(2d JUD)

Page 12, lines 14 - 15:

Delete

"(i) manslaughter; or

(ii)"

Page 12, following line 15:

Insert a new subparagraph to read:

"(D) one-half the presumptive term specified in AS 12.55.125(c) or the active term of imprisonment, whichever is less, for each additional crime that is manslaughter;"

Reletter the following subparagraphs accordingly.

AMENDMENT 3

OFFERED IN THE HOUSE FINANCE COMMITTEE

BY REPRESENTATIVE CROFT

TO: CS HB 244 (JUD), \S version

Page 10, lines 5-7:

Delete all material

Insert: "(e) In this section,"

Page 11, lines 4-11:

Delete all material

Renumber accordingly.

HOUSE COMMITTEE REPORT

R/O last year but some FN changes

(11)

Date Referred to Committee: May 12, 2003 **ERRALS:**

Date of Committee Action: 5/15/03

The FINANCE Committee considered: **HB 244**

HOUSE BILL NO. 244 **CRIMINAL LAW/SENTEI** **PAROLE**

"An Act relating to the Code of Criminal Procedure; relating to defenses, affirmative del o certain criminal acts; relating to rights of prisoners after arrest; relating to discovery, immunity ... of defenses, admissibility of certain evidence, and right to representation in criminal proceedings; relating to sentencing, probation, and discretionary parole; amending Rule 16, Alaska Rules of Criminal Procedure, and Rules 404, 412, 609, and 803, Alaska Rules of Evidence; and providing for an effective date."

Recommends it be replaced with [ ] HCS *or* [√] CS *for* JUD

For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [√] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LEG
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES *Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero

PREVIOUS FISCAL NOTES

List by Dept(s):	FN#	Fiscal	Indet.	Zero
LAW	1			√
COR	2	√		
ADM	3	√		

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	Hawker				√
	STOLTZE				√
	Berkowitz				√
	Kerttula		√		
	MOSES			√	
	Chenault			√	
					√
	FOSTER		X		
Chair:	Harris			√	
Chair:	Williams			√	

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 244
(H) Publish Date: 4/4/03

Revision Date/Time (Note if correction):
Dept. Affected: Law
Title "An Act relating to the Code of Criminal Procedure; . . ."
BRU Criminal Division
Component All
Sponsor Rules Committee
Requester Governor
Component No.

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

The bill proposes a number of changes in the law regarding criminal defenses and criminal procedures. It addresses self-defense, and other defenses such as acting in the heat of passion and using deadly force in defense of others. It also would put some limits on collateral attacks on prior convictions. Additionally, the bill adopts a rational procedure for courts to follow in deciding claims of privilege and the granting of immunity, and it makes changes in sentencing procedures.

Passage of this legislation will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson
Phone (907) 465-5370
Division Attorney General's Office
Date/Time 3/20/03 8:30 AM
Approved by: Kathryn Daughhetee for Gregg D. Renkes, Attorney General
Date 3/20/2003
Agency Department of Law

(Revised 9/2002 OMB)

:TTEE COPY

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: HB 244
(H) Publish Date: 4/4/03

Revision Date/Time (Note if correction):
Dept. Affected: Department of Corrections
Title: Criminal Procedures, Sentencing & Related Issues
BRU: Administration & Operations
Component: Institution Director's Office
Sponsor
Requester
Component No. 1381

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	3.4	54.4	98.6	173.6	194.3	224.9
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	**3.4**	**54.4**	**98.6**	**173.6**	**194.3**	**224.9**
CAPITAL EXPENDITURES	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CHANGE IN REVENUES ( )	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	3.4	54.4	98.6	173.6	194.3	224.9
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	**3.4**	**54.4**	**98.6**	**173.6**	**194.3**	**224.9**

Estimate of any current year (FY2003) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: *(Attach a separate page if necessary)*

Time served is estimated based on the time that would have been served under this bill for defendants sentenced during the time period 1/1/2001 through 12/31/2001. Time served under current law is not included on Fiscal Note estimates. Months are based on an average of 30 days per month and the FY03 cost of care of $113.31. Sentences timeframe is estimated as beginning 7/1/2003.

See attached:

Prepared by: Jerry D. Burnett, Director
Phone (907) 465-3339
Division: Administrative Services
Date/Time 3/21/03 8:31 AM
Approved by: Portia C.K. Parker, Deputy Commissioner
Date 3/21/2003
Agency: Department of Corrections

(Revised 9/2002 OMB)

STATE OF ALASKA
2003 LEGISLATIVE SESSION

BILL NO. HB 244

ANALYSIS CONTINUATION

For years past FY 2009, there could be a cumulative effect of long-term and short-term sentence increases that would result in higher costs on an annual basis. We have not attempted to estimate these future year costs past FY 2009. Given the recidivism rates for many offenders, it is not clear that these longer sentences will actually have the effect of increasing costs to the Department of Corrections. Our costs are the same on a daily basis whether offenders are serving an extra period of incarceration or are reincarcerated for a new offense. To the extent that increased sentences may reduce recidivism for this group of offenders, the legislation may result in lower costs in future years.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: CSHB 244(JUD)
(H) Publish Date: 5/12/2003

Revision Date/Time (Note if correction):
Dept. Affected: Administration
Title "An Act relating to the Code of Criminal Procedure;..."
BRU Legal and Advocacy Services
Component Public Defender Agency
Sponsor Rules Committee
Requester House Judiciary
Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	106.4	106.4	106.4	106.4	106.4	106.4
Travel	4.2	4.2	4.2	4.2	4.2	4.2
Contractual	13.0	13.0	13.0	13.0	13.0	13.0
Supplies	2.0	2.0	2.0	2.0	2.0	2.0
Equipment	13.4	1.3	1.3	1.3	1.3	1.3
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	**139.0**	**126.9**	**126.9**	**126.9**	**126.9**	**126.9**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	139.0	126.9	126.9	126.9	126.9	126.9
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	**139.0**	**126.9**	**126.9**	**126.9**	**126.9**	**126.9**

Estimate of any current year (FY2003) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time	2	2	2	2	2	2
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This bill proposes numerous changes in criminal law and procedure. These changes will result in a financial impact on the Public Defender Agency. The impact will be felt in increased preparation for trials in felony and misdemeanor cases as described below. The Agency will need two additional Investigators, one in Anchorage and one in Fairbanks, the offices with the highest caseloads, to meet this need. Currently the Agency only has 13.5 investigators handling over 20,000 cases a year.

See attached page for continuing analysis.

Prepared by: Linda K. Wilson, Deputy Director
Phone (907)-334-4416
Division Public Defender Agency
Date/Time 5/8/03 7:17 AM
Approved by: Mike Miller, Commissioner
Date 5/8/2003
Agency Department of Administration

STATE OF ALASKA
2003 LEGISLATIVE SESSION

BILL NO. CSHB 244(JUD)

ANALYSIS CONTINUATION

Sections 1-5 change long-standing Alaska laws on self-defense, defense of others, and heat of passion and require the defense to carry the entire burden of proving to the jury that the defendant acted in self-defense, defense of others, or in the heat of passion. Under current law the defendant must produce some credible evidence of self-defense, defense of others or heat of passion before a judge will allow a jury to consider the defense, but once sufficiently produced, the state then has the burden of proving that the defendant's actions were not justified. The Agency will have increased investigative costs as a result of this change.

Shifting the burden to the defense to prove self-defense, defense of others, and heat of passion by a preponderance of the evidence in many instances will require more defense investigative efforts to find, arrange and then have the attorney present the relevant evidence. Relevant evidence to the defense is not always in the exclusive possession of the individual defendant.

Sections 7 and 15 of the bill propose to change the burden of proof, currently belonging to the prosecution, to make it the defense's burden of proof to challenge the validity of a prior conviction in both a prosecution where the prior conviction is an element of the crime being prosecuted and at sentencing where a prior conviction may result in a longer sentence. The defense must prove by a preponderance of the evidence that a prior conviction, sometimes from another state, that is either an element of the crime being prosecuted or is being used to seek a longer sentence, is invalid because of the denial of the right to counsel or jury trial. Shifting this burden of proof onto the defense will require more investigation efforts from the defense to find out the underlying facts in the old case, perhaps from out of state, and then retrieve evidence from that old case to be presented in the current case to meet the burden of proof. This is not an easy task to accomplish by an agency that is outside of law enforcement, and does not have the numerous resources to draw on to assist them across the country.

Sections 21 - 23 concern notice of defenses and experts and require the defense to give notice sooner than required under current law. It also adopts serious sanctions for failures to timely notify the prosecution. These changes in the rules will require the defense to put forth additional investigative efforts related to experts and defenses to meet these earlier deadlines in order to avoid the significant sanctions proposed.

Sections 13, 14, and 20 seek to amend the sentencing statutes to expand the situations in which consecutive sentencing is mandated and to eliminate the court's ability to determine the amount of consecutive time to be imposed for certain crimes. It will likely result in the inability to resolve cases short of trial because of the exposure to mandatory consecutive sentences. This fiscal impact is not easily determined, but inevitable.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 4
Bill Version: CSHB 244(2d JUD)
(H) Publish Date: 4/21/04

Revision Date/Time (Note if correction):
Dept. Affected: Law
Title "An Act relating to murder in the second degree, the defense of acting in the heat of passion..."
BRU Criminal
Component All
Sponsor House Rules Committee
Requester House Judiciary Committee
Component No.

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)						
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

The bill proposes a number of changes in the law regarding criminal defenses and procedures.

1. Makes the death of any person in the course of the enumerated crimes such as robbery murder in the second degree.
2. It makes self-defense unavailable to violence resulting from gang activity or illegal drug transaction and it reverses certain self-defense decisions.
3. It adopt a procedure for the courts to determine whether a valid privilege against self-incrimination exists, and if found makes requirements of the court to inform prosecution of the seriousness of the crime to which privilege applies.
4. The bill adopts guidelines and direction to courts in imposing concurrent and consecutive terms of imprisonment when a defendant is convicted of more than one crime.

Prepared by: Kathryn Daughhetee, Director
Phone
Division Administrative Services
Date/Time 3/16/04 4:31 PM
Approved by: Kathryn Daughhetee for Gregg D. Renkes, Attorney General
Date 3/16/2004
Agency Department of Law

COMMITTEE COPY

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 244(2d JUD)

ANALYSIS CONTINUATION

5. It also makes failure to report a violation of a condition of release by a third party custodian a misdemeanor.
6. It expands the crime of sexual abuse of a minor in the third degree to include offenders under 16 years of age engaging in sexual penetration with a person under 13 years of age and at least three years younger than the offender and makes it a class C felony. It also authroizes the realse to the public, upon request, of agency records concerning adjudication of a sexual offense to protect the safety of a child or vulnerable adult.
7. Finally, this bill also relates to local options regarding alcoholic beverages; the boundaries of local option areas; furnishing alcoholic beverages to a person under 21 years old; and forfeiture of money and other valuable items derived from violation of laws relating to alcoholic beverages.

Passage of this legislation will have no foreseeable fiscal impact on the Department of Law.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 5
Bill Version: CSHB 244(2d JUD)
(H) Publish Date: 4/21/04

Revision Date/Time (Note if correction):
Dept. Affected: Corrections
Title: Criminal Procedures, Sentencing & Related Issues.
RDU: Administration & Operations
Component: Institution Director's Office
Sponsor
Requester
Component No.: 1381

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	3.4	54.6	98.9	174.2	195.0	225.7
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	3.4	54.6	98.9	174.2	195.0	225.7
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)						
1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	3.4	54.6	98.9	174.2	195.0	225.7
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	3.4	54.6	98.9	174.2	195.0	225.7

Estimate of any current year (FY2004) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: *(Attach a separate page if necessary)*

Time served is estimated based on the time that would have been served under this bill for defendants sentenced during the time period 1/1/2001 through 12/31/2001. Time served under current law is not included on Fiscal Note estimates. Months are based on an average of 30 days per month and the FY04 cost of care of $113.69. Sentences timeframe is estimated as beginning 7/1/2004.

See attached:

Prepared by: Jerry D. Burnett, Director
Phone (907) 465-3339
Division: Administrative Services
Date/Time 3/16/04 8:05 AM
Approved by: Portia C.K. Parker, Deputy Commissioner
Date 3/16/2004
Agency: Department of Corrections

(Revised 9/2003 OMB)

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 244(2d JUD)

ANALYSIS CONTINUATION

For years past FY 2010, there could be a cumulative effect of long-term and short-term sentence increases that would result in higher costs on an annual basis. We have not attempted to estimate these future year costs past FY 2010. Given the recidivism rates for many offenders, it is not clear that these longer sentences will actually have the effect of increasing costs to the Department of Corrections. Our costs are the same on a daily basis whether offenders are serving an extra period of incarceration or are reincarcerated for a new offense. To the extent that increased sentences reduce recidivism for this group of offenders, the legislation may result in lower costs in future years.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 6
Bill Version: CSHB 244(2d JUD)
(H) Publish Date: 4/21/04

Revision Date/Time (Note if correction):
Dept. Affected: Administration
Title: An Act relating to murder in the second degree,...
BRU: Legal and Advocacy Service
Component: Public Defender Agency
Sponsor: Rules Committee
Requester: House Judiciary
Component No.: 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	74.5	74.5	74.5	74.5	74.5	74.5
Travel	2.1	2.1	2.1	2.1	2.1	2.1
Contractual	6.5	6.5	6.5	6.5	6.5	6.5
Supplies	1.0	1.0	1.0	1.0	1.0	1.0
Equipment	6.7	0.7	0.7	0.7	0.7	0.7
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	90.8	84.8	84.8	84.8	84.8	84.8
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	90.8	84.8	84.8	84.8	84.8	84.8
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	90.8	84.8	84.8	84.8	84.8	84.8

Estimate of any current year (FY2004) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

The Public Defender's operations will be fiscally affected by this proposed legislation if it becomes law. In sections 1-7, if established villages and municipalities adopt lower amounts of alcohol for local option purposes than established in Title 4 that would increase the number of prosecutions per year, depending upon the number of local option areas that adopt lower amounts. The Ageny cannot predict how many local option areas will lower the amounts, so the fiscal impact cannot be quantified. Expanding the circumstances under which the offense of furnishing alcohol to a minor is a class C felony instead of a class A misdemeanor, to include violations that occur

See attached page.

Prepared by: Linda K. Wilson, Deputy Director
Phone (907)-334-4416
Division: Public Defender Agency
Date/Time 4/2/04 11:43 AM
Approved by: Mike Miller, Commissioner
Date 4/2/2004
Agency: Department of Administration

(Revised 9/2003 OMB)

COMMITTEE COPY

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 244(2d JUD)

ANALYSIS CONTINUATION

within the boundaries of a local option area will have a fiscal impact on the operation of the Agency. Increasing what was a misdemeanor to a felony increases the workload of the Agency. Felonies are more difficult cases and often require more work, investigation, and resources to defend, especially in rural areas, that would be most impacted by this change. Allowing the forfeiture of money and other items used in financial transactions derived from prohibited activity violative of local option laws, will have a fiscal impact on the operations of the Agency, because there will be more hearings on the issue of forfeiture involving potential claims by lienholders, owners, and others with an interest in the property subject to forfeiture.

Section 9 expands the crime of assault in the third degree, a class C felony, to include when a person with criminal negligence causes serious physical injury by means of a dangerous instrument. This conduct is currently an A misdemeanor. Expanding the crime of third degree assault, a C felony, to include causing serious physical injury with criminal negligence, by means of a dangerous instrument, most likely a vehicle, will certainly have a fiscal impact on Agency operations. Increasing what is now a misdemeanor to a felony level offense increases the workload of the Agency. Felonies are more difficult cases that require more resources to defend. It cannot be accurately predicted however what the increased number of cases from misdemeanor to felony will be, that are the target of this section.

Section 12 (with conforming Section 28(a)) seeks to increase the penalties for and create a new criminal offense for violations of a court-ordered third party custodian's duty. Changing what is now a contempt violation to a charge for a class A or B misdemeanor with significantly stiffer penalties will result in less clients getting out of jail on bail, which will increase the need to more quickly prepare a case for trial and then go to trial more quickly for these clients to ensure their right to a speedy trial. It will also increase the Public Defender Agency's caseloads because it may be appointed to represent many of these custodians charged with these misdemeanors for failing to immediately report a violation.

Section 13 will have a fiscal affect on the Agency operations because more cases will be prosecuted where self-defense used to be legitimately raised, but now will be disallowed, however, it is impossible to accurately predict how many of these new prosecutions will result.

Section 14 proposes changing the quantum of proof that the defendant must produce to the satisfaction of the judge, sitting without a jury, in order to raise self-defense or defense of others to the jury. Instead of "some evidence" as currently required, Section 14 proposes "some plausible evidence."

The Agency will have increased investigative costs as a result of these changes, primarily in the Anchorage office that handles the most cases.

Sections 18-19, 25-26, and 28(b) seek to amend the sentencing statutes to expand the situations in which consecutive sentencing is mandated and to eliminate or restrict the court's ability to determine the appropriate amount of consecutive time to be imposed for certain crimes. This change in the sentencing statutes will likely result in the inability to resolve cases short of trial, when the case is one in which conviction of more than one count would otherwise have been an appropriate resolution, now would be forced to go to trial because of the exposure to mandatory consecutive sentences. This fiscal impact is not easily determined, but inevitable.

Sections 21-24 concern drunk driving and refusal laws under Title 28. It broadens felony DUI and refusal to include a person driving under the influence who has any prior conviction for felony DUI or refusal. Making any subsequent DUI or refusal a felony if there is a prior conviction for felony DUI or refusal will impact the operations of the agency, probably not immediately, but in the future. It is unknown how many people convicted of felony DUI or refusal will allegedly reoffend after 10 years has elapsed. Since the enactment of felony DUI and refusal in 1996, the number of these cases handled by the Agency has increased every year, In FY 99 the Agency handled appoximately 125 felony DUI and refusals, but in FY02 it handled over 300. Felony prosecutions are more difficult cases and require more work, investigation, and resources to defend, especially in rural areas.

For all of the above reasons, one full time investigator is required in the Anchorage office to meet the fiscal challenges this bill will have on the operations of the Agency.

	HB 244 as Introduced	CSHB 244 (Jud)
Heat of Passion	Makes Heat-of-passion (essentially a form of temporary insanity), an affirmative defense that the defendant must prove by a preponderance of evidence, just like insanity.	No similar provision
Self-defense Burden of Proof	Makes self-defense an affirmative defense, that the defendant must prove by a preponderance of evidence, with certain exceptions.	No similar provision. DOES NOT CHANGE THE BURDEN OF PROOF.
Self-defense Standards	Prohibits use of deadly force if a person brings a deadly weapon to an encounter with reckless disregard that the encounter would result in combat.	Prohibits a claim of self-defense if a deadly weapon (i.e., guns or knives) is used to further the felony criminal objectives of other persons (i.e., gang activity), or in a felony drug transaction. Court may instruct a jury on self-defense if the court finds there is some **plausible** evidence to support it.
Felony-Murder	No similar provision	Expands felony-murder rule so offenders committing dangerous crimes can be charged with second-degree murder if their accomplice is killed.
Rights of Relatives and Attorneys	Clarified that a relative or attorney does not have a right to interrupt an interview with the police if the arrested person has consented to the interview after being advised of his rights.	Included
Immunity for witnesses	Conforms statutory law with *State v. Gonzales,* 853 P.2d 526 (Alaska 1993), that requires complete immunity if a person is compelled to testify after claiming a valid privilege against self-incrimination.	Included
Immunity for witnesses	Establishes orderly procedure for the court to consider if the witness has a valid claim of the privilege against self-incrimination. An attorney would be appointed to represent the witness, and the prosecutor would be present. The court would specify the crime to which the privilege applies.	Establishes a similar procedure. **However, the prosecutor would not be present in the hearing.** The Attorney General shall designate a special attorney to find out from the court the seriousness level of the crime, but not the specific crime the witness may have committed. The designated attorney makes the decision whether to grant immunity to the witness, and is prohibited from telling anyone about the seriousness level of the crime.
Misdemeanor Offense for Third Party Custodians Who Violate Court Orders	No similar provision	If a criminal defendant is released from jail into the custody of a third party custodian, the court orders the custodian to notify the police if the defendant breaks conditions of release. Many custodians do not comply with the judge's orders, and allow defendants to violate conditions. Current law makes the custodian guilty of contempt of court, with a possible sentence of 6 months. This bill creates a more specific offense that makes it a class A misdemeanor if the defendant was charged with a felony, and a class B misdemeanor otherwise. Judges are required to make written and oral findings regarding the reasons why a third party custodian is necessary. The House Judiciary bill also includes a letter of intent that judges should "more rigorously apply the statutory framework" for appointing third party custodians.

Consecutive sentences: Generally	Adopts guidelines for judges sentencing defendants for more than one crime. In 1982, the legislature enacted AS 12.55.025 (e) and (g), which requires consecutive sentences for each count of homicide, assault, and sexual assault. Because of imprecise drafting, the courts have interpreted these statutes as a legislative preference for consecutive sentences. This preference is frequently ignored.	Included
Consecutive sentences: Serious Person Crimes	For homicide, kidnapping, first-degree sexual assault, and first-degree sexual abuse (penetration), the bill adopts minimum requirements for consecutive sentences in cases with multiple convictions.	Included
Consecutive sentences: Other Person Crimes	For less serious crimes against a person, such as a misdemeanor assaults, the court must impose some period of consecutive time for each crime.	Included
Consecutive sentences: Other	For other less serious crimes, the bill allows the court to impose sentences that are concurrent or partially concurrent.	Included
Bootlegging	No similar provision	Closes a loophole regarding the local option perimeters around villages. Allows communities to adopt lower limits of alcohol possession and importation as part of the local option system. Increases the penalty for bootleggers in urban areas who send alcohol to local option areas. Increases penalty to a class C felony for furnishing alcohol to minors in local options areas (unless the community opts out), and for sending large amounts of alcohol to local option areas. Strengthens the forfeiture law for bootlegging.
Drunk Driving	No similar provision	Once a person has committed felony drunk driving, all subsequent drunk driving offenses within 20 years would be treated as felonies. Increases penalty to a class C felony for certain vehicular offenses that cause serious physical injury. Prohibits the "big gulp" defense in drunk driving cases.
Protects the Public from Juvenile Sex Offenders	No similar provision	Increases penalty for sexual abuse of young children by teenagers. Allows greater disclosure of information about juvenile offenders.
Prior convictions admissible when elements of crime	The bill allows evidence of the prior convictions to be admitted during the state's case-in-chief, if the state is required to prove the prior convictions (e.g. felony drunk driving) as an element of the offense. Allows the defendant to challenget the validity of these prior convictions only by proving to the court that the defendant was denied the right to counsel or to a jury trial in the prior prosecutions.	No similar provision
Prior convictions at sentencing	For sentencing, the bill allows the defendant to claim that prior convictions are invalid only if the defendant claims that the right to counsel or a jury trial was denied in the prior case.	No similar provision

Sexual abuse and Sexual assault sentence mitigator	Added a statutory mitigating factor for sentencing in sexual assault and sexual abuse cases - that the defendant mitigated the effect of the crime on the victim by entering a plea of guilty or no contest within 30 days of arraignment in superior court.	No similar provision
Discovery in criminal cases: Notice of Defenses	Requires the defense to give notice of certain defenses (e.g. alibi, entrapment) 30 days before trial (current rules require 10 days notice). It also requires the defense to give notice of these defenses if they are likely to raise them, and requires the court to disallow the defense if notice is not given within 7 days of trial.	No similar provision
Discovery in criminal cases: Sanctions	Clarifies that sanctions for discovery violations, such as failure to give notice of defenses discussed above, are in addition to other sanctions provided in the Criminal Rules.	No similar provision
Discovery in criminal cases: Expert witnesses	Requires notice to opposing counsel of expert witnesses at least 45 days before trial. Adopts an orderly procedure for disclosure of written reports of experts, and information about experts retained to respond to expert testimony. The bill also provides sanctions for failure to comply with the rule. The court must exclude the testimony if disclosure is not made within 7 days of trial.	No similar provision
Impeachment evidence	Allows evidence given in a statement, if the statement was voluntary and not coerced, but suppressed because *Miranda v. Arizona* was violated, to be used to impeach the testimony of the person who gave the statement. This would prevent a person from testifying falsely with impunity after a statement is suppressed.	No similar provision
Impeachment evidence	Allows evidence illegally obtained (for example, taken as a result of a search that was later found to be flawed), to be used to impeach testimony, if the court finds that the evidence was not obtained in substantial violation of rights.	No similar provision
Impeachment with prior conviction	The Evidence Rules allow a witness to be impeached with the conviction of a crime involving dishonesty or false statement, but only if no more than five years have elapsed from the date of conviction to the time the witness testifies. However, it is also common that a person is not released from custody within 5 years of conviction, and the witness may never be impeached for conviction of a serious crime. The bill extends the time the conviction may be used to 5 years from the date of unconditional discharge from the conviction.	No similar provision
Domestic violence reports	Allows a statement made within 24 hours of an alleged domestic violence offense to be admitted, as an exception to the hearsay rule.	No similar provision

Highlights of Governor's 2004 Crime Bill (CSHB 244 (2d JUD))

MAKES CRIMINALS THINK TWICE BEFORE COMMITTING DANGEROUS OFFENSES

1. Adopts consecutive sentencing procedures so that some consecutive term is imposed for each victim or each conviction of a serious crime.

2. Disallows self-defense if the state proves a deadly weapon was possessed to further the felony criminal objectives of a gang, or to buy or sell felony amounts of illegal drugs. Also disallows self-defense if the only evidence of it is implausible.

3. Adopts a uniform and constitutional procedure for deciding whether to grant immunity to witnesses, thus making it harder for gang members, accomplices and friends of defendants to refuse to testify by hiding behind state immunity laws.

4. Expands felony-murder law so offenders committing dangerous crimes can be charged with second-degree murder if their accomplice is killed.

5. Takes away the right of attorneys to demand to immediately enter prisons and jails to visit prisoners who are voluntarily speaking with police investigators.

6. Makes it a misdemeanor for a court-appointed custodian to knowingly fail to report that the defendant released to his custody has violated court-imposed conditions.

BOOTLEGGING: HELPS LOCAL OPTION COMMUNITIES

7. Allows communities to adopt lower limits of alcohol possession and importation as part of the local option system; closes a local option loophole.

8. Increases penalty to a class C felony for furnishing alcohol to minors in local option areas, and for sending large amounts of alcohol to local option areas.

9. Allows forfeiture of cash seized in bootlegging offenses.

PROTECTS CHILDREN FROM JUVENILE OFFENDERS

10. Increases penalty for sexual abuse of young children by teenagers.

11. Allows greater disclosure of information about juvenile offenders.

IMPROVES DRUNK DRIVING LAWS

12. Once a person has committed felony drunk driving (three times in 10 years), all additional drunk driving within the next 20 years would be treated as a felony.

13. Increases penalty to a class C felony for certain vehicular offenses that cause serious physical injury.

14. Prohibits the "big gulp" defense in drunk driving cases that encourages drinking drivers to have "one for the road."

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. Jim Holm
Rep. Dan Ogg
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg

State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee
Letter of Intent
CSHB 244 (2d JUD)

The Alaska State Legislature acknowledges the findings contained in the Alaska Judicial Council's study "Alaska Felony Process: 1999" that the use of third party custodians was initially intended to give indigent defendants an equal opportunity for predisposition release, that this bail condition was one of the most important influences on the length of time that defendants spent incarcerated before disposition of their cases, and that this bail condition has resulted in substantially longer terms of predisposition incarceration in non-violent type cases. Given the right to bail guaranteed by Article I, Section 11 of the Alaska Constitution, it is the intent of the Legislature that judicial officers appoint third party custodians in a manner that will further the intent of the statute.

Representative Lesil McGuire
Chair

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

FRANK H. MURKOWSKI, GOVERNOR

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-5903
PHONE: (907)269-5100
FAX: (907)276-3697

March 9, 2004

The Honorable Lesil McGuire, Representative
State Capitol
Juneau, Ak 99801-1182

Re: HB 244, Governor's 2004 Crime Bill

Dear Representative McGuire:

I am writing to voice my support of the Governor's 2004 Crime Bill, which I understand, will be considered as a committee substitute for HB 244. Although I support all the provisions in the Governor's new bill, there are some that are of particular interest to me because they are important in protecting children from abuse.

For over 20 years I have been working in Alaska as a prosecutor of adult sex offenders, as a prosecutor of juvenile offenders, and as a line attorney and supervisor of prosecutors of child protection (CINA) cases, many of which involve sexual abuse of children, as well as other types of abuse and neglect. I have also served on two Governor's Child Protection Task Forces and the Balloon Project Steering Committee. I continue to serve on the Juvenile Justice Working Group, the CINA and Juvenile Delinquency Court Rules Committee, the CINA Court Improvement Project and the Management Team of Alaska CARES (Anchorage's Child Advocacy Center). And I currently serve as chair of the Federal Children's Justice Act Task Force. Finally, I received the 2003 Commissioner's Award from the U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, for my "outstanding leadership and service in the prevention of child abuse and neglect." This was followed by a citation in my honor issued by the Alaska Legislature and sponsored by the Honorable Fred Dyson.

Because of my lengthy and broad experience in several aspects of the fight against child abuse and neglect articulated above, I would like to add my support and comments to four particular provisions of the Governor's crime bill that deal directly with this effort.

First, the provisions giving direction to courts in imposing sentences for defendants convicted of more than one crime will help protect children from abusers. Current laws for sentencing offenders convicted of multiple offenses are confusing and unevenly applied. As I know you are aware, child abusers often victimize more than one child, and more than one time, and therefore these new sentencing provisions are of great interest to me.

Next, because I am well aware that sexual offenders are not always adults, I support the provisions that would increase the seriousness of abuse of young children by teenagers. A 14-year-old that sexually abuses a five- year- old by penetration should be adjudicated of a felony, not a misdemeanor. Even though the incarceration/treatment of these young offenders would not drastically change, increasing the class of the offense would send the correct message to these offenders about the seriousness of the offense. Currently, to a juvenile, it appears more serious to steal someone's laptop (a felony) than to engage in full sexual penetration with a kindergartner (a misdemeanor).

Thirdly, I support the provision that would allow greater information to be released about juvenile sex offenders. A parent should be able to find out if a potential babysitter for their children has been adjudicated in the juvenile justice system for a sex offense. As a mother of two young children, I know I would be horrified if I unwittingly hired a babysitter that perpetrated on one or both of my children. My children could be scarred for life.

Finally, the provisions giving local communities authority to adopt stronger controls over alcohol in local option areas, and related provisions to curb bootlegging, will contribute to a better environment for children in rural areas. Alcohol is almost always involved in incidents of child sexual abuse, physical abuse and neglect. If perpetrators who are prone to abusing children when they have consumed too much alcohol were not allowed access to it, I guarantee the rate of child abuse and neglect would plummet.

Thank you for hearing this legislation. I believe it will greatly assist our efforts to make Alaska a safer place to be a child.

Sincerely,

GREGG D. RENKES
ATTORNEY GENERAL

By: Lisa B. Nelson
Assistant Attorney General

LBN:dal

Alaska Association of Chiefs of Police

Via: US Mail

February 24, 2004

Mr. Dean Guaneli
Chief Assistant Attorney General
PO Box 110300
Juneau, Alaska 99801

RE: Governor's 2004 Crime Bill

Dear Dean,

The Alaska Association of Chiefs of Police would like to offer our support for the Governors 2004 Crime Bill. I believe this bill offers many potential solutions to problems we as Law Enforcement Officers and you as Prosecutors face day on a daily basis.

As an Alaskan Law Enforcement Officer for over 30 years I have watch our criminal justice system come from areas that were weak to a much stronger practice today. However there is still much to do to assure the safety of the people we serve as well as reducing the occurrence of serious and dangerous offenses. This bill assist's those communities that choose to reduce the use of alcohol; it improves our drunken driving laws and helps in the protection of children from juvenile offenders. These are important areas that need to be address and I believe the Governor has made a major step in the right direction.

We support this bill and offer any assistance we can provide. Please contact me if you have any questions or concerns.

Sincerely,

Thomas Lee Clemons
Chief of Police

(907) 224-3338 P.O. Box 167 Seward, AK 99664

HB244

FRANK H. MURKOWSKI
GOVERNOR

GOVERNOR@GOV.STATE.AK.US

P.O. BOX 110001
JUNEAU, ALASKA 99811-0001
(907) 465-3500
FAX (907) 465-3532
WWW.GOV.STATE.AK.US

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 3, 2003

The Honorable Pete Kott
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Kott:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill making changes to criminal procedures that would allow for more straightforward and fair prosecution of crime in Alaska. Additionally, the bill would improve the criminal law regarding sentences.

The bill proposes the following changes in criminal procedures.

Deterring Those Who Take Deadly Weapons to a Fight. We have to cut down on the violence on our streets. There are too many drug dealers, gang members, and violent people who bring guns to situations where they know they will get into fights; they then claim self-defense when they use the gun. Too many innocent people die, and prosecution is too difficult. We need to put a stop to this. If you bring a gun to a fight, you should be responsible for the consequences. Self-defense should not excuse a killing if the defendant brought a deadly weapon to a confrontation with reason to believe that combat would result. The Alaska Supreme Court long ago declared in *Bangs v. State,* 608 P.2d 1 (Alaska 1980), that a person who brings a deadly weapon to a confrontation, having reason to know that the encounter will likely result in combat, should not be entitled to self-defense protection. But trial judges have become too loose in enforcing the Alaska Supreme Court's admonition. A defendant who brings a gun to an encounter and uses it to finish a fight should not be able to claim self-defense.

Improving the Law of Self-Defense, Deadly Force In Self-Defense, Heat Of Passion, And Other Defenses. A related change is also necessary in the law of self-defense and "heat of passion." The prosecution always bears the burden of proving the essential elements of an offense, but if the defendant is going to raise a defense of which the defendant has exclusive knowledge, the defendant should have the burden to prove the defense by a preponderance of the evidence. This is called an affirmative defense, and the legislature has already created many examples in the Alaska Statutes. For example, duress is an affirmative defense. To establish duress, the defendant must prove that the defendant was coerced to commit a crime by a threat of imminent harm. The burden is correctly on the defendant, because only the defendant knows the effect of the threat.

The bill would change several similar defenses -- heat of passion, self-defense, the use of deadly force in self-defense, and defense of a third person -- to affirmative defenses. Currently, prosecutors must prove a negative. For example, if the defendant claims heat of passion (a defense to intentional murder in the first and second degrees), the state would have to disprove that the victim, who is dead, acted in a way to arouse the passion of the defendant. The bill provides that the defendant, who is often the only eyewitness still alive at trial, would be required to prove that "heat of passion" was aroused because of provocation by the victim. Citizens who defend themselves in their own homes and must use force to protect their families are not affected by this change. If the person acting in self-defense is a peace officer, or is on the person's own premises and is not assaulting a household member, this bill leaves the current law on self-defense intact, and requires that the prosecution disprove self-defense.

Right of Arrested Person. The bill would clarify that a person who is arrested has the right to a telephone call or visit from a friend, relative, or attorney. However, the right belongs to the person arrested, to exercise at his or her discretion.

Limiting Collateral Attacks on Prior Convictions. When an habitual criminal commits a new crime, the punishment is often greater because of the person's prior convictions. But it is now a common tactic in the new criminal case to attack the old convictions on technicalities. This means that before the prosecutor can even begin to prove the new crime, the prosecutor is forced to validate what happened in an old conviction, which is often from another state. This is generally a fruitless inquiry. The law already provides many avenues by which offenders can have their convictions reviewed. Unless a conviction was invalid because the defendant was denied the right to counsel or to a jury trial, the state should be able to rely on those convictions in prosecuting repeat criminals.

Admissibility of Prior Convictions. In the criminal code, the conviction of a prior crime is, in a few cases, an element of another offense. For example, having two prior drunk driving convictions within a certain period of time is an element of felony drunk driving. The bill would clarify that in these circumstances, evidence of prior convictions is admissible in order to prove all the elements of the charged offense. Although generally courts do not admit this evidence, the legislature has the authority to allow it. The bill also would overrule *Ostlund v. State*, 51 P.2d 938 (Alaska App. 2002), which requires a bifurcated trial, by allowing, at any time in the prosecution, evidence of prior convictions in the state's case if the prior conviction is an element of the current crime.

Grants of Immunity. The bill would give prosecutors the information needed to decide whether to grant immunity to a witness. If a witness claims a privilege against self-incrimination and refuses to testify, the only way to obtain that testimony under the Alaska Constitution is to give the person complete immunity for any crime the person may testify about. This makes it critical for the state to know what crimes will be immunized before offering immunity, but that is impossible under current procedures used by the courts. The current practice is for the judge to decide whether the witness is entitled to immunity in a closed hearing in which the prosecution is not allowed to be present. The prosecutor thus does not know what crimes require immunity. A homicide prosecution that currently is awaiting trial is a good example. The defendant, while in jail, allegedly tried to arrange for the killing of the trooper transporting him to court, so the defendant could escape. A cellmate notified the police, but will not testify without immunity. The judge held a hearing without the prosecutor, and ruled that the cellmate had a privilege against self-incrimination, but wouldn't reveal how the cellmate's testimony would incriminate him -- or even whether the cellmate feared prosecution for a felony or a misdemeanor. Unwilling to grant immunity blindfolded, the prosecutor must forego this powerful evidence of consciousness of guilt of the defendant.

The bill would give guidance to the court for evaluating a claim of privilege, and would allow the prosecutor to obtain necessary information and to be present at any hearings on the matter. Judges thus would no longer decide these issues without hearing both sides, and the prosecutor can make an informed decision about immunity.

Consecutive sentences. This bill also would strengthen and clarify the law regarding consecutive sentences for conviction of more than one crime. In 1982, AS 12.55.025(e) and (g), which mandated full consecutive sentences for each count of homicide, assault, and sexual offense, were enacted. But because of imprecise drafting, this clear expression of legislative intent was instead interpreted to be merely a "legislative preference" for consecutive

sentences that courts were free to ignore. *State v. Andrews*, 707 P.2d 900 (Alaska App. 1985), *aff'd.* 723 P.2d 85 (Alaska 1986). Later, in 1988, the legislature mandated consecutive sentences for assaults against children, but the provision that was finally enacted provided no firm guidance to the courts, especially in the most serious sexual assaults. AS 12.55.025(h).

As a result of the interpretations of the courts, trial judges ignore or pay only nominal recognition to the legislature's preference for consecutive sentences. For example, in the recent case of *State v. Glaser*, the defendant was convicted of two counts of second degree murder and one count of first degree assault. The sentence imposed by the superior court treated the drunk driving killing of two people and the serious physical injury of a third person as if only one victim had been affected by the crime, and imposed a sentence only slightly longer than the mandatory minimum sentence for a single count of second degree murder.

This bill would adopt minimum requirements for consecutive sentencing in cases involving multiple counts of homicide, kidnapping, first degree sexual assault, and first degree sexual abuse of a minor (sexual penetration). Although this bill does not go so far as the fully consecutive sentencing reflected in the 1982 legislation, it does provide more specific guidance than exists in current law. In a second degree murder case such as *State v. Glaser,* for example, the bill would require that imprisonment for at least 10 consecutive years be imposed for the second conviction of second degree murder, and some additional consecutive term of imprisonment be imposed for the assault on the third victim.

Better Notice of Expert Witnesses And Defenses. Delay, confusion, and other problems often result from the inefficient exchange of information about defenses and expert witnesses in criminal prosecutions. The discovery rules are supposed to make pretrial procedure orderly and avoid surprises at trial. However, our prosecutors report that at times attorneys who give late notice or no notice rarely suffer adverse consequences from the court, which encourages further disregard of the rules. The bill would adopt procedures for a more orderly exchange of expert witness information, and it also would adopt firm sanctions for violation of the rules. If a party does not provide notice of an expert in the time set out in the rule, the person may not use the expert testimony. The bill also would require that notice of certain defenses be made as required by the rules or the offering of that defense could be forfeited.

Expanding Impeachment of Testimony. The bill also would amend several provisions in the Alaska Rules of Evidence. Under the current rules, a statement obtained from a defendant that was not preceded by the warnings required in *Miranda v. Arizona,* 384 U.S. 436 (1966), is not admissible except in a prosecution for perjury. That is, although the statement may not be used against the person for the underlying offense, it may be used in a subsequent perjury prosecution if the person testifies falsely at trial. The bill would expand this exception to allow the statement to be used for impeachment if the person testifies falsely. Under the current court rule, a defendant in a murder case whose statements to police were suppressed could lie with impunity on the stand, knowing that at most the defendant faced a later prosecution for perjury. The bill's change to the court rule would, however, allow the defendant's statement to be used to contradict the defendant's testimony in the murder trial if the defendant lied.

A similar court rule limits the use of evidence obtained with an invalid search warrant or if the police make a mistake in the technical rules governing search and seizure. Such evidence is not admissible for the underlying prosecution, and can only be used in a subsequent perjury case. This bill would allow this evidence to be used to impeach the defendant or other witness on cross-examination. The exclusionary rule discourages careless law enforcement by excluding illegally obtained evidence. It should not give witnesses a chance to testify falsely at trial.

Current rules also allow a witness's credibility to be impeached by a prior conviction for a crime involving dishonesty or false statement (for example, theft, robbery, burglary, perjury) if the conviction occurred within five years of the testimony. However, in many instances, the five-year period is over before the person is even out of jail, so juries never find out that the person has a conviction for dishonesty. This bill would amend the court rule to allow juries to be told of such convictions if less than five years has elapsed from the person's unconditional discharge from probation or parole.

Giving Juries the Full Picture in Domestic Violence Cases. Domestic abusers often succeed in pressuring their domestic partners into not testifying against the abuser. In order to prosecute such cases, the prosecutor must be able to introduce evidence from other persons to tell the jury the whole story. But if the jury isn't allowed to know what was said immediately after the assault, the jury only gets part of the story. We can change this, and provide more perpetrators with the help they need to stop abusing. Victims of domestic violence are often unavailable to testify at trial -- often for compelling reasons concerning their safety and the safety of their children. Under current court rules, if the victim is not present, the statements of the victim are admissible only if the statements qualify under the narrow rule for "excited utterances."

This bill would expand that rule in domestic violence cases, so that a jury can learn about all statements made within 24 hours of the crime, if there are other indications of reliability. This hearsay exception would apply to statements that an assault occurred, and also if the victim recanted and denied that an assault occurred.

New Mitigating Factor for Defendants Who Show Concern for Victims of Sexual Offenses. Victims of sexual offenses, more so than any other crime, dread testifying in open court and often view giving testimony as being victimized again. They must not only testify in front of a jury of citizens and the defendant who violated them, but it must be done in public and often in cases that gain press attention. This is very traumatic for the victim. Sex offenders who have genuine remorse for their crimes do not want to put the victim through this crucible. For those sex offenders who quickly plead guilty, thus sparing their victims the ordeal of public testimony, this bill would provide a statutory "mitigating factor" that the judge may take into consideration in reducing the person's sentence.

I urge your prompt and favorable consideration of this bill.

Sincerely,

Frank H. Murkowski
Governor

Replacement

by Meyer

23-GH1024\D.1
Luckhaupt
5/14/03

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 244(JUD)

Page 1, line 1, following "**Procedure;**":

Insert "**relating to defenses and affirmative defenses to certain criminal acts;**"

Page 1, following line 7:

Insert a new bill section to read:

"*** Section 1.** AS 11.41.115(a) is amended to read:

(a) In a prosecution under AS 11.41.100(a)(1)(A) or 11.41.110(a)(1), it is **an affirmative** [A] defense that the defendant acted in a heat of passion, before there had been a reasonable opportunity for the passion to cool, when the heat of passion resulted from a serious provocation by the intended victim. "

Renumber the following bill sections accordingly.

Page 9, line 12:

Delete "secs. 4, 6, 7, and 15"

Insert "secs. 1, 5, 7, 8, and 16"

Page 9, line 14:

Delete "secs. 1 - 3, 5, and 8 - 14"

Insert "secs. 2 - 4, 6, and 9 - 15"

Replacement by Meyer

23-GH1024\D.2
Luckhaupt
5/14/03

AMENDMENT 2

OFFERED IN THE HOUSE

TO: CSHB 244(JUD)

Page 2, following line 3:

Insert a new bill section to read:

"* **Sec. 2.** AS 12.45 is amended by adding a new section to article 2 to read:

Sec. 12.45.033. Admissibility of prior convictions. (a) In a prosecution for a crime that has a prior conviction as an element of the offense, the following are admissible to prove any element of the offense:

(1) evidence of the prior conviction of the defendant;

(2) a stipulation made by the defendant to the prior conviction.

(b) In a prosecution for a crime that has a prior conviction as an element of the offense, the defendant may raise a legal challenge to the validity of a prior conviction only by proving, by a preponderance of evidence to a judge sitting without a jury, that the prior conviction is invalid because the defendant was denied the right to counsel or the right to a jury trial.

(c) In this section,

(1) "denied the right to counsel" means that under the law of the jurisdiction in which the conviction was entered, the defendant had no right to court-appointed counsel, and, in that particular case, the defendant did not retain counsel;

(2) "right to a jury trial" means that under the law of the jurisdiction in which the conviction was entered, the defendant was entitled to a trial by a jury of six or more persons."

Renumber the following bill sections accordingly.

Page 9, line 12:

Delete "secs. 4, 6, 7, and 15"

Insert "secs. 5, 7, 8, and 16"

Page 9, line 14:

Delete "secs. 1 - 3, 5, and 8 - 14"

Insert "secs. 1 - 4, 6, and 9 - 15"

23-GH1024\D.4
Luckhaupt
5/14/03

by Stoltze

AMENDMENT 3

OFFERED IN THE HOUSE

TO: CSHB 244(JUD)

Page 1, lines 12 - 13:

Delete "or any relative or friend of the prisoner"

by Stoltze

23-GH1024\D.3
Luckhaupt
5/14/03

AMENDMENT 4

OFFERED IN THE HOUSE

TO: CSHB 244(JUD)

Page 1, line 5:

Delete ", **609, and 803**"

Insert "**and 609**"

Page 8, line 29, through page 9, line 4:

Delete all material.

Renumber the following bill sections accordingly.

Page 9, line 12:

Delete "secs. 4, 6, 7, and 15"

Insert "secs. 4, 6, 7, and 14"

Page 9, line 14:

Delete "secs. 1 - 3, 5, and 8 - 14"

Insert "secs. 1 - 3, 5, and 8 - 13"

AMENDMENT 5

TO BE OFFERED IN THE HOUSE FINANCE COMMITTEE

BY REPRESENTATIVE Kerttula

TO: CS HB 244 (JUD)

Page 3, line 8:

Delete: "shall"

Insert: "may"

Renumber accordingly.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 244
(H) Publish Date: 4/4/03

Revision Date/Time (Note if correction):
Dept. Affected: Law
Title "An Act relating to the Code of Criminal Procedure; . . ."
BRU Criminal Division
Component All
Sponsor Rules Committee
Requester Governor
Component No.

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type–Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

The bill proposes a number of changes in the law regarding criminal defenses and criminal procedures. It addresses self-defense, and other defenses such as acting in the heat of passion and using deadly force in defense of others. It also would put some limits on collateral attacks on prior convictions. Additionally, the bill adopts a rational procedure for courts to follow in deciding claims of privilege and the granting of immunity, and it makes changes in sentencing procedures.

Passage of this legislation will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson
Phone (907) 465-5370
Division Attorney General's Office
Date/Time 3/20/03 0:30 AM
Approved by: Kathryn Daughhetee for Gregg D. Renkes, Attorney General
Date 3/20/2003
Agency Department of Law

(Revised 9/2002 OMB)

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: HB 244
(H) Publish Date: 4/4/03

Revision Date/Time (Note if correction):
Dept. Affected: Department of Corrections
Title: Criminal Procedures, Sentencing & Related Issues
BRU: Administration & Operations
Component: Institution Director's Office
Sponsor
Requester
Component No. 1381

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	3.4	54.4	98.6	173.6	194.3	224.9
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	**3.4**	**54.4**	**98.6**	**173.6**	**194.3**	**224.9**
CAPITAL EXPENDITURES	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CHANGE IN REVENUES ( )	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	3.4	54.4	98.6	173.6	194.3	224.9
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	**3.4**	**54.4**	**98.6**	**173.6**	**194.3**	**224.9**

Estimate of any current year (FY2003) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: *(Attach a separate page if necessary)*

Time served is estimated based on the time that would have been served under this bill for defendants sentenced during the time period 1/1/2001 through 12/31/2001. Time served under current law is not included on Fiscal Note estimates. Months are based on an average of 30 days per month and the FY03 cost of care of $113.31. Sentences timeframe is estimated as beginning 7/1/2003.

See attached:

Prepared by: Jerry D. Burnett, Director — Phone (907) 465-3339
Division: Administrative Services — Date/Time 3/21/03 8:31 AM
Approved by: Portia C.K. Parker, Deputy Commissioner — Date 3/21/2003
Agency: Department of Corrections

(Revised 9/2002 OMB)

STATE OF ALASKA
2003 LEGISLATIVE SESSION

BILL NO. HB 244

ANALYSIS CONTINUATION

For years past FY 2009, there could be a cumulative effect of long-term and short-term sentence increases that would result in higher costs on an annual basis. We have not attempted to estimate these future year costs past FY 2009. Given the recidivism rates for many offenders, it is not clear that these longer sentences will actually have the effect of increasing costs to the Department of Corrections. Our costs are the same on a daily basis whether offenders are serving an extra period of incarceration or are reincarcerated for a new offense. To the extent that increased sentences may reduce recidivism for this group of offenders, the legislation may result in lower costs in future years.

Replaced 2 Meyer

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 244(JUD)

Page 2, following line 3:

Insert a new bill section to read:

"***Sec. 2.** AS 12.45 is amended by adding a new section to article 2 to read:

Sec. 12.45.117. Admissibility of prior convictions. (a) In a prosecution for a crime that has a prior conviction as an element of the offense, the following are admissible to prove any element of the offense:

(1) evidence of the prior conviction of the defendant;

(2) a stipulation made by the defendant to the prior conviction.

(b) In a prosecution for a crime that has a prior conviction as an element of the offense, the defendant may raise a legal challenge to the validity of a prior conviction only by proving, by a preponderance of evidence to a judge sitting without a jury, that the prior conviction is invalid because the defendant was denied the right to counsel or the right to a jury trial.

(c) In this section,

(1) "denied the right to counsel" means that under the law of the jurisdiction in which the conviction was entered, the defendant had no right to court-appointed counsel and in that particular case the defendant did not retain counsel;

(2) "right to a jury trial" means that under the law of the jurisdiction in which the conviction was entered, the defendant was entitled to a trial by a jury of six or more persons."

Renumber the following bill sections accordingly.

Replaced

Meyer

AMENDMENT 1

OFFERED IN THE HOUSE

TO: CSHB 244(JUD)

Page 1, following line 7:

Insert a new bill section to read:

"***Section 1.** AS 11.41.115(c) is amended to read:

(a) In a prosecution under AS 11.41.100(a)(1)(A) or 11.41.110(a)(1), it is **an affirmative** [A] defense that the defendant acted in a heat of passion, before there had been a reasonable opportunity for the passion to cool, when the heat of passion resulted from a serious provocation by the intended victim."

Renumber the following bill sections accordingly.

23-GH1024\D

AMENDMENT # 3

OFFERED IN HOUSE FINANCE BY REPRESENTATIVE STOLTZE

TO: CS HB 244 (JUD)

Page 1, line 12:

After "prisoner" delete "or any relative or friend of the prisoner"

23-GH1024\D

AMENDMENT # 5 4

OFFERED IN HOUSE FINANCE BY REPRESENTATIVE STOLTZE

TO: CS HB 244 (JUD)

Delete Section 13, beginning on page 8, lines 29 through 31, and page 9, lines 1 through 4.

Renumber sections accordingly.

AMENDMENT

TO BE OFFERED IN THE HOUSE FINANCE COMMITTEE

BY REPRESENTATIVE Kerttula

TO: CS HB 244 (JUD)

Page 3, line 8:

Delete: "shall"

Insert: "may"

Renumber accordingly.

PLETCHER & WEINIG
ASSOCIATED IN THE PRACTICE OF LAW

Richard A. Weinig
ATTORNEY

John W. Pletcher, III
OF COUNSEL

DIMOND CENTER OFFICE TOWER
800 E. DIMOND BLVD., SUITE 3-615
ANCHORAGE, ALASKA 99515-2096

TELEPHONE
(907) 349-1900

e-mail: pwfdlaw@gci.net

FACSIMILE
(907) 349-7758

May 8, 2003

Representative Bill Williams
Room 515
State Capitol
Juneau AK 99801-1182

Dear Representative Williams:

I am writing to ask you to vote against sections 1-5 of SB 170 and HB 244. Sections 1-5 are identical in each bill. They effectively destroy every Alaskan's right of self-defense and effectively prohibit the use of force to protect any third person who may be under attack.

At the present time, a person may use deadly force for self-defense against death, serious injury, kidnaping, sexual assault in the first degree, sexual assault in the second degree, or robbery. A person may use such force as he or she reasonably believes is necessary to defend a third person when he or she reasonably believes that the third person would be justified in using that degree of force for self-defense. (AS 11.81.330 and .340) In either case, the prosecution must prove, beyond a reasonable doubt, that such use of force was not justified.

Under SB 170 and HB 244, self-defense and use of force in defense of a third person are reduced from defenses to affirmative defenses. That means that the prosecution need prove nothing. It places the burden upon the accused to persuade a jury that use of force was necessary. This stands existing law on its head.

Moreover, if the accused was armed at the time of an attack upon him or her, SB 170 and HB 244 would deprive the accused of any right to assert self-defense or justifiable use of force in defense of a third person.

Approximately 15,000 Alaskans have concealed carry permits. Many use them. If a permit holder, lawfully carrying a handgun, were attacked and was forced to use his or her weapon in self-defense or in defense of a third person, SB 170 and HB 244 would preclude him or her from claiming self-defense or justifiable use of force in defense of that third person. If a woman had been previously attacked by an abusive husband or boyfriend and had the good sense to obtain a weapon to defend her or her child against future attacks, SB 170 and HB 244 would preclude her from asserting self-defense or defense of a third person in a subsequent attack. Section 4 of SB 170 and HB 244 state:

> A person may not use deadly force . . . if the person brought a deadly weapon to an encounter with reckless disregard that the encounter would result in combat.

This means that if a carry permit holder or the woman who had been previously attacked armed himself or herself, they could not assert self-defense because they "brought a deadly weapon to an encounter".

SB 170 and HB 244 should not be enacted. They are the sort of legislation which one might expect to emerge from Sara Brady, Senator Diane Feinstein, Senator Charles Schumer or Handgun Control. It is astonishing that a Republican governor or any Alaskan legislator would sponsor such bills.

Enclosed is a April 26, 2003 Anchorage Daily News article on this matter. I concur with the views expressed by Brant McGee and Barbara Brink.

Please let me know what your views are on SB 170 and HB 244.

Thanks for your attention.

My best regards,

Richard A. Weinig

Richard A. Weinig

addresses of all representatives and all senators
this letter and a copy of the clipping goes to each of them.

\\Front desk\front_c\D Cases\WEINIG\SB 170 HB 244.wpd

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

Anchorage Daily News 4/4/03

COMPASS: *Points of view from the community*

Bills assault right to self-defense

By BRANT McGEE and BARBARA BRINK

McGee

While it is claimed the new statute is for convicting gang members, it would dramatically diminish the rights of all of us to self-defense. But the most outrageous impact is on previously assaulted victims.

Brink

Your right to defend yourself and your family is under attack.

A radical change in the law has been proposed (Senate Bill 170; House Bill 244) to make it easier to convict Alaskans who exercise their right of self-defense. Under current law, if you are attacked and forced to defend yourself and later prosecuted, the government must prove beyond a reasonable doubt that your use of force was unjustified. The new statute will shift the burden of proof from the government to you and make you prove your innocence. In some situations you will have no right to defend yourself at all.

Self-defense, the right embodied in every major legal system since Old Testament times, always takes place in moments of crisis. While an Alaskan must act reasonably in using force in self-defense, "detached reflection cannot be demanded in the presence of an uplifted knife." These words by Justice Holmes describe the difficulty of knowing exactly what force is necessary at a particular moment in a confrontation. Determination of the facts by a jury is often difficult and now the government wants to stack the deck. This change in the law will treat you, the victim of an assault, like a criminal.

While it is claimed the new statute is for convicting gang members, it would dramatically diminish the rights of all of us to self-defense. But the most outrageous impact is on previously assaulted victims. The exact new words are that "a person may not use deadly force ... if the person brought a deadly weapon to an encounter with reckless disregard that the encounter would result in combat." In other words, a woman who arms herself because she is afraid her abusive ex-boyfriend might seriously hurt or kill her in an encounter has absolutely no right to self-defense. This proposal denies any right of self-defense to the very people who are most likely to have to exercise it — those in fear of someone who has threatened them. By exercising her Second Amendment rights, she has canceled her right to self-defense.

Defending a loved one from an unexpected deadly assault will require you to prove your innocence. For example, an elderly grandfather has chosen to obtain a concealed weapon permit. Each day he walks his 10-year-old grandson to and from the bus stop. One afternoon, as he approaches the bus stop, he sees a group of older boys surround his grandson and the biggest one begins to pistol whip the boy. As his grandson drops unconscious to the ground, the assailant continues to strike him in the head with the pistol. The grandfather shouts two warnings before he opens fire and kills the assailant. The grandfather is arrested and charged with murder because the assailant's pistol was not employed as a firearm. This man must come to court and prove his innocence.

Why can't we trust juries to acquit in these cases even though the government has turned the presumption of innocence into a presumption of guilt and transferred the burden of proof to the citizen? The answer is that the law should protect the innocent from arrest and prosecution as well. People charged with homicide almost never make bail — most lose their jobs and often their marriages and relationships. The children of jailed defendants are often taken into state custody. The cost of defending such cases will fall upon public agencies who use public dollars to pay lawyers, investigators, experts and scientific analysts. A homicide charge is a life-changing trauma that is never erased by an acquittal.

This change in the law is poorly conceived and runs counter to Alaskans' conception of their right to self-defense. What of the innocent person who, because of the change proposed in this bill, hesitates to act in a moment of crisis and is killed by an attacker?

This proposed change in the law demands public condemnation. Every person who has loved ones to protect has a stake in this issue. Do not let the government kill your right to defend yourself and your family.

■ Public Defender Barbara Brink and Public Advocate Brant McGee manage agencies that provide legal representation to indigent defendants, abused and neglected children, parents and other Alaskans.

Alaska State Legislature

Please enter into the record my testimony to the House Finance
Committee name

Committee on H B 244 SB 170 CSHB 244 dated May 13, 2003
Bill/Subject

NO on Senate bill 170 and House Bill 244!
The rights of Alaskans to self defense
would be gone!! Instead of gov. mentor's
claim that it would help to hasten the
conviction of gang members, we citizens would
be charged guilty if arrested for defense,
until we could prove ourselves innocent.!!
DO NOT LET government KILL OUR RIGHT,
to defend ourselves your FAMILYS

Signed: Ellen O. Johnson
Testifier

all Alaskans
Representing (Optional)

501 KNIK GOOSE BAY Rd
Address

WASILLA ALASKA
Phone number

907-373-1139

HOUSE BILL 244
Sectional Analysis

Section 1. "Heat of passion" applies only to First Degree Murder and Second Degree Murder. If a person kills while in a passion that was the result of serious provocation by the intended victim, that reduces the killing from murder to manslaughter. In one case, a man broke into the home of a drug dealer to recover money, and shot the drug dealer. He claimed that the shooting was done in a "heat of passion" and the Alaska Supreme Court reversed his murder conviction because the trial judge did not believe he was entitled to raise this defense. "Heat of passion" is often a fall-back position for defendants who do not think they will completely escape responsibility under self-defense. In cases where the state is able to disprove self-defense, it may also be required to disprove "heat of passion." This section would change "heat of passion" from a defense, that the state must *disprove* beyond a reasonable doubt, to an affirmative defense, that the defendant must prove by a preponderance of evidence. The defendant is the person who knows the motivation for the killing, and should bear the burden of establishing this justification.

Sections 2 - 4. These change self-defense from a defense, that the state must disprove beyond a reasonable doubt, to an affirmative defense, that the defendant must prove by a preponderance of evidence, with two exceptions. First, self-defense would remain a defense for the state to disprove if the person was on his or her property and did not use force against a household member; Second, it would remain a defense as under current law for force used by a peace officer acting within the scope of his or her duties. In most homicides, the defendant is only person still alive who was present at the killing. As with the defense of duress, the defendant is the person who knows the motivation for the use of force, and should bear the burden of establishing this justification. Section 2 deals with use of non-deadly force in self-defense. Sections 3 and 4 deal with deadly force. Section 4 also provides that a defendant may not claim self-defense for a killing if he brought a deadly weapon to the encounter, and was aware of and disregarded the risk that the encounter would result in combat.

Section 5 makes use of force in defense of a third person an affirmative defense. As with self-defense, the state would still be required to disprove the defense if the incident occurred on the person's property or the force was used by a peace officer.

Section 6 provides that an adult who has volunteered to talk to the police must request to be visited by an attorney, relative or friend. Occasionally attorneys people will demand to visit a person under arrest, even if the person has not made a request for the visit. This interrupts the police investigation, but it is allowed under current law. All other provisions in section 6, regarding the right to immediately make phone calls, are unchanged from current law.

Section 7. When the law provides that an element of a crime depends on a prior conviction or convictions, such as felony drunk driving, the state must prove beyond a reasonable doubt that the past convictions occurred. But the Alaska courts have said that this must occur in two trials, and that the jury must not be told of the past convictions in the first trial. This section reverses that court decision. Section 7 also provides that the defendant may not again litigate the validity of the prior conviction, unless the defendant was not provided counsel or a jury trial. Prior convictions should not again be subject to attack where the defendant has had the opportunity to appeal, and to exercise post-conviction remedies.

Sections 8 -12 and 17. These sections adopt a procedure for making decisions about Fifth Amendment claims and the granting of immunity by the state. Alaska law requires complete, transactional immunity from prosecution for a person who has claimed a privilege; thus, the decision to grant immunity must be made carefully. Currently, the courts hold secret hearings with witnesses who refuse to testify, and then give the state no information that the state needs to decide whether to grant immunity to the witness. Under this bill, the state is allowed the information it needs to make a rational decision about granting immunity from prosecution. Section 8 merely conforms statutory law to a constitutional decision by the Alaska Supreme Cournt. Sections 9 and 10 are minor clarifying amendments. Section 11 defines a term that explains that the witness can communicate to the court through his or her attorney, rather than speaking directly. Section 12 adopts a procedure where the decision about the privilege is made after an attorney is appointed for the witness, and after input by both the witness and the state. Section 17 clarifies that a witness who claims a Fifth Amendment privilege not to testify is entitled to a public defender if the cannot afford one. This codifies current court practice.

Sections 13 and 14, 18 - 20. Sections 13, 18 - 20 are conforming amendments regarding consecutive sentencing. Section 14 gives direction to courts in sentencing for more than one offense. Current law appears to require consecutive sentences, but was not interpreted that way because of bad drafting. This clarifies that for most crimes a court may impose sentences that are concurrent or partially concurrent. However, for homicides, kidnapping and serious sex offenses, this section specifies the minimum amount of consecutive time that must be imposed. For example, for two counts of first degree murder, the court must require the mandatory minimum term of the second offense to be served consecutively. For manslaughter or kidnapping, at least the period of the presumptive term of the second offense must be served consecutively.

Section 15 is similar to section 7, and provides that in imposing a presumptive sentence (which depends on prior convictions), the defendant may only challenge the validity of a prior conviction if he was denied the right to counsel or the right to a jury trial.

Section 16 would adopt a new mitigating factor for sentencing in a sexual felonies. Because these trials are so difficult for the victim, it would allow the court to consider whether to impose a lesser sentence if the defendant reduced the impact on the victim by entering a plea of guilty or no contest within 30 days of arraignment.

Section 21 changes Rule 16 (c)(5), Alaska Rules of Criminal Procedure, to require a defendant to give notice of certain defenses 30 days in advance of trial. Current law requires a shorter notice, and is routinely ignored by defense attorneys and courts.

Section 22 makes a conforming amendment to Rule 16(e)(1), Alaska Rules of Criminal Procedure, by cross-referencing consequences provided in other law for violation of the discovery rules or an order issued by a court under the discovery rules.

Section 23 addresses pretrial discovery of expert witnesses by both the prosecution and the defense. It requires that no later than 45 days before trial, both parties provide opposing counsel with the name and curriculum vitae of expert witnesses. The defense must disclose only those experts that it may call at trial. The prosecution must disclose experts that it may call at trial or that have worked on the case. Defense attorneys frequently instruct their experts not to write reports, because the report would have to be turned over to the prosecution. The prosecution has no such luxury, and is required to provide an expert's report. This section provides that if the defense expert has not written a report, the prosecution is entitled to depose the expert at the expense of the defense. It requires the court to disallow expert testimony if disclosure isn't complete seven days before trial or another time ordered by the court.

Section 24 amends the Alaska Rules of Evidence to provide that a voluntary statement obtained in violation of the technical *Miranda* requirements, may be used to impeach the person who made the statement, if that person testifies differently. Further, evidence that has been suppressed may also be used to impeach a witness. Current law only allows these statements and evidence to be used at a later perjury trial. This makes them available to impeach a witness at the first trial.

Section 25 extends the time for use of prior convictions for impeachment at trial from five years from conviction, to five years from the date of unconditional discharge.

Section 26 adopts a new exception to the rule against use of hearsay evidence, by allowing the use at trial of statements made within 24 hours of a crime involving domestic violence, if the statement reports or describes the crime.

Sections 27 - 31 include conforming repealers, a notice of a court rule change described above, procedural directions, and an effective date, July 1, 2003.