

HB

41

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB41-LAW-CDCO-1-14-1
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title: "An Act relating to minimum periods of
imprisonment for the crime of assault in the fourth degree..." RDU: CRIMINAL
 Sponsor: Rep. Lynn and Rep. McGuire Component: Criminal Justice Litigation
 Requester: House Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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						
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CHANGE IN REVENUES ()						
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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 (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 12.55.135(d) by adding a new subsection that imposes a 30 day sentence for assault in the fourth degree if the assault is committed against an employee of an elementary, junior high, or secondary school while the employee was engaged in the performance of school duties. Most assaults in schools are committed by juveniles, and there aren't enough cases to result in a fiscal impact on the Department of Law as a result of passage of this legislation.

Prepared by: Kathryn Daughhettee, Director Phone 465-3673
 Division: Administrative Services Division Date/Time 1/14/05 4:10 PM
 Approved by: Kathryn Daughhettee for Gregg D. Renkes, Attorney General Date 1/14/2005
 Agency: Department of Law

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 41
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An act relating to minimum sentence RDU Legal and Advocacy Services
for assault on school employee... Component Public Defender Agency
 Sponsor Reps. Lynn & McGuire
 Requester House Judiciary Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
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						
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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 (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would require a mandatory minimum sentence for an assault in the fourth degree committed against any school employee. The Public Defender Agency believes this bill will have a minimal fiscal impact on the operations of the Agency.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)334-4416
 Division: Public Defender Agency Date/Time 1/14/05 9:26 AM
 Approved by: Michael Tibbles, Deputy Commissioner Date 1/14/2005
 Agency: Department of Administration

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: HB041-EED-ESS-01-18-05
 Bill Version: HB 41
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Education & Early Development
 Title An act relating to minimum periods of RDU ESS
imprisonment for the crime of assault in the fourth degree Component Executive Administration
 Sponsor Rep Lynn & Rep McGuire
 Requester Judiciary Component No. 2736

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

There is no financial impact related to this legislation with the Department of Education & Early Development. Rather this legislation extends imprisonment to those who would assault an educator while performing duties at the time of the assault.

Prepared by: Eddy Jeans, Director
 Division: School Finance
 Approved by: Karen Rehfeld, Deputy Commissioner
 Agency: Education & Early Development

Phone: 465-8679
 Date/Time: 1/18/05 3:31 PM
 Date: 1/18/2005

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 41
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
 Title An Act relating to minimum periods RDU Institutional Facilities
of imprisonment for assault: crime against school employees Component Institution Director's Office
 Sponsor Representatives Lynn and McGuire
 Requester Judiciary, Finance Component No. 524

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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	0.0	0.0	0.0	0.0	0.0	0.0
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	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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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	0.0	0.0	0.0	0.0	0.0	0.0
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	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 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)

Due to the extremely small number of potential cases, the Department of Corrections does not anticipate a fiscal impact from the passage of this legislation.

Prepared by: Sharleen Griffin, Acting Director
 Division: Administrative Services
 Approved by: Portia Parker, Deputy Commissioner
 Agency: Department of Corrections

Phone: 465-4641
 Date/Time: 1/20/05 12:57 PM
 Date: 1/20/2005

Logan after game

Friday in the trial of Jerome Logan accused of killing a man after a game, one witness said he did not see Logan about the game. The witness said in Anchorage Superior Court that a team of three white men defeated Logan's team and teased Logan and others. "You got schooled by some

who did not use racial slurs. Logan faces charges for allegedly assaulting Jerry Watterson in July 2000 and a fight with Twete at an East Anchorage bar.

Logan was drinking that night and he might have taunted Watterson. "I was in panic, I was in a panic, I didn't know if I said it. Now I know I said it." Logan's attorney, ex-Butler also asked the judge to tell the police, in the trial Logan as having "shiny white teeth." Logan "had a bright

- Anchorage Daily News

Airman got in the middle of shootout

■ **FATALITY:** Gunfire erupted at trailer court during confrontation.

By LUCAS WALL
Anchorage Daily News

The 19-year-old man shot to death Sunday in a Fairbanks trailer park was an Air Force airman who got in the middle of a shootout involving more than 20 people, including several other airmen and Army soldiers, Alaska State Troopers said Tuesday.

Troopers and three local police departments responded to the Lake View Trailer Court about 12:25 a.m. Terry Hachtel died while en route to Fairbanks Memorial Hospital in a private vehicle.

Seven trooper investigators are

working the case with help from State Crime Lab technicians, the Air Force Office of Special Investigations and the Army Criminal Investigation Division.

Troopers spokesman Greg Wilkinson said events began Friday night at a party in a Fairbanks residence. There was a fight there involving military personnel and civilians, but Wilkinson said he didn't know what it was about.

The night after, a group of 20 or so people including Hachtel went to the trailer, which the Lake View manager said is owned by David Causey. Troopers said the owner was home at the time but wouldn't say how many others were with him.

The group wanted revenge for what happened the previous night, Wilkinson said, and several people

tried to enter the trailer. Gunfire erupted between those inside and outside the trailer, and Hachtel was struck in the chest.

Wilkinson said he didn't know how many people fired shots or if Hachtel was among the shooters. One firearm was recovered from inside the trailer and one from outside, he said. He didn't know the types, but said neither was a military weapon.

About 10 strings of green and orange yarn were strung up outside the trailer Monday as investigators apparently tried to plot bullet trajectory.

"We're trying to establish who fired first," Wilkinson said.

Troopers hope to conclude their investigation within the next two weeks and forward findings to the Fairbanks district attorney's office.

Lt. Esmeralda Silvestre, an Eielson spokeswoman, said Air Force investigators won't comment on the matter. Hachtel's hometown was listed as Fort Ord, Calif., an Army base 5 miles north of Monterey. He is a native of Roy, Utah.

Hachtel joined the Air Force in May 2000 and had been stationed at Eielson since November 2000, Silvestre said. He worked in the 354th Munitions Flight, responsible for taking trailers of bombs and bullets from storage to the flight line for loading onto aircraft.

The Air Force held a memorial service for Hachtel Tuesday afternoon at the base chapel.

■ The Associated Press contributed to this story. Reporter Lucas Wall can be reached at lwall@adn.com or 257-4321.

11/12/02 ADW

to be broadcast on TV, the Internet

Annual State of the Alaska Legislature at 7 p.m. will be cast live on several channels.

The event can be seen on Alaska TV Juneau, KUAC-TV Bethel, the Alaska System (ARCS TV) and Anchorage, and Chantona.

Alaska, the cable-TV service also televises the event. For more information, visit the Gavel to Gavel website at www.ktoo.org/

The event will be broadcast on Alaska television and live-streamed at www.state.ak.us. Anchorage Daily News

Mom pleads not guilty to assaulting girl's teacher

■ **CHARGES:** Woman pulled Taku teacher's hair, tore phone off wall, police say.

By NICOLE TSONG
Anchorage Daily News

A mother who police say attacked her daughter's Taku Elementary teacher pleaded not guilty on Tuesday in Anchorage District Court to charges of assault.

Angel S. Carter, 36, of Anchorage faces two counts of fourth-degree misdemeanor assault and one count of malicious destruction of property.

The maximum penalty for one assault charge is one year in jail and a \$5,000 fine, while destroying

property carries a maximum penalty of six months in jail and a \$1,000 fine. Her trial was set for March 11.

Carter is free on her own recognizance. Judge Stephanie Rhoades also ordered her to stay away from the teacher and Anchorage School District property.

Anchorage police say Carter walked into the fifth-grade classroom on Dec. 13 and asked teacher Bonnie Lucca for documented daily reports on her daughter's behavior. At the time, the teacher was



Carter

working on an assignment with students. When Lucca told Carter she couldn't speak with her until class ended and asked her to leave, Carter became furious and attacked, pushing Lucca and pulling her hair, police said.

Lucca tried to call for help, but Carter grabbed the classroom telephone and tore it off the wall, police said. Other teachers separated the two.

Lucca suffered minor injuries, including a scratch on her face and bruises on her arm and leg. She could not be reached for comment.

In an interview five days after the incident, Carter said she lost her temper that day because of ongoing issues with Lucca. She said

her daughter was having behavioral and academic problems, so she asked Lucca to try daily progress reports for two weeks.

"I was asking for something daily, just for a short period of time, and she would always tell me, 'I don't have time, I'm not going to give this to you.'"

Carter, who also could not be reached for comment Tuesday, said at the time she was sorry the incident happened in front of children.

But "you don't deny a parent from wanting their child to excel," she said.

■ Nicole Tsong can be reached at ntsong@adn.com or 257-4450.

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. John Coghill
Rep. Nancy Dahlstrom
Rep. Pete Kott
Rep. Les Gara
Rep. Max Gruenberg



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

House Judiciary Committee

Memorandum

To: Leg. Legal
From: Vanessa Tondini, Committee Aide
House Judiciary Committee
Date: February 7, 2005
Re: CS Request

Please create a final draft House Judiciary Committee Substitute for work order # 23-LS0307A, Hb 41, incorporating the attached one amendment. The bill was passed out of committee today.

If you have any questions, please call me at 4990.
Thank you!

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

AMENDMENT # 1 - PASSED

OFFERED IN THE
HOUSE JUDICIARY COMMITTEE

BY REP. MCGUIRE

TO: HB 41

Page 2, Line 4:

After "school duties"

Insert "white on school grounds, on a school bus, at a school-sponsored event, or in the administrative offices of a school district"

Gave

Assessment # 2 - FAILS

Page 2, line 7 insert:

The court may determine a storage seizure
is ~~not~~ justified upon proof, under AS 12.55.
155, that any of the factors in
AS 12.55.155 (d) (1-17) apply.

(2) the defendant, although an accomplice, played only a minor role in the commission of the offense;

(3) the defendant committed the offense under some degree of duress, coercion, threat, or compulsion insufficient to constitute a complete defense, but which significantly affected the defendant's conduct;

(4) the conduct of a youthful defendant was substantially influenced by another person more mature than the defendant;

(5) the conduct of an aged defendant was substantially a product of physical or mental infirmities resulting from the defendant's age;

(6) in a conviction for assault under AS 11.41.200 — 11.41.220, the defendant acted with serious provocation from the victim;

(7) except in the case of a crime defined by AS 11.41.410 — 11.41.470, the victim provoked the crime to a significant degree;

(8) *[Repealed, § 42 ch 143 SLA 1982.]*

(9) the conduct constituting the offense was among the least serious conduct included in the definition of the offense;

(10) before the defendant knew that the criminal conduct had been discovered, the defendant fully compensated or made a good faith effort to fully compensate the victim of the defendant's criminal conduct for any damage or injury sustained;

(11) the defendant was motivated to commit the offense solely by an overwhelming compulsion to provide for emergency necessities for the defendant's immediate family;

(12) the defendant assisted authorities to detect, apprehend, or prosecute other persons who committed an offense;

(13) the facts surrounding the commission of the offense and any previous offenses by the defendant establish that the harm caused by the defendant's conduct is consistently minor and inconsistent with the imposition of a substantial period of imprisonment;

(14) the defendant is convicted of an offense specified in AS 11.71 and the offense involved small quantities of a controlled substance;

(15) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the distribution of a controlled substance, other than a schedule IA controlled substance, to a personal acquaintance who is 19 years of age or older for no profit;

(16) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the possession of a small amount of a controlled substance for personal use in the defendant's home;

(17) in a conviction for assault or attempted assault or for homicide or attempted homicide, the defendant acted in response to domestic violence perpetrated by the victim against the defendant and the domestic violence consisted of aggravated or repeated instances of assaultive behavior.

(e) If a factor in aggravation is a necessary element of the present offense, or requires the imposition of a presumptive term under AS 12.55.125(c)(2), that factor may not be used to aggravate the presumptive term. If a factor in mitigation is raised at trial as a defense reducing the offense charged to a lesser included offense, that factor may not be used to mitigate the presumptive term.

(f) If the state seeks to establish a factor in aggravation at sentencing or if the defendant seeks to establish a factor in mitigation at sentencing, written notice must be served on the opposing party and filed with the court not later than 30 days before the date set for imposition of sentence. Factors in aggravation and factors in mitigation must be established by clear and convincing evidence before the court sitting without a jury. All findings must be set out with specificity.

(g) Voluntary alcohol or other drug intoxication or chronic alcoholism or other drug addiction may not be considered an aggravating or mitigating factor.

(h) In this section, "serious provocation" has the meaning given in AS 11.41.115(f). (§ 12 ch 166 SLA 1978; am §§ 39 — 41 ch 102 SLA 1980; am §§ 19, 20 ch 45 SLA 1982;

Alaska State Legislature

Chair

Military and Veterans Affairs Committee

Member

Education Committee
State Affairs Committee
Labor and Commerce Committee
Joint Armed Services Committee
Econ Dev, Int'l Trade & Tourism

Finance Subcommittees



A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

Session:
Alaska State Capitol
Juneau, AK 99801-1182

Phone: (907) 465-4931
Fax: (907) 465-4316
Toll Free: (800) 870-4391

Interim:
716 W. 4th Ave., #330
Anchorage, AK 99501-2133

Phone: (907) 269-0205
Fax: (907) 269-0207

Representative_Bob_Lynn@legis.state.ak.us

January 12, 2005

To: Representative Lesil McGuire, Chairman
Judiciary Committee

Fr: Representative Bob Lynn

Re: HB 41

"An Act relating to minimum periods of imprisonment for the crime of assault in the fourth degree committed against an employee of an elementary, junior high, or secondary school who was engaged in the performance of school duties at the time of the assault."

Please schedule HB 41 to be heard in the Judiciary Committee at your earliest convenience. Attached is a copy of the Bill and supporting documents. Thank you.

Alaska State Legislature

Chair

Military and Veterans Affairs Committee

Member

Education Committee
State Affairs Committee
Labor and Commerce Committee
Joint Armed Services Committee
Econ Dev, Int'l Trade & Tourism

Finance Subcommittees



A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

Session:
Alaska State Capitol
Juneau, AK 99801-1182

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Anchorage, AK 99501-2133

Phone: (907) 269-0205
Fax: (907) 269-0207

Representative_Bob_Lynn@legis.state.ak.us

SPONSOR STATEMENT HB 41

State Statute provides for specific terms of imprisonment for crimes committed against certain public employees, such as peace officers, firefighters, etc., in the performance of their official duties. School employees who, each day, work with our most precious resource, our children, deserve the same level of respect and protection under the law.

This bill revises sentencing guidelines so that an individual convicted as an adult of assault on a school employee during, or because of, the performance of official duties, will receive a *mandatory* minimum term of imprisonment. This would be similar to that imposed upon an individual who assaults a peace officer, firefighter, correctional employee, emergency medical technician, paramedic, ambulance attendance or other emergency responder engaged in the performance of official duties at the time of the offense.

Schools must be safe for teachers and other school employees, as well as for children. This bill adds a giant step toward that safety. Your support of HB 41 is requested.

Angry parent punches schoolteacher

ATTACK: Mother assaults Fairview Elementary teacher; district will pursue charges.

By KATIE PESZNECKER

Anchorage Daily News

(Published: October 15, 2003)

The mother of a Fairview Elementary School student was cited for misdemeanor assault Monday after she confronted her son's teacher in a school hallway and hit the man several times.

Police said the teacher had broken up a fight between two sixth-graders earlier in the day, placing one, Cassandra L. West's son, in a "bear hug" to pull him off the other student. Principal Lois Mance called West, 39, and asked her to come to school to discuss the incident, said Superintendent Carol Comeau.

According to police and school officials, West arrived after school hours and attacked the 40-year-old teacher outside his classroom. She punched him three times, police said.

Comeau said she met with the Fairview teacher Tuesday. He was shaken up, she said, and she assured him the district will pursue charges.

"This is absolutely intolerable," Comeau said. "Our employees should feel safe wherever they are, and nobody has a right to assault an Anchorage employee for any reason. Assaulting school personnel is illegal and she will be prosecuted to the full extent of the law."

In an interview Tuesday, West said she didn't go to the school intending to hit her son's teacher. She said she and her son arrived at the school about 3:45 p.m. While they were there, she said, her son told her he had felt "choked" under the teacher's restraint.

West said she felt overcome with anger and went up to the classroom. When she arrived, she said, she asked the teacher if they could talk. She wanted to be polite, she said.

West said the teacher immediately left the room and suggested they go to the office. He was walking away, with West swearing at him, according to police and West's own account.

"Excuse me," West said she called after him. "I want to know why you put your hands on my kid."

She then jumped on him and hit him, West said. A second teacher intervened and the principal came on the scene.

"To put your hands on somebody's child, it doesn't make sense," West said Tuesday evening. "I was tripped out."

School staff members called police.

West had left in her vehicle when officers arrived, McGee said. Police found her at her home and cited her.

The contract for district teachers says they may "use reasonable and necessary physical force on a student to protect the teacher, a student(s) or others from physical injury" and "in any extraordinary case of breach of discipline, to restrain a physically disruptive student."

EMPLOYMENT Careers

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"Had a student been attacking another student and the teacher stood by and just yelled at the kid, somebody would now hold that teacher responsible for not intervening to prevent injury," said Bob Roses, president of the Anchorage Education Association teachers union. "You have to err on the side of caution."

The teacher did not want to be identified or interviewed, Roses said. "He wants this thing to go away." Police and school officials also refused to identify the teacher.

West has lived in Alaska for eight years and said it hasn't been without trouble. She has been cited several times for minor crimes ranging from assault to theft and said she spent three years in prison on a drug conviction.

She said hitting the teacher was wrong.

"But wasn't it wrong when he touched (my son)?" said West, sipping apple juice at her apartment and wearing a red and white T-shirt that read "Beware! Attitude out of control."

West said she plans to look into filing charges against the teacher.

If someone thinks a teacher has behaved inappropriately, there are procedures in place to investigate that, Roses said.

"The real problem here is the parent coming in and deciding to attack a teacher," he said. "It is never appropriate for any (parent) to take matters into their own hand."

Monday's assault is only the second time an Anchorage teacher has been assaulted at school, district officials say. A Taku Elementary mother in December 2001 assaulted her daughter's teacher in front of a classroom of children. That woman, Angel Carter, was sentenced to 90 days in jail.

Daily News reporter Katie Pesznecker can be reached at kpesznecker@adn.com.

Juneau Empire
Web posted Sunday, December 16, 2001

State Briefs

Parent charged with attacking teacher

ANCHORAGE - The mother of an Anchorage fifth-grader is accused of attacking her daughter's teacher in the classroom.

Angel Carter, 36, has been cited for misdemeanor assault and malicious destruction of property, but has not been taken into custody, police said.

Carter walked into Bonnie Lucca's classroom at Taku Elementary School on Thursday morning and asked the teacher if they could discuss her daughter's grades, police said. At the time, Lucca was working on an assignment with her students.

When Lucca told Carter she couldn't speak with her until class ended and asked her to leave, Carter became furious, pushing the teacher and pulling her hair, police said.

Lucca tried to call for help, but Carter tore the classroom telephone off the wall, police said.

Lucca suffered minor injuries. The School District has banned Carter from school grounds.

Assault nets jail for mom

SENTENCE: Woman who punched teacher gets 120 days.

TATABOLINE BRANT
Anchorage Daily News
Staff

A mother who punched a Fairview Elementary School teacher last fall outside his classroom was sentenced Friday to 120 days in jail and 10 years of probation — the maximum probation for misdemeanor assault, court records say. Cassandra L. West, 39, was also fined \$1,000, forbidden to have contact with the fifth-grade teacher she assaulted, and ordered to stay off Anchorage School District property unless given specific permission to the contrary.

The stiff sentence pleased School District Superintendent Carol Comeau, who said the misdemeanor assault was serious. Comeau is pushing for a state law to establish mandatory minimum jail sentences of 30 to 60 days for people convicted of assaulting school employees.

"I very much appreciate the support of the prosecutor and the Police Department in dealing with this issue," Comeau said. "I can't emphasize strongly enough how I want all our school employees to feel safe while they're on duty at work."

The assault took place around 4 p.m. Oct. 13. West had been called to the school after her son got into a fight and was restrained by a fifth-grade teacher. West confronted the instructor outside his classroom, swore at him and then punched him three times, according to police and West.

West said in an interview in October that she did not go to the school intending to hit anyone but that she was overcome with anger when her son said he felt he had been choked by the teacher. Comeau said Monday that district officials investigated the teacher's actions in restraining the boy and that he was found to have done nothing wrong.

West has convictions for drug, larceny and false reporting offenses and a history of losing her temper, court records show. About six months before the incident at the school, she was arrested for malicious destruction of property for pouring water on the electrical components of her ex-boyfriend's television. She also cut the line to the intercom in his apartment used for buzzing people in, and cracked one of his windows, the documents say. West was ordered to complete an anger management course but never did, court records show.

West could not be reached Monday, but she said in the October interview that hitting the teacher was wrong. "But wasn't it wrong when he touched (my son)?" she said.

Assistant Municipal Attorney Richard Felton said West's sentence was in line with the 90-day jail term Angel Carter was given two years ago after she assaulted a Taku Elementary School teacher.

"I think it's a fair sentence," he said. "There has to be a bright line drawn."

Daily News reporter Tataboline Brant can be reached at tbrant@adn.com or 257-4321.

Juneau Empire
Web posted Wednesday, January 16, 2002

State Briefs

Mom pleads innocent in assault on her daughter's teacher

ANCHORAGE - An Anchorage mother who police say attacked her daughter's teacher pleaded innocent Tuesday in Anchorage District Court to charges of assault.

Angel S. Carter, 36, faces two counts of fourth-degree misdemeanor assault and one count of malicious destruction of property. Her trial is set for March 11.

Carter is free on her own recognizance and has been ordered by a judge to stay away from the teacher and Anchorage School District property.

Anchorage police say Carter walked into the fifth-grade classroom at Taku Elementary School on Dec. 13 and asked teacher Bonnie Lucca for documented daily reports on her daughter's behavior. At the time, the teacher was working on an assignment with students. Lucca told Carter she couldn't speak with her until class ended and asked her to leave, police said. Carter became furious and pushed Lucca and pulled her hair, police said.

Lucca tried to call for help, but Carter grabbed the classroom telephone and tore it off the wall, police said. Other teachers separated the two. Lucca suffered minor injuries, including a scratch and bruises.

Kenai Peninsula Online

Web posted Sunday, March 24, 2002

Anchorage mother sentenced for assaulting fifth-grade teacher

ANCHORAGE (AP) -- A judge sentenced an Anchorage mother to 90 days in jail for assaulting her daughter's teacher in front of a class of fifth-graders.

Prosecutors said Angel Carter in December walked into Bonnie Lucca's classroom at Taku Elementary School and grabbed Lucca after the teacher motioned for her to keep quiet. Carter then hit Lucca and smashed a telephone against her head.

Carter, 36, pleaded guilty Friday to two counts of misdemeanor assault and one count of malicious destruction of property. She also was ordered not to contact teachers without written permission from prosecutors.

"To bring violence in the classroom to children is so horrible, so insidious and unforgivable that I think a serious jail sentence would be warranted," Alaska District Judge Peter Ashman told Carter, whose head remained bowed as he spoke.

Ashman accepted the plea agreement and sentenced Carter to three months in jail. If Carter stays out of trouble during a year of probation, the conviction will be cleared from her record, said municipal attorney Pill Greene.

Although the judge felt Carter's punishment should be more harsh, not accepting the agreement would mean returning the case to trial status. That would postpone an end to the case, he said, and would not be fair to Lucca or her students.

"In real terms, what they'll know is she'll get 90 days in jail, and maybe that's enough," Ashman said.

Carter has no prior record.

During the hearing, she apologized to Superintendent Carol Comeau, Lucca and Taku's principal, Karlyn Daenzer.

"I hope something positive can come out of something negative," she said, turning in her seat to look at them.

Students heard a videotaped apology from Carter in class on Thursday.

During the hearing, Lucca told the judge her version of events.

Earlier that week in December, Carter had approached Lucca, asking for daily progress reports on her daughter. Lucca refused, saying she only had time to do

weekly reports. Substitute teachers for Lucca also told Lucca that Carter tried to intimidate them, and Taku's office staff said Carter had threatened to hurt Lucca.

Another teacher was leading the class Dec. 13 when Carter walked into the classroom with her daughter. Lucca said she motioned with her hand for Carter to stay silent, but the parent came face-to-face with her and started yelling. Then she grabbed Lucca and said they had to go in the hallway, Lucca said.

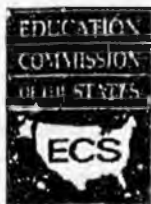
When Lucca resisted, Carter shoved her into a corner and started hitting her, the teacher said. Lucca yelled for help, and tried to use the telephone to call the police, but Carter ripped it off the wall and hit her with it, she said.

Carter's daughter was moved to another classroom after the incident.

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ECS StateNotes

Safety/Crime/Violence

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Teachers: Protections/Limits on Liability

March 1998

ECS Information Clearinghouse

State	Legislation	Limits on teacher action	Assaults against teachers	Other rights of teachers and school employees
AL	HB 470/SB 367; enacted 7-95 S 79 (Acts 94-794); enacted 5-94	Teachers granted immunity, as long as their actions are within the boundaries of local board policy	Warrant of arrest issued against anyone assaulting teacher; offender prosecuted Felony offense	Legal support provided by board; exempt from child-abuse charges when acting within parameters of written board policies; immunity when reporting suspected drug abuse
AR	HB 1422; enacted 4-95		Must be reported by principals to the appropriate local law enforcement agency	
FL	96-293; became law 5-96 without governor's signature		Reclassification of offenses for person committing assault on an elected official or employee of a school district, private school, state-supported school or state university. Any student found to have committed assault on a school employee (as above) – a violation of 784.081, Florida Statutes – shall be expelled and placed in an	Child who attacks school employee to be expelled and placed in an alternative school setting for at least one year

			alternative setting for a minimum of 1 year.	
GA	20-2-1000; enacted 4-95	Teacher free from threat of civil damages when disciplining student, "except for acts or omissions of willful or wanton misconduct"		Legal fees (if teacher/defendant found innocent) paid by plaintiff; county or local board to provide legal support for educator, except in cases when educator violated board policy
IA	Safe Schools Bill; enacted 5-94 HF 2383; enacted 6-94	Teachers may use "reasonable force" to maintain order	Students who commit a violent act against a school employee are to be automatically suspended School board may choose to expel student	Those prosecuting teachers for use of excessive force must present "clear and convincing" evidence of abuse, rather than a "preponderance" of evidence Schools authorized to share information regarding students who wish to transfer school; employees are given leave for injuries incurred during a violent episode at school
IN	enacted 5-95			Legislation allows suspensions once limited to five days to be increased to ten days; Teachers can keep students from their areas of supervision for up to five days; Monies collected from fines to be used to purchase metal detectors and other safety equipment; Schools may enact dress codes
IN	SB 73; enacted 3-96		Punished by school principal by means of up to 120 days of community service or by assigning juvenile court counseling conducted in the presence of a representative of the school corporation; fines assessed for crimes committed with weapons	
MD	HB 298; enacted 1-96		School staff may "take reasonable action necessary to prevent violence"	County board will compensate staff member for medical expenses incurred while breaking up violence; County board will provide legal counsel for staff member who has taken "reasonable action necessary to prevent violence"
MI	PA 158; enacted 6-94		Any person who assaults another person with less than the intent to commit murder or to inflict great bodily harm, with a gun,	A parent of a minor is guilty of a misdemeanor if he or she has custody of the minor, the minor is found in possession of a weapon in a weapon-free school zone, and

			assault on an employee of the school	
NY	<p>S 1410; proposed 3-96, pending as of 7-22-96</p> <p>SB 5157; proposed 3-96, pending as of 7-22-96</p> <p>SB 5160; proposed 3-96, pending as of 7-22-96</p>		<p>Would make assaults on teachers and other school employees felonies</p>	<p>Would give educational workers the same protections currently afforded police officers and firefighters</p> <p>Would allow teachers to suspend students for up to five days; would improve instructional mandates for the education of at-risk students; teachers would be authorized to unilaterally identify offensive student behavior, determine guilt, and dispense punishment;</p> <p>Would mandate districts to establish separate schools or set aside norms for instruction of disruptive students, and dictate when students must be assigned to these segregated settings</p> <p>School employees granted criminal and civil immunity when reporting suspected incidents of violence;</p> <p>District may not take retaliatory action against the employee for reporting such incidents;</p> <p>The employee may sue the director for taking retaliatory action</p>
OR	<p>HB 2487A; enacted 7-95</p>		<p>A school superintendent may ask that a student's driving privileges be revoked for bringing a weapon to school, assault, harassment, menacing, use of threat or intimidation</p>	<p>Public schools allowed more latitude in student suspension and discipline;</p> <p>Teachers may include considerations of attendance when deciding upon grades;</p> <p>Students who bring weapons to school may be expelled for one calendar year</p>
TX	<p>Compact for Safe Schools; active 6-94</p> <p>380.1312, effective 7-96</p>	<p>Teachers allowed reasonable physical force to maintain control</p>	<p>Students who perpetrate violent acts removed from the regular school program</p>	
UT	<p>SB 230; enacted 6-94</p>			<p>Schools notified when pupil is adjudicated for a violent offense;</p>

				<p>school districts must notify principals who must pass on information to teachers on a need-to-know basis;</p> <p>Board of education must decide upon process of dissemination of information;</p> <p>Leaders must be notified when a student is discovered on school property or at a school-sponsored event with a dangerous weapon</p>
VA	<p>22.1-279.1.1; enacted 3-95</p> <p>Notice of Juvenile Arrest; enacted 5-95</p> <p>HB 1041; proposed 1-96, pending as of 7-22-96</p> <p>SB 472</p>	<p>Teachers forbidden to exercise corporal punishment, except when needed to maintain order</p>		<p>Requires the intake officer to notify the division superintendent whenever a juvenile is arrested and charged with a delinquent act involving death, weapons, drugs, assaults, woundings, arson, or burglary</p> <p>Codifies a Virginia Supreme Court decision by granting immunity from civil damages to public school teachers when acting in good faith within their scope of employment while supervising, caring for or disciplining students, unless the acts or omission were the result of gross negligence or willful misconduct</p> <p>Same wording as above, ends at "employment"</p>

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NEA-ALASKA

Affiliated with the National Education Association

January 19, 2005

Representative Bob Lynn
State Capitol, Room 415
Juneau AK 99801

Dear Representative Lynn:

Parents have always sent their children to school feeling their children are in the safest place they could be away from home. Because of the acts of violence in public schools around the country and in our state in recent years, the safety of a child or a school employee in the school environment has increasingly been questioned.

Safe schools and classrooms are absolutely essential for student success. In 2000, the legislature passed HB 253, sponsored by then Representative Fred Dyson, requiring school disciplinary and safety programs. We commend that effort. We believe more must be done.

One of the issues addressed at past Delegate Assemblies has been to continue the NEA-Alaska position that *NEA-Alaska shall seek legislation making the consequences of an assault of an educational employee the same as though the assault were to occur on a police officer.* Your introduction of House Bill (HB 41) accomplishes this task and is appreciated by the members of NEA-Alaska. **We are in support of HB 41.**

NEA-Alaska looks forward to HB 41 being heard in the committee process and will be ready to testify in support of this legislation.

Sincerely,

Bill Bjork, President

**FAIRBANKS NORTH STAR BOROUGH SCHOOL DISTRICT**(907) 452-1000 520 Fifth Avenue Fairbanks, AK 99701-4756 www.northstar.k12.ak.us

January 18, 2005

The Honorable John Coghill, Jr.
The Honorable Bob Lynn
Alaska House of Representatives
State Capitol
Juneau, Alaska 99801

Dear Representatives Coghill & Lynn:

On behalf of the Fairbanks North Star Borough School District, I would like to express my support for HB 41 – Assault on School Employees.

This measure could deter people from seeking out district employees during working hours and/or the performance of school duties, allowing employees to concentrate on our main objective - the education of our children.

If there is any other information you desire or if you have questions, please do not hesitate to contact my office.

Sincerely yours,

Ann E. Shortt, Ed. D.
Superintendent of Schools
/plh

Enclosure

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355



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Wrangell
Pres. Wrangell Chapter

January 14, 2005

Representative Bob Lynn
House of Representatives
State Capitol
Juneau AK 99801-1182

Dear Representative Lynn;

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing HB 41, an act relating to the crime of assault.

The APOA State Board's Legislative Committee recently reviewed this proposed legislation and decided to unanimously support this bill.

Your proposed bill calls for more stringent consequences for those who would assault a school employee while in the performance of their official school duties. We believe this to be appropriate as children often view the aggression and must also deal with the aftermath of fear and uncertainty. There is no room for violence or intimidation in any school.

We thank you for addressing this issue. Please contact the APOA office in Anchorage at 277-0515 if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

Angella Long
State President

**ORIGINAL
IN
MAIL**



January 19, 2005

Statement of the Association of Alaska School Boards
On HB 41
By Carl Rose, Executive Director

The 51 member school districts of AASB have endorsed mandatory minimum sentences for persons convicted of assault on school employees while they are at work on school property. The 60-day sentences proposed in HB 41 may serve as a deterrent to such incidents. If not, the penalty fits the seriousness of such crimes. Our member districts have worked diligently to make Alaska public schools safe places for our children to attend classes. HB 41 would be another tool that we could use to ensure the safety of our children and our employees.

Alaska Council of School Administrators

Resolution 04-4

ASSAULT OF SCHOOL EMPLOYEES

WHEREAS, State statute provides for specific terms of imprisonment for crimes committed against certain public employees, peace officers, firefighters, etc. in the performance of their official duties; and

WHEREAS, school employees deserve the same level of respect and protection under the law; now

THEREFORE IT IS RESOLVED that the Alaska Council of School Administrators urges that Alaska's criminal code or sentencing guidelines be revised so that an adult convicted of assault on a school employee during or because of the performance of official duties will receive a mandatory minimum term of imprisonment similar to that imposed upon an adult who assaults a uniformed or otherwise clearly identified peace officer, firefighter, correctional employee, emergency medical technician, paramedic, ambulance attendant or other emergency responder engaged in the performance of official duties at the time of the offense.

Adopted by the Alaska Council of School Administrators (AASA, AAESP, AASSP and ALASBO) October and December 2004.

the victim, there was at least some evidence to support a finding that defendant's feet were not dangerous instruments, and because the defendant's use of a dangerous instrument was therefore in dispute, the trial court erred in denying defendant's conviction for assault in the second degree. *Willett v. State*, 836 P.2d 955 (Alaska Ct. App. 1992).

Fourth-degree assault as lesser included offense of first-degree sexual assault. — See *Nathaniel v. State*, 668 P.2d 851 (Alaska Ct. App. 1983).

Fourth-degree assault as a component of sexual assault. — Under either a sufficiency-of-the-evidence or a double-jeopardy analysis, sexual assault defendant's separate conviction for fourth-degree assault was improper; where the victim testified that defendant's act of running to the door placed her in fear that he was going to lock the door and recommence a sexual assault, the fourth-degree assault was simply a component of the sexual assault, and, moreover, the State did not prove the culpable mental state. *David v. State*, Ct. App. Op. No. 4862 (File No. A-8408), P.3d (Alaska Ct. App. Apr. 28, 2004).

Fourth-degree assault as lesser included offense of attempted sexual assault in the first degree. — See *Baden v. State*, 667 P.2d 1275 (Alaska Ct. App. 1983).

Fourth-degree assault as lesser included offense of robbery in the second degree. — Conviction for robbery in the second degree was reversed where there was at least some evidence presented at trial to justify finding that the defendant was guilty of assault but not robbery, so that a lesser included offense instruction on assault was required. *Marker v. State*, 692 P.2d 977 (Alaska Ct. App. 1984).

Cross-examination of psychiatrist. — Allowing the prosecutor to cross-examine a psychiatrist by reference to defendant's prior convictions for driving while intoxicated was not an abuse of discretion, where defendant, by putting his mens rea directly in issue through the witness's expert testimony, opened the witness up to cross-examination about the basis for his opinion. *Jansen v. State*, 764 P.2d 308 (Alaska Ct. App. 1988).

Instructions. — In prosecution for fourth-degree assault, since there was evidence from which the jury could infer that defendant believed he had to kick his uncle to prevent harm to his daughter, and that this belief was reasonable, he was entitled to an instruction on defense of a third person as justification for his conduct. *David v. State*, 698 P.2d 1233 (Alaska Ct. App. 1985).

Trial court did not abuse its discretion in refusing to instruct the jury on the lesser-included offense of assault in the fourth degree at defendant's trial for sexual assault in the first degree, where there was no evidence of a disputed fact to distinguish sexual

assault from assault in the fourth degree, and a finding of guilt on the sexual assault offense would have been inconsistent with an acquittal on a fourth-degree assault charge. *Dolchok v. State*, 763 P.2d 977 (Alaska Ct. App. 1988).

Introduction into evidence of tape recording of incident not erroneous and conviction upheld. — See *O'Neill v. State*, 675 P.2d 1288 (Alaska Ct. App. 1984).

Conviction and sentence upheld. — See *Contreras v. State*, 675 P.2d 654 (Alaska Ct. App. 1984).

Sentence found excessive. — Composite sentence of 41 years for convictions of sexual assault in the first degree, kidnapping, three counts of assault in the third degree and one count of assault in the fourth degree was excessive; the defendant should not have received a sentence in excess of 30 years. *Patterson v. State*, 689 P.2d 146 (Alaska Ct. App. 1984).

Sentence affirmed. — See *Afcan v. State*, 711 P.2d 1198 (Alaska Ct. App. 1986).

Sentence disapproved. — Trial court's sentencing decision was clearly mistaken where the sentence fell near the bottom of the authorized range of sentences for fourth-degree assault and the evidence concerning defendant's background and personal characteristics provided little basis for characterizing his case as particularly mitigated, including two prior misdemeanor convictions. *State v. Huletz*, 838 P.2d 1257 (Alaska Ct. App. 1992).

Applied in *Bidwell v. State*, 656 P.2d 592 (Alaska Ct. App. 1983); *Jackson v. State*, 657 P.2d 405 (Alaska Ct. App. 1983); *Huitt v. State*, 678 P.2d 415 (Alaska Ct. App. 1984); *Olp v. State*, 738 P.2d 1117 (Alaska Ct. App. 1987).

Quoted in *Maynard v. State*, 652 P.2d 489 (Alaska Ct. App. 1982); *Michael v. State*, 767 P.2d 193 (Alaska Ct. App. 1988).

Stated in *State v. Williams*, 855 P.2d 1337 (Alaska Ct. App. 1993); *Sosa v. State*, 4 P.3d 951 (Alaska 2000).

Cited in *Folger v. State*, 648 P.2d 111 (Alaska Ct. App. 1982); *Kelly v. State*, 652 P.2d 112 (Alaska Ct. App. 1982); *Moxie v. State*, 662 P.2d 990 (Alaska Ct. App. 1983); *Davis v. State*, 684 P.2d 147 (Alaska Ct. App. 1984); *Norbert v. State*, 718 P.2d 160 (Alaska Ct. App. 1986); *Weston v. State*, 656 P.2d 1186 (Alaska Ct. App. 1982); *Noel v. State*, 754 P.2d 280 (Alaska Ct. App. 1988); *Alfred v. State*, 758 P.2d 130 (Alaska Ct. App. 1988); *Jones v. State*, 765 P.2d 107 (Alaska Ct. App. 1988); *State v. Hernandez*, 877 P.2d 1309 (Alaska Ct. App. 1994); *Samaniego v. City of Kodiak*, 2 P.3d 78 (Alaska 2000); *Griffin v. State*, 9 P.3d 301 (Alaska Ct. App. 2000); *Heaps v. State*, Ct. App. Op. No. 1741 (File No. A-7472), P.3d (Alaska Ct. App. 2001); *Hutchings v. State*, 53 P.3d 1132 (Alaska Ct. App. 2002); *Nelson v. State*, 68 P.3d 402 (Alaska Ct. App. 2003); *Bingaman v. State*, 76 P.3d 398 (Alaska Ct. App. 2003); *Dayton v. State*, 78 P.3d 270 (Alaska Ct. App. 2003).

Collateral references. — Standard for judging conduct of minor motorist charged with gross negligence, recklessness, wilful or wanton misconduct, or

the like, under guest statute or similar common-law rule, 97 ALR2d 861.

Sec. 11.41.250. Reckless endangerment. (a) A person commits the crime of reckless endangerment if the person recklessly engages in conduct which creates a substantial risk of serious physical injury to another person.

(b) Reckless endangerment is a class A misdemeanor. (§ 3 ch 166 SLA 1978)

Sec. 11.81.640. Application of AS 11.81.600 — 11.81.630. AS 11.81.600 — 11.81.630 apply only to this title. (§ 10 ch 166 SLA 1978)

NOTES TO DECISIONS

Stated in *Neitzel v. State*, 655 P.2d 325 (Alaska Ct. App. 1987); *Cole v. State*, 828 P.2d 175 (Alaska Ct. App. 1992); *Alvarez v. Ketchikan Gateway Borough*, 91 P.3d 289 (Alaska Ct. App. 2004).
Cited in *Brown v. State*, 739 P.2d 182 (Alaska Ct. App. 1982).

Article 6. Definitions.

Section 11.81.900. Definitions

Sec. 11.81.900. Definitions. (a) For purposes of this title, unless the context requires otherwise,

(1) a person acts "intentionally" with respect to a result described by a provision of law defining an offense when the person's conscious objective is to cause that result; when intentionally causing a particular result is an element of an offense, that intent need not be the person's only objective;

(2) a person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist; a person who is unaware of conduct or a circumstance of which the person would have been aware had that person not been intoxicated acts knowingly with respect to that conduct or circumstance;

(3) a person acts "recklessly" with respect to a result or to a circumstance described by a provision of law defining an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation; a person who is unaware of a risk of which the person would have been aware had that person not been intoxicated acts recklessly with respect to that risk;

(4) a person acts with "criminal negligence" with respect to a result or to a circumstance described by a provision of law defining an offense when the person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

(b) In this title, unless otherwise specified or unless the context requires otherwise,

(1) "access device" means a card, credit card, plate, code, account number, algorithm, or identification number, including a social security number, electronic serial number, or password, that is capable of being used, alone or in conjunction with another access device or identification document, to obtain property or services, or that can be used to initiate a transfer of property;

(2) "affirmative defense" means that

(A) some evidence must be admitted which places in issue the defense; and

(B) the defendant has the burden of establishing the defense by a preponderance of the evidence;

(3) "animal" means a vertebrate living creature not a human being, but does not include fish;

(4) "benefit" means a present or future gain or advantage to the beneficiary or to third person pursuant to the desire or consent of the beneficiary;

(5) "building", in addition to its usual meaning, includes any propelled vehicle structure adapted for overnight accommodation of persons or for carrying on business when a building consists of separate units, including apartment units, offices, or rental rooms, each unit is considered a separate building;

(6) "cannabis" has the meaning ascribed to it in AS 11.71.900(10), (11), and (14);

(7) "conduct" means an act or omission and its accompanying mental state;

(8) "controlled substance" has the meaning ascribed to it in AS 11.71.900(4);

(9) "correctional facility" means premises, or a portion of premises, used for the confinement of persons under official detention;

(10) "credit card" means any instrument or device, whether known as a credit card, credit plate, courtesy card, or identification card or by any other name, issued without fee by an issuer for the use of the cardholder in obtaining property or services on credit;

(11) "crime" means an offense for which a sentence of imprisonment is authorized; crime is either a felony or a misdemeanor;

(12) "crime involving domestic violence" has the meaning given in AS 18.66.990;

(13) "criminal street gang" means a group of three or more persons

(A) who have in common a name or identifying sign, symbol, tattoo or other physical marking, style of dress, or use of hand signs; and

(B) who, individually, jointly, or in combination, have committed or attempted to commit, within the preceding three years, for the benefit of, at the direction of, or in association with the group, two or more offenses under any of, or any combination of, the following:

(i) AS 11.41;

(ii) AS 11.46; or

(iii) a felony offense.

(14) "culpable mental state" means "intentionally", "knowingly", "recklessly", or with "criminal negligence", as those terms are defined in (a) of this section;

(15) "dangerous instrument" means any deadly weapon or anything that, under the circumstances in which it is used, attempted to be used, or threatened to be used, is capable of causing death or serious physical injury;

(16) "deadly force" means force that the person uses with the intent of causing, or uses under circumstances that the person knows create a substantial risk of causing, death or serious physical injury; "deadly force" includes intentionally discharging or pointing a firearm in the direction of another person or in the direction in which another person is believed to be and intentionally placing another person in fear of imminent serious physical injury by means of a dangerous instrument;

(17) "deadly weapon" means any firearm, or anything designed for and capable of causing death or serious physical injury, including a knife, an axe, a club, metal knuckle or an explosive;

(18) "deception" means to knowingly

(A) create or confirm another's false impression that the defendant does not believe to be true, including false impressions as to law or value and false impressions as to intention or other state of mind;

(B) fail to correct another's false impression that the defendant previously has created or confirmed;

(C) prevent another from acquiring information pertinent to the disposition of the property or service involved;

(D) sell or otherwise transfer or encumber property and fail to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether or not the impediment is a matter of official record; or

(E) promise performance that the defendant does not intend to perform or knows will not be performed;

(19) "defense", other than an affirmative defense, means that

(A) some evidence must be admitted which places in issue the defense; and

(B) the state then has the burden of disproving the existence of the defense beyond a reasonable doubt;

(20) "defensive weapon" means an electric stun gun, or a device to dispense mace or a similar chemical agent, that is not designed to cause death or serious physical injury;

(21) "drug" has the meaning ascribed to it in AS 11.71.900(9);

(22) "dwelling" means a building that is designed for use or is used as a person's permanent or temporary home or place of lodging;

(23) "explosive" means a chemical compound, mixture, or device that is commonly used or intended for the purpose of producing a chemical reaction resulting in a substantially instantaneous release of gas and heat, including dynamite, blasting powder, nitroglycerin, blasting caps, and nitrojelly, but excluding salable fireworks as defined in AS 18.72.050, black powder, smokeless powder, small arms ammunition, and small arms ammunition primers;

(24) "felony" means a crime for which a sentence of imprisonment for a term of more than one year is authorized;

(25) "fiduciary" means a trustee, guardian, executor, administrator, receiver, or any other person carrying on functions of trust on behalf of another person or organization;

(26) "firearm" means a weapon, including a pistol, revolver, rifle, or shotgun, whether loaded or unloaded, operable or inoperable, designed for discharging a shot capable of causing death or serious physical injury;

(27) "force" means any bodily impact, restraint, or confinement or the threat of imminent bodily impact, restraint, or confinement, "force" includes deadly and nondeadly force;

(28) "government" means the United States, any state or any municipality or other political subdivision within the United States or its territories; any department, agency, or subdivision of any of the foregoing; an agency carrying out the functions of government; or any corporation or agency formed under interstate compact or international treaty;

(29) "highway" means a public road, road right-of-way, street, alley, bridge, walk, trail, tunnel, path, or similar or related facility, as well as ferries and similar or related facilities;

(30) "identification document" means a paper, instrument, or other article used to establish the identity of a person; "identification document" includes a social security card, driver's license, non-driver's identification, birth certificate, passport, employee identification, or hunting or fishing license;

(31) "includes" means "includes but is not limited to";

(32) "incompetent person" means a person who is impaired by reason of mental illness or mental deficiency to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning that person;

(33) "intoxicated" means intoxicated from the use of a drug or alcohol;

(34) "law" includes statutes and regulations;

(35) "leased" includes "rented";

(36) "metal knuckles" means a device that consists of finger rings or guards made of a hard substance and designed, made, or adapted for inflicting serious physical injury or death by striking a person;

(37) "misdemeanor" means a crime for which a sentence of imprisonment for a term of more than one year may not be imposed;

(38) "nondeadly force" means force other than deadly force;

(39) "offense" means conduct for which a sentence of imprisonment or fine is authorized; an offense is either a crime or a violation;

(40) "official detention" means custody, arrest, surrender in lieu of arrest, or actual or constructive restraint under an order of a court in a criminal or juvenile proceeding, other than an order of conditional bail release;

(41) "official proceeding" means a proceeding heard before a legislative, judicial, administrative, or other governmental body or official authorized to hear evidence under oath;

(42) "omission" means a failure to perform an act for which a duty of performance is imposed by law;

(43) "organization" means a legal entity, including a corporation, company, association, firm, partnership, joint stock company, foundation, institution, government, society, union, club, church, or any other group of persons organized for any purpose;

(44) "peace officer" means a public servant vested by law with a duty to maintain public order or to make arrests, whether the duty extends to all offenses or is limited to a specific class of offenses or offenders;

(45) "person" means a natural person and, when appropriate, an organization, government, or governmental instrumentality;

(46) "physical injury" means a physical pain or an impairment of physical condition;

(47) "police dog" means a dog used in police work under the control of a peace officer;

(48) "possess" means having physical possession or the exercise of dominion or control over property;

(49) "premises" means real property and any building;

(50) "propelled vehicle" means a device upon which or by which a person or property is or may be transported, and which is self-propelled, including automobiles, vessels, airplanes, motorcycles, snow machines, all-terrain vehicles, sailboats, and construction equipment;

(51) "property" means an article, substance, or thing of value, including money, tangible and intangible personal property including data or information stored in a computer program, system, or network, real property, an access device, a domestic pet or livestock regardless of value, choses-in-action, and evidence of debt or of contract; a commodity of a public utility such as gas, electricity, steam, or water constitutes property, but the supplying of such a commodity to premises from an outside source by means of wires, pipes, conduits, or other equipment is considered a rendition of a service rather than a sale or delivery of property;

(52) "public place" means a place to which the public or a substantial group of persons has access and includes highways, transportation facilities, schools, places of amusement or business, parks, playgrounds, prisons, and hallways, lobbies, and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence;

(53) "public record" means a document, paper, book, letter, drawing, map, plat, photo, photographic file, motion picture, film, microfilm, microphotograph, exhibit, magnetic or paper tape, punched card or other document of any other material, regardless of physical form or characteristic, developed or received under law or in connection with the transaction of official business and preserved or appropriate for preservation by any agency, municipality, or any body subject to the open meeting provision of AS 44.62.310, as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the state or municipality or because of the informational value in it; it also includes staff manuals and instructions to staff that affect the public;

(54) "public servant" means each of the following, whether compensated or not, but does not include jurors or witnesses:

(A) an officer or employee of the state, a municipality or other political subdivision of the state, or a governmental instrumentality of the state, including legislators, members of the judiciary, and peace officers;

(B) a person acting as an advisor, consultant, or assistant at the request of, the direction of, or under contract with the state, a municipality or other political subdivision

f the state, or another governmental instrumentality; in this subparagraph "person" includes an employee of the person;

(C) a person who serves as a member of the board or commission created by statute or by legislative, judicial, or administrative action by the state, a municipality or other political subdivision of the state, or a governmental instrumentality;

(D) a person nominated, elected, appointed, employed, or designated to act in a capacity defined in (A) — (C) of this paragraph, but who does not occupy the position;

(55) a "renunciation" is not "voluntary and complete" if it is substantially motivated, in whole or in part, by

(A) a belief that circumstances exist which increase the probability of detection or apprehension of the defendant or another participant in the criminal enterprise, or which render more difficult the accomplishment of the criminal purpose; or

(B) a decision to postpone the criminal conduct until another time or to transfer the criminal effort to another victim or another but similar objective;

(56) "serious physical injury" means

(A) physical injury caused by an act performed under circumstances that create a substantial risk of death; or

(B) physical injury 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;

(57) "services" includes labor, professional services, transportation, telephone or other communications service, entertainment, including cable, subscription, or pay television or other telecommunications service, the supplying of food, lodging, or other accommodations in hotels, restaurants, or elsewhere, admission to exhibitions, the use of a computer, computer time, a computer system, a computer program, a computer network, or any part of a computer system or network, and the supplying of equipment for use;

(58) "sexual contact" means

(A) the defendant's

(i) knowingly touching, directly or through clothing, the victim's genitals, anus, or male breast; or

(ii) knowingly causing the victim to touch, directly or through clothing, the defendant's or victim's genitals, anus, or female breast;

(B) but "sexual contact" does not include acts

(i) that may reasonably be construed to be normal caretaker responsibilities for a child, interactions with a child, or affection for a child;

(ii) performed for the purpose of administering a recognized and lawful form of treatment that is reasonably adapted to promoting the physical or mental health of the person being treated; or

(iii) that are a necessary part of a search of a person committed to the custody of the Department of Corrections or the Department of Health and Social Services;

(59) "sexual penetration"

(A) means genital intercourse, cunnilingus, fellatio, anal intercourse, or an intrusion, however slight, of an object or any part of a person's body into the genital or anal opening of another person's body; each party to any of the acts described in this subparagraph is considered to be engaged in sexual penetration;

(B) does not include acts

(i) performed for the purpose of administering a recognized and lawful form of treatment that is reasonably adapted to promoting the physical health of the person being treated; or

(ii) that are a necessary part of a search of a person committed to the custody of the Department of Corrections or the Department of Health and Social Services;

(60) "solicits" includes "commands";

(61) "threat" means a menace, however communicated, to engage in conduct describe in AS 11.41.520(a)(1) — (7) but under AS 11.41.520(a)(1) includes all threats to inflict physical injury on anyone;

(62) "violation" is a noncriminal offense punishable only by a fine, but not by imprisonment or other penalty; conviction of a violation does not give rise to an disability or legal disadvantage based on conviction of a crime; a person charged with violation is not entitled

(A) to a trial by jury; or

(B) to have a public defender or other counsel appointed at public expense to represent the person;

(63) "voluntary act" means a bodily movement performed consciously as a result of effort and determination, and includes the possession of property if the defendant was aware of the physical possession or control for a sufficient period to have been able to terminate it. (§ 10 ch 166 SLA 1978; am §§ 29 — 32 ch 102 SLA 1980; am §§ 12 — 14 ch 45 SLA 1982; am §§ 12 — 15 ch 143 SLA 1982; am § 2 ch 54 SLA 1983; am § 5 ch 7 SLA 1984; am § 3 ch 114 SLA 1984; am §§ 1, 2 ch 116 SLA 1984; am § 1 ch 171 SLA 1990; am § 10 ch 59 SLA 1991; am § 3 ch 91 SLA 1991; am § 5 ch 60 SLA 1996; am § 1 ch 86 SLA 1998; am §§ 4, 5 ch 33 SLA 2000; am §§ 16, 17 ch 65 SLA 2000; am § 22 ch 35 SLA 2003; am § 3 ch 139 SLA 2004)

Revisor's notes. — Subsection (b) was reorganized in 1983, 1991, 1996, 1998, 2000 and 2004 to maintain alphabetical order. Paragraph (3) was enacted as paragraph (63) and renumbered in 2004.

Cross references. — See general definitions in AS 01.10.060.

For legislative purpose of the 1991 amendment to paragraph (b)(35) (now (b)(40)), see § 1, ch. 91, SLA 1991 in the Temporary and Special Acts.

Effect of amendments. — The 1998 amendment, effective June 13, 1998, added paragraph (b)(10) (now (b)(12)).

The first 2000 amendment, effective August 9, 2000, added items (b)(57)(B)(iii) and (b)(58)(B)(ii) [now (b)(58)(B)(iii) and (b)(59)(B)(ii)] and made related stylistic changes.

The second 2000 amendment, effective May 23, 2000, in subsection (b) substituted "an access device" for "a credit card" near the middle of paragraph (50) [now (51)] and added paragraphs (1) and (29) [now (30)].

The 2003 amendment, effective June 3, 2003, made stylistic changes in paragraph (b)(58) [now paragraph (b)(59)].

The 2004 amendment effective September 21, 2004, inserted paragraph (b)(3).

Editor's notes. — Section 12, ch. 60, SLA 199 provides that the definition of "criminal street gang" as added by § 5, ch. 60, SLA 1996, applies "to an act that occurs on or after September 1, 1996, except that references to previous offenses refer to acts occurring before, on, or after September 1, 1996."

For related article, see Stern, *Consciousness and Wrongdoing: Mens Rea in Alaska*, 1984 *Alaska Law Rev.* 1.

Legislative history reports. — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 198 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 28, 1980.

NOTES TO DECISIONS

Annotator's notes. — Many of the cases in the notes below were decided under former AS 11.75.030, which provided for the division of crimes into felonies and misdemeanors.

Mere civil negligence not basis for criminal conviction. — The definitions contained in the Revised Criminal Code for both recklessness (paragraph (a)(3) of this section) and criminal negligence (paragraph (a)(4) of this section), which require "gross deviation" from the standard of care that "a reasonable person would observe in the situation" were expressly formulated to preclude mere civil negligence from forming the basis for a criminal conviction. *Andrew v. State*, 653 P.2d 1063 (Alaska Ct. App. 1982).

Paragraph (a)(3) provision as to intoxication is constitutional. — Due process is not violated by the provision in paragraph (a)(3) that intoxication is not to be considered in determining recklessness with regard to circumstances surrounding one's conduct. *Neitzel v. State*, 655 P.2d 325 (Alaska Ct. App. 1982).

Applicability to second-degree murder statute. — The term "intentionally" as used in AS 11.41.110(a)(2) is not used "with respect to a result and thus is not governed by the definition of "intentionally" in AS 11.81.900(a)(1), but should be given the meaning assigned to "knowingly" in AS 11.41.110(a)(2) with respect to conduct ("performance of an act which results in death"). *Neitzel v. State*, 65 P.2d 325 (Alaska Ct. App. 1982).

Criminally negligent homicide scheme not unconstitutionally vague. — Alaska's criminally negligent homicide scheme proscribed by this section and AS 11.41.130(a) is not unconstitutionally vague with respect to, inter alia, the term "gross deviation", as its meaning is well within the comprehension of the average juror. *Panther v. Hames*, 991 F.2d 576 (9th Cir. 1993).

Applicability to robbery statute. — Court did not err, in defendant's robbery case, by denying his motion to dismiss where defendant grabbed the vic

tim's purs' and tugged until she fell down, because that conduct constituted bodily impact. *Butts v. State*, 53 P.3d 609 (Alaska Ct. App. 2002).

Applicability to theft by receiving statute. — The definition of recklessness in paragraph (a)(3) of this section is applicable to term "reckless disregard" in AS 11.46.190(a), the theft by receiving statute. *Andrew v. State*, 653 P.2d 1063 (Alaska Ct. App. 1982).

No decriminalization of escapes by 1978 criminal code revision. — When the criminal code was revised in 1978, the commentary stated that the revised code made three significant changes in the escape laws; there was no mention of the decriminalization of escapes by persons confined in lieu of bail, and the absence of such a comment indicates the legislature's intent not to change the effect of the law in that regard. *Andrejko v. State*, 695 P.2d 246 (Alaska Ct. App. 1985).

Only anonymous phone calls without any legitimate intent prohibited. — When AS 11.61.120(a)(4) (harassment by making anonymous telephone call) is read in conjunction with paragraph (a)(1) of this section, the statute is theoretically broad enough to punish political speech or other legitimate communication upon proof that one of the speaker's subsidiary motives was to annoy the listener. Because the scope of the statute is potentially so broad, AS 11.61.120(a)(4) must be interpreted to prohibit telephone calls only when the call has no legitimate communicative purpose, when the caller's speech is devoid of any substantive information, and the caller's sole intention is to annoy or harass the recipient. *McKillop v. State*, 857 P.2d 358 (Alaska Ct. App. 1993).

"Knowingly." — One who remains "deliberately ignorant of illegal activity," is necessarily "aware of a substantial probability of its existence," and so, acts "knowingly" under subdivision (a)(2). *Dawson v. State*, 894 P.2d 672 (Alaska Ct. App. 1995).

A defendant who inadvertently encounters another person in a public place has not "knowingly" approached or appeared within sight of that person. *Petersen v. State*, 930 P.2d 414 (Alaska Ct. App. 1996).

A conviction for third-degree weapons misconduct under AS 11.61.200(a)(6) does not require the State to present evidence that defendant possessed the handgun with the specific intent that the weapon be untraceable. *Collins v. State*, 977 P.2d 741 (Alaska Ct. App. 1999).

If a person is subject to a protective order containing a provision listed in AS 18.66.100(c)(1)-(7), when a person commits the crime of violating the protective order, the state must prove that the defendant acted "knowingly" as that term is defined in paragraph (a)(2). *Strane v. State*, 16 P.3d 745 (Alaska Ct. App. 2001).

Under the intoxication clause of paragraph (a)(2), unawareness caused by intoxication is deemed to be awareness for purposes of assessing whether a defendant acted "knowingly." *Hutchison v. State*, 27 P.3d 774 (Alaska Ct. App. 2001).

Benefit. — A public defender's agreement to accept meals, marijuana, a trip and a promise to build a cabin from a criminal defendant fell within the definition of "benefit" for purposes of the bribery statute, AS 11.56.110. *Bachlet v. State*, 941 P.2d 200 (Alaska Ct. App. 1997).

"Building." — Walk-in cooler in store building was not a separate unit, but a storage area within the single-business structure. *Arabie v. State*, 699 P.2d 890 (Alaska Ct. App. 1985).

Paragraph (b)(3) provides examples of what types of

units are "separate units": apartments, offices, and rented rooms. This list is illustrative but not definitive, and does not exhaust the list of what would be considered "separate units" for purposes of burglary. *Pushruk v. State*, 780 P.2d 1044 (Alaska Ct. App. 1989).

There is nothing in the statutory definition of building, or the examples given of separate units which would require separate owners, in order to have separate units. *Pushruk v. State*, 780 P.2d 1044 (Alaska Ct. App. 1989).

A person who rents out a portion of his residence can reserve a right of privacy in certain rooms of the house and these rooms can constitute separate buildings within the meaning of paragraph (b)(3). A renter who breaks into those rooms and steals property from them commits burglary. *Wesolic v. State*, 837 P.2d 130 (Alaska Ct. App. 1992).

Freezer trailer which defendants forcibly entered and from which they took bread products, which was standing, self-enclosed metal structure, fit the definition of a "building." *Austin v. State*, 883 P.2d 992 (Alaska Ct. App. 1994).

Although the statute does not define the terms "adapted" and "for carrying on business," the theft of a fax machine from a real estate agent's unoccupied automobile might constitute burglary. *United States v. Sparks*, 265 F.3d 825 (9th Cir. 2001).

Pursuant to subsection (b)(4), unlawful entry of a propelled vehicle, with intent to commit a crime in that vehicle, constitutes the crime of burglary only if the propelled vehicle is adapted for overnight accommodation of persons, or for carrying on business. *Timothy v. State*, 90 P.3d 177 (Alaska Ct. App. 2004).

Terms "building" and "premises" in AS 11.46.310, paragraph (b)(3) of this section and 11.46.350 are used interchangeably. *Arabie v. State*, 699 P.2d 890 (Alaska Ct. App. 1985).

Credit card numbers. — Policy considerations and case law support the conclusion that a credit card number is included in the definition of "credit card." *State v. Morgan*, 985 P.2d 1022 (Alaska Ct. App. 1999).

"Dangerous instrument." — While feet are not dangerous instruments per se, they may become so, however they are shod, if used in such a way as to be capable of causing death or serious physical injury. *Wettanen v. State*, 655 P.2d 1213 (Alaska Ct. App. 1983).

Before a hand may be deemed a "dangerous instrument," the state must present particularized evidence from which reasonable jurors could conclude beyond a reasonable doubt that the manner in which the hand was used in the case at issue posed an actual and substantial risk of causing death or serious physical injury, rather than a risk that was merely hypothetical or abstract. *Konrad v. State*, 763 P.2d 1369 (Alaska Ct. App. 1988).

The use of a dangerous instrument is not necessarily an element of manslaughter, even though it is safe to assume that the vast majority of manslaughter cases will involve the use of an object or implement that falls within the definition of a dangerous instrument. *Krasovich v. State*, 731 P.2d 598 (Alaska Ct. App. 1987).

The use of a dangerous instrument is characteristic of manslaughter, and the automobile is a dangerous instrument characteristically used in committing the offense. *Krasovich v. State*, 731 P.2d 598 (Alaska Ct. App. 1987).

A knife meets the definition of "dangerous instru-

Article 5. General Principles of Criminal Liability.

Section

- 600. General requirements of culpability
- 610. Construction of statutes with respect to culpability
- 615. Offenses defined by age or value

Section

- 620. Effect of ignorance or mistake upon liability
- 630. Intoxication as a defense
- 640. Application of AS 11.81.600 — 11.81.630

Sec. 11.81.600. General requirements of culpability. (a) The minimal requirement for criminal liability is the performance by a person of conduct that includes voluntary act or the omission to perform an act that the person is capable of performing;

(b) A person is not guilty of an offense unless the person acts with a culpable mental state, except that no culpable mental state must be proved

(1) if the description of the offense does not specify a culpable mental state and the offense is

- (A) a violation; or
- (B) designated as one of "strict liability"; or

(2) if a legislative intent to dispense with the culpable mental state requirement is present. (§ 10 ch 166 SLA 1978; am § 27 ch 102 SLA 1980)

Legislative history reports. — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 2 1980.

NOTES TO DECISIONS

Culpable mental state requirement. — Subsection (b) generally requires criminal acts to be performed with an accompanying culpable mental state, but the provision allows exceptions when the legislature has clearly expressed its intent to apply strict liability to a specific element of a crime. *Noblitt v. State*, 808 P.2d 280 (Alaska Ct. App. 1991).

Since no portion of AS 11.56.740 expressly designates the crime as one of strict liability, and the wording of the statute gives no other indication that the legislature wished to dispense with proof of a culpable mental state, the rule of statutory construction obliged the appellate court to construe the statute as requiring proof of culpable mental state. *Strane v. State*, 981 P.2d 122 (Alaska Ct. App. 1999).

For discussion of culpable mental states relat-

ing to violation of fish and game laws, see *Reynolds v. State*, 655 P.2d 1313 (Alaska Ct. App. 1982).

Applied in *Bell v. State*, 668 P.2d 829 (Alaska Ct. App. 1983).

Quoted in *Neitzel v. State*, 655 P.2d 325 (Alaska Ct. App. 1982); *Hart v. State*, 702 P.2d 651 (Alaska Ct. App. 1985); *Kinney v. State*, 927 P.2d 1289 (Alaska Ct. App. 1996); *State v. Simpson*, 53 P.3d 165 (Alaska Ct. App. 2002).

Stated in *Ortberg v. State*, 751 P.2d 1368 (Alaska Ct. App. 1988).

Cited in *Allen v. State*, 759 P.2d 541 (Alaska Ct. App. 1988); *Gudmundson v. State*, 763 P.2d 137 (Alaska Ct. App. 1988); *R.J.M. v. State*, 940 P.2d 87 (Alaska Ct. App. 1997); *Alvarez v. Ketchikan Gateway Borough*, 91 P.3d 289 (Alaska Ct. App. 2004).

Sec. 11.81.610. Construction of statutes with respect to culpability. (a) [Repealed, § 44 ch 102 SLA 1980.]

(b) Except as provided in AS 11.81.600(b), if a provision of law defining an offense does not prescribe a culpable mental state, the culpable mental state that must be proved with respect to

- (1) conduct is "knowingly"; and
- (2) a circumstance or a result is "recklessly."

(c) When a provision of law provides that criminal negligence suffices to establish a element of an offense, that element is also established if a person acts intentionally, knowingly, or recklessly. If acting recklessly suffices to establish an element, that element also is established if a person acts intentionally or knowingly. If acting knowingly suffices to establish an element, that element is also established if a person acts intentionally. (§ 10 ch 166 SLA 1978; am § 44 ch 102 SLA 1980)

NOTES TO DECISIONS

Subsection (b) applies to AS 11.51.120. Taylor v. State, 710 P.2d 1019 (Alaska Ct. App. 1985).

Subsection (b) applies to second-degree criminal trespass statute. — Since AS 11.46.330 is silent regarding mens rea, this section is implicated. Johnson v. State, 739 P.2d 781 (Alaska Ct. App. 1987).

Application of subsection (b) to second-degree murder statute. — Since AS 11.41.110(a)(2) does not specifically establish a mental element for the result ("death") or the surrounding circumstances ("under circumstances manifesting an extreme indifference to the value of human life") involved in second-degree murder, a "reckless" mental state is to be imputed to those two factors based on application of subsection (b) of this section. Neitzel v. State, 655 P.2d 325 (Alaska Ct. App. 1982).

Subsection (b) inapplicable to fish and game offenses. — Subsection (b) does not govern the interpretation of offenses defined in Title 16: For fish and game offenses under that title and its regulations, civil negligence, rather than recklessness, is the de-

fault culpable mental state to be applied. Orr-Hickey v. State, 973 P.2d 612 (Alaska Ct. App. 1999).

For discussion of culpable mental states relating to violation of fish and game laws, see Reynolds v. State, 655 P.2d 1313 (Alaska Ct. App. 1982).

Applied in Afcan v. State, 711 P.2d 1198 (Alaska Ct. App. 1986).

Quoted in Gregory v. State, 717 P.2d 428 (Alaska Ct. App. 1986); Michael v. State, 767 P.2d 193 (Alaska Ct. App. 1988); Cole v. State, 828 P.2d 175 (Alaska Ct. App. 1992); Knix v. State, 922 P.2d 913 (Alaska Ct. App. 1996).

Stated in Ortberg v. State, 751 P.2d 1368 (Alaska Ct. App. 1988); Strane v. State, 16 P.3d 745 (Alaska Ct. App. 2001).

Cited in Baden v. State, 667 P.2d 1275 (Alaska Ct. App. 1983); Allen v. State, 759 P.2d 541 (Alaska Ct. App. 1988); Strane v. State, 981 P.2d 122 (Alaska Ct. App. 1999); Riley v. State, 60 P.3d 204 (Alaska Ct. App. 2002).

Sec. 11.81.615. Offenses defined by age or value. Whenever a provision of law defining an offense requires a determination of the age of the victim or the value of property or services, it is not a defense to the lowest class of offense established by the evidence that the age of the victim is less than the age which would make the offense a higher class of offense or that the value of the property or services exceeds the value which would make the offense a higher class of offense, and a person may be charged and convicted accordingly. (§ 10 ch 166 SLA 1978)

NOTES TO DECISIONS

Sexual offender convicted of lesser degree of offense. — The legislature intended this section to permit a court or jury to convict a sexual offender of a lesser degree of offense despite the fact that the evidence reasonably (or even convincingly) demonstrates that the defendant committed a greater degree of offense because the victim was younger than alleged. Thiessen v. State, 844 P.2d 1137 (Alaska Ct. App. 1993).

Restitution based on actual loss. — Where a defendant is charged with a lesser offense but the evidence establishes that he committed a greater offense, a restitutionary award based on the actual loss to the victim is appropriate, even though the loss exceeds the maximum property-value figure which defines the lesser offense. Fee v. State, 656 P.2d 1202 (Alaska Ct. App. 1982).

Sec. 11.81.620. Effect of ignorance or mistake upon liability. (a) Knowledge, recklessness, or criminal negligence as to whether conduct constitutes an offense, or knowledge, recklessness, or criminal negligence as to the existence, meaning, or application of the provision of law defining an offense, is not an element of an offense unless the provision of law clearly so provides. Use of the phrase "intent to commit a crime", "intent to promote or facilitate the commission of a crime", or like terminology in a provision of law does not require that the defendant act with a culpable mental state as to the criminality of the conduct that is the object of the defendant's intent.

(b) A person is not relieved of criminal liability for conduct because the person engages in the conduct under a mistaken belief of fact, unless

(1) the factual mistake is a reasonable one that negates the culpable mental state required for the commission of the offense;

(2) the provision of law defining the offense or a related provision of law expressly provides that the factual mistake constitutes a defense or exemption; or

(3) the factual mistake is a reasonable one that supports a defense of justification as provided in AS 11.81.320 -- 11.81.430. (§ 10 ch 166 SLA 1978; am § 28 ch 102 SLA 1980)