

LEG. FINANCE - BILLS 1981 - 1982 1688

CSSB 535 - SB 541 1688

COMMITTEE REPORT

HOUSE

FURTHER:

Date: _____

Mr. Speaker:

The Committee on _____ has had _____

under consideration and reports it back as follows:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "~~Letter of Intent~~ ^{commentary}" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

COMMENTARY AND SECTIONAL ANALYSIS
FOR THE 1982 AMENDMENTS TO ALASKA'S LAW ON
CRIMINAL LAW AND PROCEDURE
HCS CSSB535 (2d Judiciary)

Sections 1-4. AS 11.41.100 - 11.41.130 Multiple Deaths

These sections add new provisions applicable to the sections of the revised criminal code defining the crimes of Murder in the First and Second Degrees, Manslaughter and Criminally Negligent Homicide. The intent of these sections is to reverse the outcome in cases similar to Thessen v. State, 508 P.2d 1192 (Alaska 1973). In Thessen the Alaska Supreme Court held that only one homicide conviction may result when a defendant is convicted of setting a fire that kills 14 people. Under these sections the defendant could be convicted of 14 counts of homicide - one for each death. Multiple convictions would also result in Manslaughter cases where multiple deaths are caused by a defendant who drives while intoxicated, thus reversing the Alaska Supreme Court's holding in cases similar to the factual situation in State v. Souter, 606 P.2d 399 (Alaska 1980).

Section 5. AS 11.41.200(a)(1), Assault in the First Degree.

This amendment changes the culpable mental state for this form of Assault in the First Degree from "intentionally" to "recklessly." The effect of this change is to eliminate the defense of intoxication when a person is charged with the crime. See AS 11.81.900(a)(3). Additionally, the amendment requires that serious physical injury result before the crime occurs. This change has been made because the definition of physical injury in AS 11.81.900(b) is very broad and would include relatively minor injuries. Recklessly causing physical injury by means of a dangerous instrument is classified as Assault in the Third Degree under AS 11.41.-220(a)(2).

Section 6. AS 11.41.210(a), Assault in the Second Degree.

The repealer in section 36 of the bill eliminates paragraph (3) of the former Assault in the Second Degree

statute and covers the conduct described in that section under paragraph (2) by providing that recklessly causing serious physical injury is a class C felony regardless of whether a dangerous instrument is used.

Section 7. AS 11.41.220(a), Assault in the Third Degree.

This amendment closes a significant gap in existing law by providing that recklessly causing physical injury by means of a dangerous instrument is a felony. Under current law, recklessly placing a person in fear of imminent serious physical injury by means of a dangerous instrument is classified as a class C felony, but the actual causing of physical injury is only a misdemeanor.

Section 8. AS 11.41.230(a)(3), Assault in the Fourth Degree.

Similar to the change made to AS 11.41.200(a)(1), this amendment changes the culpable mental state for Assault in the Fourth Degree under paragraph (3) from "intentionally" to "recklessly" and thereby eliminates the defense of intoxication.

Sections 9-10. AS 11.46.484, Criminal Mischief in the Third Degree.

These two sections are amendments to the Criminal Mischief in the Third Degree statute which would make the second conviction of "joyriding" a class C felony if the defendant has previously committed that crime. Joyriding would remain a class A misdemeanor for the first offense unless covered by AS 11.46.482(a)(4). The intent of these sections is to more effectively deal with this crime, which is responsible for serious inconvenience and financial suffering by hundreds of innocent motor vehicle owners in Alaska each year, and to more appropriately express societal condemnation of those who continue to commit this crime.

Section 11. AS 11.81.320. Justification: Necessity.

This amendment provides that the defense of necessity is an affirmative defense which the defendant is required

to establish by a preponderance of the evidence. See
AS 11.81.900(b)(1).

Section 12. AS 11.81.900(a)(1). Definition of "Intentionally".

This clarifying amendment provides that when a crime requires that the defendant act intentionally, the intent specified need not be the defendant's only intent. Frequently, a person will act with several intents when he or she commits a crime. As long as the defendant acted with an intent prescribed by the statute, the element of intent has been established, even though several additional intents may have been present.

Section 13. AS 11.81.900(b)(37). Definition of "Organization".

This amendment emphasizes that a government (defined in AS 11.81.900(b)(23)) qualifies as an "organization" as that term is used in the criminal code. An example of a statute applying to crimes against organizations is Criminal Mischief in the First Degree, AS 11.46.480(a)(1).

Section 14. AS 11.81.900(b)(44). Definition of "Property".

This amendment emphasizes that data or information stored in a computer program system, or network constitutes "property" and consequently is protected by statutes prohibiting crimes against property. For example, the theft or destruction of a computer program would constitute Theft or Criminal Mischief in the first, second, third or fourth degree, depending on the value of the particular program, system or network involved.

The amendment also makes clear that domestic pets and livestock are included within the definition of property, and that no value must necessarily accrue to those animals. Of course, certain values would have to be pleaded and proved if property crimes involving these animals were charged at a level above the lowest degree of the property crime.

Section 15. AS 11.81.900(b)(49). Definition of "Serious Physical Injury".

This amendment restructures the definition of "serious physical injury" to include physical injury caused by an act performed under circumstances which create a substantial risk of death, as compared to the current requirement that the physical injury itself create the risk of death.

The necessity for this change is best illustrated by considering a case involving a defendant who stabs a victim in the chest two inches from the heart. If major blood vessels are not severed and the victim makes a rapid recovery from his wound, it could be argued that serious physical injury has not occurred since the existing definition requires that the wound itself create a substantial risk of death. This change resolves any ambiguity on this issue by providing that serious physical injury occurs when the circumstances surrounding the infliction of physical injury create a substantial risk of death. Under the amended definition, a stab wound two inches from the heart would constitute serious physical injury since the injury occurred under circumstances that created a substantial risk of death.

Sections 16-23. Insanity and Competency to Stand Trial.

Introduction.

These sections makes significant significant changes to Alaska's laws pertaining to the defense of insanity in criminal trials and are intended to accomplish three major changes from current law. First, the bill restricts the types of mental diseases or defects that will provide a complete defense to criminal liability. Second, a new verdict of "guilty but mentally ill" will be available in cases where the defendant unsuccessfully raises the defenses of insanity or mental disease or defect negating a culpable mental state. Third, the legislation requires mental health treatment within the criminal justice system for persons falling under the ALI test of insanity specified in repealed AS 12.45.083.

Section 12.45.083 read in conjunction with AS 12.47.130(2) adopt a definition of insanity that limits the defense to persons suffering from the most extreme forms of mental illness. Persons found not guilty by reason of insanity under this test are subject to criminal commitment under AS 12.45.090. This scheme provides substantial protection for the public by requiring a person criminally committed to bear the burden of demonstrating his lack of danger to others before he is released.

Under this new limited affirmative defense of insanity, many persons who would have been found not guilty by reason of insanity under former AS 12.45.083 will now be found guilty and sentenced under the criminal law like any other defendant. AS 12.47.050 recognizes, however, that rehabilitation and eventual reintegration of such persons into society must be premised on a program of mental health care. For these people, the new law provides for a jury verdict of "guilty but mentally ill." This verdict is entered when the defendant, although not meeting the new definition of insanity, would meet the ALI test of the former law. Section 12.47.050 makes it mandatory for the Department of Health and Social Services to provide mental health treatment for a person who is "guilty but mentally ill."

AS 12.45.083, Insanity Excluding Responsibility.

This section limits the scope of the insanity defense to persons suffering from the most serious forms of mental diseases or defects. The defense is specified as an "affirmative defense", a term defined in AS 12.47.130, by reference to AS 11.81.900(b)(1), to require the defendant to establish the elements of the defense by a preponderance of the evidence. The section also continues the requirement, previously found in AS 12.45.085, that the defendant file notice of intent to rely on the defense of mental disease or defect excluding responsibility.

By limiting the defense to cases where the defendant is unable to appreciate the nature and quality of his conduct, this legislation enacts one branch of the M'Naghten test of insanity. That portion of the M'Naghten test which defines legal insanity as including situations where the defendant did not know the wrongfulness of his conduct is specifically rejected by this legislation and excluded from

the revised definition of legal insanity. The fact that the defendant did not appreciate the wrongfulness of his conduct, nevertheless, may be relied upon to establish that the defendant was "guilty but mentally ill" under AS 12.47.030.

An example of a person who could successfully establish the elements of the revised insanity defense is the defendant who, as a result of a mental disease or defect, is unable to realize that he is shooting someone with a gun when he pulls the trigger on what he believes to be a water pistol, or a murder defendant who believes he is attacking the ghost of his mother rather than a living human being. Conversely, this defense would not apply to a defendant who contends that he was instructed to kill by a hallucination, since the defendant would still realize the nature and quality of his act, even though he thought it might be justified by a supernatural being. Such a defendant could be determined guilty but mentally ill under AS 12.47.030.

The terms used to define "mental disease or defect" in AS 12.47.130, are taken from the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, 3rd Edition (1980). The term is intended to include those major mental disorders such as schizophrenia, severe mood disorders, or profound organic mental disorders which substantially impair a person's ability to perceive reality or adapt to it.

There are many mental disorders defined in psychiatry, however, which, though they affect behavior, are not of the severity or magnitude necessary to qualify under this definition. Examples of these disorders would be drug addictions, posttraumatic stress disorders, conduct disorders, dissociative disorders, psychosexual disorders, and impulse control disorders. Voluntary intoxication or drug withdrawal states, regardless of their severity, would not qualify as a "mental disease or defect."

AS 12.45.085, Mental Disease or Defect Negating Culpable Mental State.

This section recognizes that notwithstanding the revised definition of insanity in AS 12.45.083, the state must establish every element of the crime charged against the defendant beyond a reasonable doubt. To the extent that a defendant is able to raise a reasonable doubt that a mental disease or defect made it impossible for him to act

with the culpable mental state required for the commission of the crime, this section requires the defendant to be found not guilty by reason of insanity regardless of whether the defendant could have established by a preponderance of the evidence the affirmative defense of insanity.

Subsection (a) is based substantially on former AS 12.45.085 but makes some minor changes in language. The subsection now refers to evidence that rebuts the "culpable mental state" required for the crime instead of evidence that rebuts the defendant's "state of mind." The term "culpable mental state" is used since it is defined in AS 11.81.900(b)(10). The subsection also requires, in slightly different language than former AS 12.45.085, that the defendant must provide notice of intent to rely on the defense.

Subsection (b) specifies the procedures pertaining to the disposition of a defendant found not guilty by reason of insanity because a mental disease or defect prevented him from acting with a required culpable mental state. If the defendant is not found guilty of any lesser included offense, the defendant is treated identically as if he had successfully established the affirmative defense of insanity in AS 12.45.083. The defendant is then subject to commitment under AS 12.45.090.

Subsection (c) recognizes that in some cases the defendant may be found not guilty because a mental disease or defect prevented him from acting with the culpable mental state required for the crime charged, but, nevertheless, found guilty of a lesser included offense. For example, a defendant suffering from a mental disease or defect who is charged with Murder in the First Degree may have lacked the intent to cause death and may be found not guilty for that reason. Nevertheless, in spite of the mental disease or defect, he may have acted recklessly or with criminal negligence, thus allowing conviction for lesser offenses. In such cases, the defendant is sentenced for the lesser included offense as if he had been determined to be guilty but mentally ill under AS 12.47.030. At the expiration of that sentence, the defendant is subject to commitment pursuant to AS 12.45.090(c) as a result of his acquittal for the higher offense due to the fact that a mental disease or defect prevented him from acting with the required culpable mental state.

AS 12.45.087, Psychiatric Examination.

This section makes several technical and minor substantive amendments to former 12.45.087 specifying the type of examination conducted of a person who intends to raise the affirmative defense of insanity and allows the examination to include an evaluation relevant to a verdict of guilty but mentally ill.

Additionally, this section recognizes the need to protect the public from potentially dangerous persons by requiring that commitment be to a secure facility. This language, does, however preserves the ability of the Department of Health and Social Services to designate appropriate facilities to carry out this function.

AS 12.45.090, Procedure After Raising Defense of Insanity.

The affirmative defense of insanity under AS 12.45.-083 absolves persons of criminal responsibility who were suffering from the most severe forms of mental illness. In addition, some forms of mental illness may negate a required culpable mental state and result in a verdict of not guilty by reason of insanity under AS 12.45.085(b). In both cases, however, the defendant has been shown to have engaged in conduct that the law prohibits. It is therefore the primary concern of this section that the public be protected from the mentally ill who have been shown beyond a reasonable doubt to have committed an act that would have been a crime but for their mental illness. Society has a significant interest in insuring that such persons are not released until an appropriate showing has been made that they no longer pose a significant danger to persons or property. Thus the burden of proof is placed upon a defendant seeking release from commitment following an acquittal by reason of insanity under AS 12.45.083 or 12.45.085 and that burden is increased to a clear and convincing evidence standard.

Paragraph (j)(1) substantially broadens the definition of "mental illness" as compared to "mental disease or defect" appearing elsewhere in Title 12. The court must be satisfied that the defendant is free from any mental condition that bears upon the issue of his dangerousness before release may be ordered.

Paragraph (j)(2) provides the court with a formula for assessing dangerousness. The court is to consider both the risk that the defendant will commit harmful acts, as well as the magnitude of the harm that could be expected. For example, the court should require a greater risk that the defendant will commit acts involving only harm to property, but can rest a determination of dangerousness upon substantially less likelihood of future acts, if the defendant's future acts can be expected to involve the infliction of serious physical injury.

AS 12.45.100, Incompetency to Proceed.

This section makes several technical changes to AS 12.45.100. One substantive change is made allowing use of a statement of a defendant made in the course of an examination to determine incompetency to proceed in the event that the defendant later raises the insanity defense or a defense under AS 12.47.020.

AS 12.45.110, Commitment on Finding of Incompetency.

This section is identical to former AS 12.45.110 but provides that criminal charges should not be dismissed in the event of incompetency to proceed for five years if the crime charged is an unclassified or class A felony. Under prior law, the exemption from the five year provision only applied to Murder.

AS 12.45.115, Determination of Sanity After Commitment.

This section makes a minor technical change.

AS 12.47.030, Guilty But Mentally Ill.

This section defines when a defendant is guilty but mentally ill and is to be used by a jury in determining whether to return a verdict of guilty but mentally ill under AS 12.47.040(a)(4). Additional discussion of that verdict is found in the introductory commentary to this chapter.

AS 12.47.040, Form of Verdict When Evidence of Mental Disease or Defect Admissible.

This section specifies the four verdicts that may be returned when evidence of a mental disease or defect is admitted under AS 12.45.083 or AS 45.085. Subsection (c) provides that a guilty but mentally ill verdict can only be returned if the elements of the crime are established beyond a reasonable doubt and the fact that the defendant was guilty but mentally ill is established by a preponderance of the evidence.

Subsection (b) requires that a jury be informed of the possible dispositions of a defendant when the four verdicts specified in (a) are available. Existing law requires that the jury be instructed of the disposition of a defendant who raises the insanity defense. Kinsman v. State, 512 P.2d 901, 904 (Alaska 1973). The instruction set forth in Kinsman, however, does not accurately state the law since Kinsman seemed to assume that post-insanity commitment is automatic. Kinsman was decided before State v. Alto, 580 P.2d 402 (Alaska 1979) -- the case in which the Supreme Court for the first time directly addressed the issue of commitment following an insanity acquittal. There is no reason why the Kinsman instruction should not be given under present law, although it should be modified to accurately describe the new post-verdict procedures. There is also no reason why the jury should not be informed of the disposition of the defendant following the new guilty but mentally ill verdict.

Section 12.47.050, Disposition of Defendant Found Guilty But Mentally Ill.

This section provides for the disposition of a defendant who meets the ALI insanity test of being unable to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law, but who does not meet the stricter insanity test now specified in AS 12.45.083 and is found guilty but mentally ill pursuant to AS 12.47.-040(a)(4).

A defendant who suffers from a mental disease or defect short of legal insanity will be convicted like any other criminal defendant. By directing the judge to sen-

tence these defendants "as provided by law", subsection (a) is intended to accomplish two goals. First, the maximum term of custody cannot exceed the term of imprisonment permitted by the law governing sentencing for the offense; this brings Alaska law into conformity with due process and equal protection decisions governing the maximum length of a criminal commitment. Second, the defendant's mental disease or defect may be considered by the judge in arriving at the sentence to be imposed, to the extent that the judge is permitted to exercise sentencing discretion. Note, however, that the required terms of imprisonment under the presumptive and mandatory sentencing scheme specified in AS 12.55 are not affected by a verdict of guilty but mentally ill. For example, in the case of Murder in the First Degree, AS 12.55.125(a) specifies a mandatory minimum sentence of 20 years. At least that sentence must be imposed on the defendant, even though he may be guilty but mentally ill.

Subsection (b) requires the Department of Health and Social Services to provide mental health treatment to all persons found guilty but mentally ill. The type of treatment appropriate to a particular defendant is determined by the department. Subsection (c) emphasizes that if treatment is successfully completed, the defendant is then required to serve the remainder of his sentence like any other criminal defendant. Subsection (d) prevents release of a person undergoing treatment on furlough or parole, including work release or any other type of release.

Since mental health treatment is often an important part of the rehabilitation of defendants other than those covered by AS 12.45.083 and 12.45.085, subsection (e) is intended to clarify that mental health treatment remains available to these defendants. However, mental health treatment is mandatory for those defendants found guilty but mentally ill.

AS 12.47.060, Post Conviction Determination of Mental Illness.

In addition to the treatment afforded by AS 12.47.-050(e), this section guarantees to defendants who do not raise the affirmative defense of insanity, or the defense specified in AS 12.45.085, the right to a post-conviction determination of whether they were guilty but mentally ill.

Subsection (a) permits either party or the court to initiate a hearing as to whether the defendant meets the definition of guilty but mentally ill. The hearing is to be held in addition to or in conjunction with the normal sentencing proceeding, since in this instance, a finding of guilty but mentally ill deals only with the type of disposition the defendant will receive.

Subsection (c) by reference requires the Department of Health and Social Services to provide mental health treatment to all persons adjudged guilty but mentally ill at this post-conviction hearing. Those individuals will also be subject to the limitations of AS 12.47.050, including subsections (c) and (d).

AS 12.47.080, Procedure Upon Verdict of Not Guilty.

This section provides a mechanism to insure that procedures for civil commitment can promptly begin if a defendant is found not guilty of a crime but the evidence presented at trial provides the prosecuting attorney with good cause to believe that the defendant satisfies the standards for involuntary civil commitment specified in AS 47.30.700.

AS 12.47.130, Definitions.

The two definitions in this section are discussed in relevant sections of the commentary to this chapter.

Sections 24-25. AS 12.55.025(e) and (g), Consecutive Sentences.

The intent of these sections are to specify circumstances when consecutive sentences are required by law and to specify the general rule that consecutive sentences are required unless the court has the discretion to impose concurrent sentences under subsection (g). These provisions are largely self-explanatory but a few notes are required regarding the intent of paragraph (g)(3). An example of a situation falling under paragraph (g)(3) would be where the defendant within a matter of several minutes went into

several small but separate offices in an office building, stealing and vandalizing the property of different victims. Because there was a substantial change in the nature of the criminal objective -- the persons offended -- the exemption to the rule requiring consecutive sentences under this paragraph could not be established.

Section 26. AS 12.50.110, Immunity of Witnesses.

Section 26 of the bill defines the scope of immunity which must be granted in order to obtain the testimony of witnesses who invoke the privilege against self-incrimination in criminal proceedings. At present, Alaska is one of few jurisdictions which does not have a statutory framework for obtaining necessary testimony in criminal cases by providing immunity to witnesses. The National Advisory Committee on Criminal Justice Standards and Goals recommended in its Report of The Task Force on Organized Crime, released in December of 1976, that

States should enact or revise legislation to provide for immunity from the use of compelled testimony by witnesses before a grand jury, investigating commission, or State court having felony jurisdiction. These witnesses should receive only "use" immunity -- i.e., they should be immunized only from the use of evidence derived directly or indirectly from the compelled testimony.

In Surina v. Buckalew, 629 P.2d 969 (Alaska 1981), the Alaska Supreme Court recognized the inherent authority of the state to confer grants of immunity in order to compel testimony. The court, however, specifically declined to decide the scope of immunity required under the Alaska Constitution in order to compel the testimony of a recalcitrant witness and left to the determination of either the legislature or the court itself under its rule-making authority "the policy question of which option within the constitutional limits is preferable." Surina v. Buckalew, supra at 980. Indeed the court explicitly stated that decisions concerning witness immunity should be legislatively made and emphasized the "crying need" for appropriate legislation. Id. at 978.

The question concerning the required scope of an immunity grant was subsequently and more specifically raised in State v. Serdahely, 635 P.2d 1182 (Alaska 1981), and the court again declined to decide the constitutional question. Rather, the court adopted under its supervisory power a "transactional" requirement as embodied in Rule 732(b) of the Uniform Rules of Criminal Procedure.

The legislature in adopting the approach set forth in this section has determined that a requirement of "use/derivative use" immunity as opposed to "transactional" immunity is the preferable approach both as a matter of sound public policy and as a matter of constitutional requirement. See Letter of May 25, 1982, from Governor Jay S. Hammond to the House Judiciary Committee. Under the test set forth in McConkey v. State, 504 P.2d 823 (Alaska 1982), a witness who is placed in a position where he cannot be incriminated by his testimony is in the same position as any other witness and may therefore not legitimately assert the privilege in order to justify a refusal to testify.

The basic premise underlying the provisions of this section is that the privilege against self-incrimination should not be invoked to exclude necessary evidence in a criminal prosecution when the person asserting the privilege has been afforded a coextensive level of protection under the Constitution of the United States and the Constitution of the State of Alaska. Historically, witness immunity legislation has struck the delicate balance between the government's legitimate investigative needs and the individual's constitutional protections through two basic approaches. The first is "transactional" immunity under which a witness becomes completely immune from prosecution for any subject matter, transaction or occurrence about which he is compelled to testify. The second is "use/derivative use" immunity which prohibits the direct and indirect use of compelled testimony, but does not constitute a complete bar to a prosecution of the witness if the state can establish that its evidence is wholly independent of the compelled testimony.

Particularly with offenses that are conspiratorial in nature and committed under a high degree of secrecy by sophisticated or professional criminals, the key tool available in successfully solving and prosecuting the crime is the ability to compel testimony from a less culpable participant or an uncooperative witness. In order to obtain that testimony, the state should not be forced to allow a person

who participated in criminal acts to go completely free even to the point of setting aside convictions already obtained. This is particularly the case where the testimony compelled and any information obtained from that testimony cannot be used against the witness in a subsequent prosecution.

The witness immunity provisions adopted in this section are modeled after current provisions in federal law codified at 18 U.S.C. §6002 and enacted by Congress as part of the Organized Crime Control Act of 1970, Pub. L. No. 91-452, § 245. These provisions have specifically been upheld as constitutional by the United States Supreme Court in Kastigar v. United States, 406 U.S. 441 (1972). Additionally, the Alaska Supreme Court in McCracken v. Cory, 612 P.2d 990 (Alaska 1980), has held that use and derivative use immunity was constitutionally adequate to protect an individual's fifth amendment interests under the Alaska Constitution in a parole revocation proceeding while a separate criminal prosecution was pending on the same subject matter. Fundamental principles of due process impose a burden on the state to demonstrate, before proceeding with the subsequent prosecution of a witness who has been compelled to testify under an immunity grant, that its evidence is wholly independent of the compelled testimony. This requirement ensures that a witness is placed in the same position as though he had never testified and as observed by the United States Supreme Court is a "rational accommodation" between the privilege against self-incrimination and legitimate societal needs. Kastigar v. United States, 406 U.S. at 446.

Justification advanced in support of a transactional requirement includes the proposition that such a requirement is more likely to induce truthful testimony and more likely to lead to both more information and more reliable information. It is also argued that it is "extraordinarily difficult" to determine whether evidence has been obtained independently of immunized testimony. This justification is included in the commentary to Rule 732(b) of the Uniform Rules of Criminal Procedure and was relied on extensively by the trial court in State v. Serdahely, surpa, as support for the adoption of a transactional requirement.

The conclusion that more truthful and more useful information is obtained under transactional immunity assumes that there is some motivation for an immunized witness to tell everything and, in effect, to incriminate rather than exculpate, a co-defendant. In the vast majority of multi-party and organized crimes, there is simply no such motivation

present. As observed by other commentators

The usefulness of the use type of immunity has nothing to do with the legal fact that you can go out later and prosecute a witness after you immunize him. While the theory says that is what you can do--for any prosecutor to do it is asking for trouble. With transactional immunity, all the witness has to do is mention the transaction; he does not have to fill in the details. So his attorney can tell him to just mention it, and they say, "I don't remember." But with a "use" statute, a smart attorney advises his client to tell all he knows, because the more he tells, the less can be later used against him. So "use" statutes encourage fuller disclosure by witnesses, and that is what they are really all about.

Professor G. Robert Blakely, National Association of Attorneys General, Committee on the Office of the Attorney General, Prosecuting Organized Crime, Summaries of Speeches to the 1974 NAAG Seminars 30 (1974).

Additionally, a witness who is granted transactional immunity is subject to having his testimony discredited to a greater extent than a witness granted use immunity.

While the witness with transactional immunity might be considered suspect having "made a deal" with the prosecution, the witness with testimonial use immunity being compelled to testify, gains nothing by his testimony. Not only does he lack a motivation to lie, and indeed has much to risk if he does, his more independent position is known to jurors and can make his testimony more credible.

Northwestern University School of Law, Symposium: "The Granting of Witness Immunity," The Journal of Criminal Law and Criminology, Vol 67, No. 2 (1976) (remarks of Assistant

Attorney General, Crim. Div., U.S. Dept. of Justice, Richard L. Thornburgh, at page 157) (footnote omitted).

The inadequacy of transactional immunity from a public policy standpoint is made even clearer when measured against recent experience in Alaska in the series of cases out of which State v. Serdahely, supra, arose. Witnesses in multi-party crimes, which involve a series of separate trials, can look forward to successive grants of transactional immunity which relieves them of responsibility for all prior acts of perjury committed while testifying in previous proceedings on the same subject matter. Consequently, such a witness can take the risk of committing perjury during the earlier proceedings in the hope that the state will lose and will decide to drop the entire prosecution. The witness knows that his testimony is needed in subsequent proceedings and that all he has to do is tell the truth in the final proceeding in order to walk away completely. Such a result is against not only good public policy but also good common sense and gives a witness more than the constitution requires.

As previously noted, it is also suggested in support of a transactional requirement that it is "extraordinarily difficult" to determine whether evidence has been obtained independently of immunized testimony. See e.g., Commentary to Rule 732(b) of the Uniform Rules of Criminal Procedure, 10 U.L.A. at 343. An analysis of the federal experience in conducting necessary "taint" hearings under Kastigar v. United States, supra, indicates that the privilege against self-incrimination has been carefully guarded and that the "heavy burden" placed on the government to demonstrate that its case in a subsequent prosecution is wholly independent of immunized testimony has been fully enforced by the courts. See e.g., United States v. Provenzano, 629 F.2d 985, 1005 (3rd Cir. 1980), cert. denied 101 S. Ct. 267 (1981); United States v. Romano, 583 F.2d 1 (1st Cir. 1978); United States v. Jones 542 F. 2d 186, 197-202 (4th Cir.), cert. denied 426 U.S. 922 (1976); United States v. Kurzer 534 F.2d 511 (2nd Cir. 1976); United States v. First Bank of Minot North Dakota, 491 F. 2d 780 (8th Cir. 1973), cert. denied sub. nom. Thompson v. United States, 419 U.S. 825 (1974); United States v. Ostrer, 506 F. Supp. 962 (S.D.N.Y. 1980); United States v. Mitchell, 384 F. Supp. 562 (D.C.D.C. 1974); United States v. Henderson, 406 F. Supp. 417 (D. Del. 1975). The legislature is persuaded that Alaska courts will just as carefully insure that the privilege against self-incrimination is carefully protected in implementing the provisions of this section.

Section 27. AS 12.55.088(a), Modification of Sentence.

This section is intended to reasonably limit the period during which a court may order modification of a sentence already imposed. Present AS 12.55.088(a) sets no time limit on this authority. Under this section the court must act within 60 days from the original sentence. Given the fact that in felony cases there is frequently a delay between conviction and sentencing of between six weeks and six months, for all pertinent factors to be collected and prepared for argument by both the defense and the prosecutor, and that a complete sentencing report prepared by the division of corrections must be considered by the superior court judge, a two month period is sufficient to allow for a modification of the sentence.

Section 28. AS 12.55.125(c), Sentences of Imprisonment For Felonies.

This section increases the presumptive term of imprisonment applicable to a limited number of first offense class A felonies from six years to eight years. Additionally, it expands the category of crimes covered to include Manslaughter and all class A felonies where a dangerous instrument is used.

Section 29. AS 12.55.135(c), Sentences for Misdemeanors.

This amendment clears up a drafting error in sec. 2, ch. 139, SLA 1980 that was intended to provide a minimum 10 day sentence for a misdemeanor assault committed in violation of a court order restraining domestic violence. The section also increases the minimum term under this section for Fourth Degree Assault committed in violation of a domestic violence injunction. The intent of this section is to more severely punish perpetrators of domestic violence who violate court orders against such violence.

Sections 30-33. AS 12.55.145, Prior Convictions.

These sections substantially amend the statute governing consideration of prior convictions under presumptive sentencing.

AS 12.55.145(a)(1) is amended to allow the court to consider all prior unclassified felonies and class A felonies for purposes of repeat felon status in presumptive sentencing. As to other crimes, the period of "forgiveness" is extended to 10 years from the present 7 year period.

Subsection (b) clarifies that a prior offense will be considered a prior felony conviction for purposes of presumptive sentencing if the conduct was similar to a felony in Alaska. The intent of this section is that the critical time of comparison is at the time the offense was committed, regardless of whether the offense is classified as a felony under existing law. For example, if the defendant was convicted of the felony offense of grand larceny in Oregon in 1962 for stealing \$400, and that conduct would have been a felony in Alaska in 1962, that offense may be counted as a prior felony conviction under AS 12.55.145 even though the revised criminal code now requires that a felony theft involve property in an amount of \$500 or more.

Subsection (c) deals specifically with multiple sentencing situations and is compatible with revised AS 12.-55.025(e) and (g). The effect and the intent is the same.

AS 12.55.145(b) and (c) make minor changes in the time periods for defense attorneys objecting to sentencing information, and prosecutors responding to such objections. Prosecutors need additional time to secure certified copies of convictions from other jurisdictions once the defense attorney objects to the identity of a person named as previously convicted in the other jurisdiction.

Because proof of prior felony convictions is critical in triggering the presumptive sentencing provisions of the criminal code as well as in sentencing in other cases, this section provides a relatively simple means for establishing at a later date that the defendant was in fact the person convicted of a prior felony. It requires the imprinting of the defendant's fingerprints on felony judgment forms.

Section 34. AS 12.55.155(c)(8). Aggravating Factor.

This section eliminates the requirement that a presumptive term of imprisonment can only be aggravated in cases involving prior convictions for misdemeanors involving repeated instances of assaultive behavior. This change is

consistent with existing case law allowing verified information of a defendant's prior criminal history to be considered by a judge at sentencing, Nukapigak v. State, 562 P.2d 697 (Alaska 1977).

Section 35. AS 12.55.155(c), Aggravating Factors.

This section adds three aggravating factors to AS 12.55.155(c).

Factor 19 requires the court to consider juvenile criminal history if the act would have been a felony if committed by an adult. In view of the fact that the overwhelming majority of defendants subject to presumptive sentencing will have one or more prior adult felony convictions, consideration of juvenile felony conduct is a relevant consideration in imposing a sentence.

Factor 20 requires the court to consider the fact that the defendant was on parole, probation, or furlough from prison when he committed the crime.

Factor 21 requires the court to consider repeated instances of criminal conduct, whether punishable as a felony or misdemeanor, similar to the offense for which the defendant is being sentenced. This factor, for example, would allow the judge to consider prior misdemeanors of (1) Issuing A Bad Check, \$50 - \$500, (2) Obtaining A Credit Card By Fraudulent Means, and (3) Unlawful Possession Of Altered Property, \$50 - \$500 when sentencing a person subject to presumptive sentencing for Defrauding Creditors, \$25,000 or more.

Section 36. Repealers.

AS 11.41.210(a)(3) is discussed in the commentary to section 6 of the bill. The former statute in AS 12.45.-085 is now covered by new AS 12.45.085. The reference to AS 12.55.025(e) is an error as that statute is amended in section 24 of this legislation.

AS 12.55.155(d)(8), is a present mitigating factor which states in pertinent part:

(8) a prior felony conviction . . .
was of a less serious class of offense
than the present offense;

For example, a defendant convicted of Unlawful Exploiting Of A Minor, a class B felony, who was subject to a 4-year presumptive term, could have the presumptive term reduced to 0 because the prior felony was only a class C felony, Sexual Abuse Of A Minor. The intent in repealing this mitigating factor is to avoid "rewarding" a criminal for increasing the seriousness of his acts during his career.

Title 47 statutes that are repealed prohibit various frauds in public assistance programs. By their repeal it is insured that prosecution can be brought, more effectively, under the criminal code, including Theft By Deception, AS 11.46.180, and Scheme To Defraud, AS 11.46.600. Since the conduct regulated in those sections of Title 47 is already adequately covered in Title 11, it is unnecessary to retain those sections.

Section 37. Rule Change.

Section 37 notes that the amendment to AS 12.55.-088(a) at Section 27 has the effect of changing Rule 35(a), (b) and (k) of the Rules of Criminal Procedure, by limiting the period during which a sentence may be reduced or modified. The statute prior to the 1978 amendment, set a 120 day limit, and the amendment as previously pointed out, made the time period unlimited.

REVISION JUNE 1, 1982
THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. HCS for CS for SB 535 (2d Judiciary)
 Title "An Act relating to criminal laws of the state...."
 Requested by House Judiciary Committee Date May 31, 1982

II. FISCAL DETAIL
 Agency Affected Health and Social Services
 Program Category Affected Offender Confinement Reformation & Supervision
 BRU, Program, Or Subprogram(s) Affected Adult Confinement
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		627.6	1,151.3	1,369.2	1,465.1	3,858.9
200 TRAVEL		11.7	21.8	23.8	25.9	45.7
300 CONTRACTUAL		143.9	268.9	307.5	335.2	703.9
400 COMMODITIES		49.6	92.7	133.3	145.2	594.1
500 EQUIPMENT		-0-	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES		897.0	6,900.0	-0-	-0-	-0-
700 GRANTS, CLAIMS, ETC.		-0-	-0-	-0-	-0-	46.6
TOTAL	-0-	1,729.8*	8,434.7	1,833.8	1,971.4	5,249.2

FUNDING (Thousands of Dollars) * See assumptions #

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	-0-	1,729.8	8,434.7	1,833.8	1,971.4	5,249.2
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME	0	24	24	29	29	69
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

A. Bed Space Estimates:

An analysis of HCS for CSSB 535 (2nd Judiciary) indicates there would be a need for an additional 113 beds in the Alaska Correctional System if the bill were enacted. The following gives a section by section estimate for these increased bed needs.

Sections 3 and 4: Multiple Deaths

It is estimated that multiple deaths from manslaughter (Class A felony) or from criminal negligence (Class C felony) will occur one or two times a year each. Therefore, we would expect to average 1 1/2 additional A-felony convictions and 1 1/2 additional C-felony

IV. DATE May 31, 1982 PREPARED BY Roger C. Lange
 AGENCY Adult Corrections
 Original: Legislative Finance PHONE 465-3376
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)

convictions per year. The additional cumulative time served would be about 8 man years.

$$(1.5 \times 4.5) + (1.5 \times .82) = \underline{7.98}.$$

Section 10: Joyriding - Second Offense

It is estimated tht there are likely to be between 90 and 100 joyriding convictions per year. Of these 10% are estimated to be repeat offenders. For these 9 or 10 convicted offenders, the law would require sentencing as Class C felous. Therefore, these 9 cr 10 would serve approximately 162 additional days on the average (each). The aggregate impact would be about 1,539 added man days or slightly more than 4 man years.

Sections 16, 18 19, and 23: Guilty but Mentally Ill

- a. All persons with mental illnesses who also are charged with criminal offenses are being housed either at Alaska Psychiatric Institution or within one of the state's correctional centers. Therefore, no additional beds will be needed if this legislation is enacted.
- b. Persons in pre-trial status requiring psychiatric evaluation and observation will be placed at the Anchorage Pre-Trial Facility. The anticipated opening date is January 1, 1983, therefore, seven months of funding is identified for this program component, allowing for facility familiarization and training. This will be a 36-bed mental health unit as an integral program within this facility.
- c. Treatment must be provided for persons found guilty but mentally ill. These services will be provided by either staff at the Anchorage Pre-trial Facility or by contract psychiatrists when the mental condition of the inmate has been stablized to the degree that the inmate is transferred to another state correctional facility. Contract funds will be required to provide these services at facilities other than Anchorage Pre-trial.

Section 24: Multiple Offenses, Consecutive Sentencing

Multiple charges are not rare. Currently prisoners are rarely sentenced to serve consecutive sentences for more than one offense. A recent survey of in-state offenders showed that among 451 convicted persons, 150 or 33% were imprisoned on more than one charge or count. Of these, 48 appeared to qualify for sentencing consecutively under the statute. A very few of these are now serving consecutive sentences, but the majority have received concurrent sentences. If these 48 could be considered representative of the number and type of multiple offender entering the system annually (which is by no means certain), then we can estimate the additional bed spaces needed to provide for the consecutive sentencing provision of this section. We expect to commit about 80 Class A felons per year. Of these, approximately 55 are first offenders and the remainder are repeaters (25). Homicide convictions yield about 12 admissions annually. A flat 10% of all these admissions would suggest about 9 convicted felons entering the system annually may be eligible for the consecutive sentencing practice. We may delete 2 or 3 of these as not having lead to any

injury. Therefore, about 6 or 7 felons will be consecutively sentenced for periods averaging approximately 6 years each, the current sentence for first time A felons using firearms in the commission of a crime. The consecutive provision will add 4.5 years of jail time per person. This produces approximately 30 additional man years of accumulated jail service.

Section 28: First Offense Felony With Firearm

The impact of this legislation will not be experienced for 4 1/2 years from the date of effect. At the present time, an average of 32 persons are convicted of first offense felonies with the use of firearm. The current flat time sentence is 4 1/2 years. Under the proposed legislation, the flat time sentence is 6 years. Therefore, the population of inmates for which the Division of Adult Corrections is responsible would increase by 48 persons in the fifth and sixth years that the increased length is in effect. The inclusion of manslaughter among the offenses identified will raise the number of affected sentences by about 10 cases per year. The additional 1 1/2 years of incarceration times 10 yields 15 man years to be added to the 48 identified above. Therefore, the total impact of this section is estimated to be 63 beds.

Section 30: Prior Conviction Within Past 10 Years

The addition of 3 years to the retroactive period during which a convicted offender is in jeopardy changes from 7 to 10 years the span of vulnerability. Since the frequency of recidivism is a monotonically decreasing function, we believe that the effect of this provision will be moderate at most. Our investigations have shown that more than 80% of repeat offenses occur during the first three years after release. If the balance were uniformly spread over the remaining seven years then recidivism could occur in the last three years of a ten year period. Further, if the frequency declined uniformly to zero by the end of the tenth year then only 1.8% of the recidivist population would remain to be convicted after the 7th year. This last value yields an estimated increase in second offender felony convictions of slightly less than 3 per year. These would be spread in a proportionate manner over all classes of felony offenses. The approximate average increase in time served would be about 4.8 years for Class A felons, 1.85 years for Class B and 1.05 years for Class C. If we had one each of A, B, C felons the aggregate man year increase would be approximately 7.7.

Section 35 - Prior Criminal History as a Juvenile

Section 35 adds the defendant's prior criminal history while a juvenile to the list of aggravating or mitigating factors which can be used when sentencing an adult. If, as a juvenile, the defendant was convicted of a crime which would have been considered a felony if committed by an adult, the juvenile offense could be considered as an aggravating factor by the court when determining the sentence.

There will be costs attributable to this section. However, with the information available, no assessment can be made by this Department as to the magnitude of the potential costs.

The aggregate total of increased bed space needs is, therefore, 112.7 (rounded up to 113).

B. Cost Estimates

1. Capital Expenditures

113 beds at an estimated cost of \$69,000 per bed.

113 x \$69,000 = \$7,797,000
 13 requested in FY 1983 (\$897,000)
 100 requested in FY 1984 (\$6,900,000)

2. Operating Expenditures - New Beds

The major impact of portions of this legislation would not occur for approximately 4 years after its effective date. Therefore, most new positions are not requested until FY 1987.

The operating costs were developed using the Juneau Correctional Center budget as a model since their current bed capacity is very similar to the number of new beds required. This results in a new staff of 45 positions.

Five correctional officers to man one post plus some commodities (food, clothing, etc.) and contractual (medical) are identified beginning in FY 1985. Forty additional positions will be needed to man a 100 bed facility to be opened in FY 1987. It is at this time that the major effect of the bill, excluding the guilty but mentally ill provision, will be experienced.

C. Expenditures - Guilty but Mentally Ill

1. Personal Services

A total of 24 positions are required to implement this legislation.

The positions are as follows:

<u>Position Classification</u>	<u>Number Requested</u>
Forensic Psychiatrist R/28F + 5%	1
Mental Health Clinician III. (Clinical Psychologist) R/21	1
Mental Health Clinician II (Social Worker) R/19	1
Activity Therapist R/14B	1
Psychiatric Nurse Sup. R/17	1
Registered Nurses I-III R/14B	5
Correctional Officer R/13B	12
Clerk/Typist II R/7B	1
Secretary I R/10B	1
Total	<u>24</u>

Of the 24 positions, 7 are included in the FY 1983 budget request for Alaska Psychiatric Institute and are addressed in a separate fiscal note for API. These positions will be transferred to the Anchorage Pre-Trial Facility and reclassified as:

<u>Position Classification</u>	<u>Number Requested</u>
Correctional Officer II	6
Activity Therapist	1
Total	<u>7</u>

2. Travel

Travel funds are necessary to transport inmates to the treatment unit and, subsequently, to other facilities when they are classified to be ready for a general prison environment.

3. Contractual

Contractual funds are requested to provide psychiatric services to inmates found guilty but mentally ill. This will permit an average of 15 hours of psychiatric medical treatment per month in each of the state's correctional centers.

4. Commodities

The majority of these costs are for pharmaceutical products to be used in the treatment program. Some office supplies are also included.

5. Equipment

Specialized medical equipment will be required for both program components. Equipment will also be needed for the new positions.

D. Inflation

Inflation was considered to be constant over the period covered by the fiscal note, as follows:

Personal Services	7%
Other expenditure categories	9%

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

I. REQUEST
 Bill/Resolution No. House CS for CS for SB No. 535(2nd Judiciary)
 Title "An Act relating to the criminal laws of the state."
 Requested by _____

II. FISCAL DETAIL
 Agency Affected Health and Social Services
 Program Category Affected Mental Health & Developmental Disabilities
 BRU, Program, Or Subprogram(s) Affected Alaska Psychiatric Institute
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES	-0-	(132.8)	(243.6)	(260.6)	(278.9)	(298.4)
200 TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
300 CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
400 COMMODITIES	-0-	-0-	-0-	-0-	-0-	-0-
500 EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS, ETC.	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	(132.8)	(243.6)	(260.6)	(278.9)	(298.4)

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	(132.8)	(243.6)	(260.6)	(278.9)	(298.4)
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Source)	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME	-0-	(7)	(7)	(7)	(7)	(7)
PART TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

- All persons with mental illnesses who also are charged with criminal offenses are being housed either at Alaska Psychiatric Institute or within one of the state's correctional centers. Therefore, no additional beds will be needed if this legislation is enacted.

IV. DATE 5/27/82 PREPARED BY Gary Schaefer
 AGENCY Div. of Mental Health & Dev. Dis.
 Original: Legislative Finance PHONE 465-3376
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

2. Persons in pre-trial status requiring psychiatric evaluation and observation will be placed at the Anchorage Pre-trial Facility. The anticipated opening date is January 1, 1983, therefore, seven months of funding are deleted from the API BRU to allow for transfer of seven (7) positions to be Anchorage Pre-trial Facility for staffing of a 36 bed mental health unit within that facility.
3. The Psychiatric security services now being provided at API will be transferred along with these seven (7) positions.

Original sponsor: Rules/Governor

Offered: 5/29/82
Referred: Finance

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 535 (2d Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the criminal laws and procedure of
7 the state; and changing Rule 35(a), (b), and (k), Rules
8 of Criminal Procedure; and providing for an effective
9 date."

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

11 * Section 1. AS 11.41.100 is amended by adding a new subsection to read:

12 (c) If more than one person dies as a result of a person committing
13 murder in the first degree, each death constitutes a separately punish-
14 able offense.

15 * Sec. 2. AS 11 41.110 is amended by adding a new subsection to read:

16 (c) If more than one person dies as a result of a person committing
17 murder in the second degree, each death constitutes a separately punish-
18 able offense.

19 * Sec. 3. AS 11.41.120 is amended by adding a new subsection to read:

20 (c) If more than one person dies as a result of a person committing
21 manslaughter, each death constitutes a separately punishable offense.

22 * Sec. 4. AS 11.41.130 is amended by adding a new subsection to read:

23 (c) If more than one person dies as a result of a person committing
24 criminally negligent homicide, each death constitutes a separately
25 punishable offense.

26 * Sec. 5. AS 11.41.200(a)(1) is amended to read:

27 (1) he recklessly causes [WITH INTENT TO CAUSE] serious
28 physical injury to another person [, HE CAUSES PHYSICAL INJURY TO ANY
29 PERSON] by means of a dangerous instrument;

1 * Sec. 6. AS 11.41.210(a)(2) is amended to read:

2 (2) [WITH INTENT TO CAUSE PHYSICAL INJURY TO ANOTHER PERSON,]
3 he recklessly causes serious physical injury to any person. [; OR]

4 * Sec. 7. AS 11.41.220(a) is amended to read:

5 (a) A person commits the crime of assault in the third degree if
6 he recklessly

7 (1) places another person in fear of imminent serious physical
8 injury by means of a dangerous instrument; or

9 (2) causes physical injury to another person by means of a
10 dangerous instrument.

11 * Sec. 8. AS 11.41.230(a)(3) is amended to read:

12 (3) by words or other conduct he recklessly [INTENTIONALLY]
13 places another person in fear of imminent physical injury.

14 * Sec. 9. AS 11.46.484(b) is amended to read:

15 (b) Except as provided in (c) of this section, criminal [CRIMINAL]
16 mischief in the third degree is a class A misdemeanor.

17 * Sec. 10. AS 11.46.484 is amended by adding a new subsection to read:

18 (c) A person convicted under (a)(2) of this section who has been
19 previously convicted under that paragraph or under AS 28.35.010 is
20 guilty of a class C felony.

21 * Sec. 11. AS 11.81.320 is amended by adding a new subsection to read:

22 (b) The justification allowed in (a) of this section is an affirma-
23 tive defense.

24 * Sec. 12. AS 11.81.900(a)(1) is amended to read:

25 (1) a person acts "intentionally" with respect to a result
26 described by a provision of law defining an offense when his conscious
27 objective is to cause that result; when intentionally causing a particu-
28 lar result is an element of an offense, that intent need not be the
29 person's only objective;

1 * Sec. 13. AS 11.81.900(b)(37) is amended to read:

2 (37) "organization" means a legal entity, including a corpora-
3 tion, company, association, firm, partnership, joint stock company,
4 foundation, institution, government, society, union, club, church, or
5 any other group of persons organized for any purpose;

6 * Sec. 14. AS 11.81.900(b)(44) is amended to read:

7 (44) "property" means a domestic pet or livestock regardless
8 of value, an article, substance, or thing of value, including money,
9 tangible and intangible personal property including data or informa-
10 tion stored in a computer program, system, or network, real property, a
11 credit card, choses-in-action, and evidence of debt or of contract; [,]
12 a commodity of a public utility such as gas, electricity, steam, or
13 water constitutes property but the supplying of such a commodity to
14 premises from an outside source by means of wires, pipes, conduits, or
15 other equipment is considered a rendition of a service rather than a
16 sale or delivery of property;

17 * Sec. 15. AS 11.81.900(b)(49) is amended to read:

18 (49) "serious physical injury" means

19 (A) physical injury caused by an act performed under
20 circumstances that create [WHICH CREATES] a substantial risk of
21 death; or

22 (B) physical injury that [WHICH] causes serious and
23 protracted disfigurement, protracted impairment of health, [OR]
24 protracted loss or impairment of the function of a body member or
25 organ, or that [PHYSICAL INJURY WHICH] unlawfully terminates a
26 pregnancy;

27 * Sec. 16. AS 12.45.083 is repealed and reenacted to read:

28 Sec. 12.45.083. INSANITY EXCLUDING RESPONSIBILITY. (a) In a
29 prosecution for a crime, it is an affirmative defense that when the

1 defendant engaged in the criminal conduct, he was unable, as a result of
2 a mental disease or defect, to appreciate the nature and quality of his
3 conduct.

4 (b) The affirmative defense set out in (a) of this section may not
5 be raised at trial unless the defendant, within 10 days of entering his
6 plea or such later time as the court may for good cause permit, files a
7 written notice of his intent to rely on the defense.

8 (c) Evidence of a mental disease or defect that is manifested only
9 by repeated criminal or other antisocial conduct is not sufficient to
10 establish the affirmative defense under (a) of this section.

11 (d) The affirmative defense specified in (a) of this section is
12 the affirmative defense of insanity. A defendant who successfully
13 raises the affirmative defense of insanity shall be found not guilty by
14 reason of insanity and the verdict shall so state.

15 * Sec. 17. AS 12.45.085 is repealed and reenacted to read:

16 Sec. 12.45.085. MENTAL DISEASE OR DEFECT NEGATING CULPABLE MENTAL
17 STATE. (a) Evidence that the defendant suffered from a mental disease
18 or defect is admissible whenever it is relevant to prove that the defen-
19 dant did or did not have a culpable mental state that is an element of
20 the crime. However, evidence of mental disease or defect that tends to
21 negate a culpable mental state is not admissible unless the defendant,
22 within 10 days of entering his plea or at such later time as the court
23 may for good cause permit, files a written notice of his intent to rely
24 on that defense.

25 (b) When the trier of fact finds that all other elements of the
26 crime have been proved but, as a result of mental disease or defect,
27 there is a reasonable doubt as to the existence of a culpable mental
28 state that is an element of the crime, it shall enter a verdict of not
29 guilty by reason of insanity. A defendant acquitted under this sub-

1 section, and not found guilty of a lesser included offense, shall auto-
2 matically be considered as if he had established the affirmative defense
3 of insanity under AS 12.45.083. The defendant is then subject to the
4 provisions of AS 12.45.090.

5 (c) If a verdict of not guilty by reason of insanity is reached
6 under (b) of this section, the trier of fact shall also consider whether
7 the defendant is guilty of any lesser included offense. If the defendant
8 is convicted of a lesser included offense, the defendant shall be sen-
9 tenced for that offense and shall automatically be considered guilty but
10 mentally ill for purposes of AS 12.47.030 and 12.47.050. Upon completion
11 of a sentence for a lesser included offense, a hearing shall be held
12 under AS 12.45.090(c) to determine the necessity of further commitment of
13 the defendant, based on the acquittal for the greater charge under (b)
14 of this section. If the defendant is committed under AS 12.45.090(c),
15 he is subject to the provisions of AS 12.45.090(d) - (j).

16 * Sec. 18. AS 12.45.087 is repealed and reenacted to read:

17 Sec. 12.45.087. PSYCHIATRIC EXAMINATION. (a) If a defendant has
18 filed a notice of intention to rely on the affirmative defense of insan-
19 ity under AS 12.45.083 or has filed notice under AS 12.45.085(a), or
20 there is reason to doubt his fitness to proceed, or there is reason to
21 believe that mental disease or defect of the defendant will otherwise
22 become an issue in the case, the court shall appoint at least two quali-
23 fied psychiatrists or two forensic psychologists certified by the
24 American Board of Forensic Psychology to examine and report upon the
25 mental condition of the defendant. If the court appoints psychiatrists,
26 the psychiatrists may select psychologists to provide assistance. If
27 the defendant has filed notice under AS 12.45.090(a), the report shall
28 consider whether the defendant can still be committed under AS 12.45.-
29 090(c). The court may order the defendant to be committed to a secure

1 facility for the purpose of the examination for not more than 60 days or
2 such longer period as the court determines to be necessary for the
3 purpose and may direct that a qualified psychiatrist retained by the
4 defendant be permitted to witness and participate in the examination.

5 (b) In an examination under (a) of this section, any method may be
6 employed which is accepted by the medical profession for the examination
7 of those alleged to be suffering from mental disease or defect.

8 (c) The report of an examination under (a) of this section, shall
9 include the following:

10 (1) a description of the nature of the examination;

11 (2) a diagnosis of the mental condition of the defendant;

12 (3) if the defendant suffers from a mental disease or defect,
13 an opinion as to his capacity to understand the proceedings against him
14 and to assist in his own defense;

15 (4) if a notice of intention to rely on the affirmative
16 defense of insanity under AS 12.45.083 has been filed, an opinion as to
17 the extent, if any, to which the capacity of the defendant to appreciate
18 the nature and quality of his conduct was impaired at the time of the
19 crime charged; and

20 (5) if notice has been filed under AS 12.45.085(a), an opinion
21 as to the capacity of the defendant to have a culpable mental state that
22 is an element of the crime charged.

23 (d) If the examination under (a) of this section cannot be con-
24 ducted by reason of the unwillingness of the defendant to participate in
25 it, the report shall so state and shall include, if possible, an opinion
26 as to whether the unwillingness of the defendant was the result of
27 mental disease or defect.

28 (e) The report of the examination under (a) of this section shall
29 be filed with the clerk of the court, who shall cause copies to be

1 delivered to the prosecuting attorney and to counsel for the defendant.

2 * Sec. 19. AS 12.45.090 is repealed and reenacted to read:

3 Sec. 12.45.090. PROCEDURE AFTER RAISING DEFENSE OF INSANITY. (a)
4 At the time the defendant files notice to raise the affirmative defense
5 of insanity under AS 12.45.083 or files notice under AS 12.45.085(a), he
6 shall also file notice as to whether, if found not guilty by reason of
7 insanity under AS 12.45.083 or 12.45.085(b), he will assert that he is
8 not presently suffering from any mental illness that causes him to be
9 dangerous to the public peace or safety.

10 (b) If the defendant is found not guilty by reason of insanity
11 under AS 12.45.083 or 12.45.085(b), and he has not filed the notice
12 required under (a) of this section, the court shall immediately commit
13 him to the custody of the commissioner of health and social services.

14 (c) If the defendant is found not guilty by reason of insanity
15 under AS 12.45.083 or 12.45.085(b), and he has filed the notice required
16 under (a) of this section, a hearing shall be held immediately after a
17 verdict of not guilty by reason of insanity to determine the necessity
18 of commitment. The hearing shall be held before the same trier of fact
19 as the underlying charge. At the hearing, the defendant has the burden
20 of proving by clear and convincing evidence that he is not presently
21 suffering from any mental illness that causes him to be dangerous to the
22 public. If the court or jury determines that the defendant has failed
23 to meet his burden of proof, the court shall order the defendant com-
24 mitted to the custody of the commissioner of health and social services.

25 (d) A defendant committed under (b) or (c) of this section shall
26 be held in custody for a period of time not to exceed the maximum term
27 of imprisonment for the crime for which the defendant was acquitted
28 under AS 12.45.083 or 12.45.085(b) or until the mental illness is cured
29 or corrected as determined at a hearing under (e) of this section.

1 (e) A defendant committed under (b) or (c) of this section may
2 have the need for his continued commitment under this section reviewed
3 by the court sitting with a jury of 12 under a petition filed in the
4 superior court at intervals beginning no sooner than a year from his
5 initial commitment, and yearly thereafter. The burden and standard of
6 proof at a hearing under this subsection are the same as at a hearing
7 under (c) of this section. A copy of all petitions for release shall be
8 served on the attorney general at Juneau, Alaska. A copy shall also be
9 served upon the attorney of record, if he is not the attorney general,
10 who represented the state or a municipality at the time the defendant
11 was first committed.

12 (f) Continued commitment following expiration of the maximum term
13 of imprisonment for the crime for which the defendant was acquitted
14 under AS 12.45.083 or 12.45.085(b) is governed by the standards pertain-
15 ing to civil commitments as set out in AS 47.30.735.

16 (g) A person committed under this section may not be released
17 during the term of commitment except upon court order following a hearing
18 in accordance with (e) of this section. On the grounds that the defen-
19 dant has been cured of any mental illness that would cause him to be
20 dangerous to the public peace or safety, the state may at any time
21 request the court to hold a hearing to decide if the defendant should be
22 released.

23 (h) The commissioner of health and social services or his autho-
24 rized representative shall submit periodic written reports to the court
25 on the mental condition of a person committed under this section.

26 (i) An order entered under (c) or (e) of this section may be
27 reviewed by the court of appeals on appeal brought by either the defen-
28 dant or the state within 40 days from the entry of the order.

29 (j) In this section,

1 (1) "mental illness" means any mental condition that increases
2 the propensity of the defendant to be dangerous to the public peace or
3 safety, however, it is not required that the mental illness be sufficient
4 to exclude criminal responsibility under AS 12.45.083, or that the
5 mental illness presently suffered by the defendant be the same one he
6 suffered at the time of the criminal conduct;

7 (2) "dangerous" means a determination involving both the
8 magnitude of the risk that the defendant will commit an act threatening
9 the public peace or safety, as well as the magnitude of the harm that
10 could be expected to result from this conduct; a finding that a defendant
11 is "dangerous" may result from a great risk of relatively slight harm to
12 persons or property, or may result from a relatively slight risk of
13 substantial harm to persons or property.

14 * Sec. 20. AS 12.45.100 is amended to read:

15 Sec. 12.45.100. INCOMPETENCY TO PROCEED [DETERMINATION OF MENTAL
16 DISEASE OR DEFECT DURING TRIAL OR PROBATION]. (a) No person who as a
17 result of mental disease or defect lacks capacity to understand the
18 proceedings against him or to assist in his own defense may be tried,
19 convicted or sentenced for the commission of a crime [AN OFFENSE] so
20 long as the incapacity exists [ENDURES].

21 (b) When, after arrest and before the imposition of sentence or
22 before the expiration of any period of probation, the attorney general,
23 the prosecuting [DISTRICT] attorney, or the attorney for the accused has
24 reasonable cause to believe that a person charged with a crime [AN
25 OFFENSE] may be presently suffering mental disease or defect or is
26 otherwise so mentally incompetent that he is unable to understand the
27 proceedings against him or properly to assist in his own defense, he may
28 file a motion for a judicial determination of the mental competency of
29 the accused. Upon that motion or upon a similar motion in behalf of the

1 accused, or upon its own motion, the court shall have the accused,
2 whether or not previously admitted to bail, examined as to his mental
3 condition by at least one qualified psychiatrist, who shall report to
4 the court. For the purpose of the examination the court may order the
5 accused committed for a reasonable period as the court may determine to
6 a suitable hospital or other facility to be designated by the court. If
7 the report of the psychiatrist indicates a state of present mental
8 disease or defect or of other mental incompetency in the accused, the
9 court shall hold a hearing, upon due notice, at which evidence as to the
10 mental condition of the accused may be submitted, including that of the
11 reporting psychiatrist, and make a finding with respect to his mental
12 condition. No statement made by the accused in the course of an examina-
13 tion into his mental competency provided for by this section, whether
14 the examination is with or without the consent of the accused, may be
15 admitted in evidence against the accused on the issue of guilt in a
16 criminal proceeding unless the accused later relies on a defense based
17 on mental disease or defect at trial. A finding by the judge that the
18 accused is mentally competent to stand trial in no way prejudices the
19 accused in a defense based on insanity [MENTAL DISEASE OR DEFECT EXCLUD-
20 ING RESPONSIBILITY]; the finding may not be introduced in evidence on
21 that issue or otherwise be brought to the notice of the jury.

22 * Sec. 21. AS 12.45.110(b) is amended to read:

23 (b) On or before the expiration of the initial 90-day period of
24 commitment the court shall conduct a hearing to determine whether or not
25 the defendant remains incompetent. If the court finds by a preponderance
26 of the evidence that the defendant remains incompetent, the court may
27 recommit the defendant for a second period of 90 days. The court shall
28 determine at the expiration of the second 90-day period whether the
29 defendant has become competent. If at the expiration of the second

1 90-day period the court determines that the defendant continues to be
2 incompetent to stand trial, the charges against him shall be dismissed
3 without prejudice and continued commitment of the defendant shall be
4 governed by the provisions relating to civil commitments under AS 47.30.-
5 700 - 47.30.915 unless the defendant is charged with a crime involving
6 force against a person and the court finds that the defendant presents a
7 substantial danger of physical injury to other persons and that there is
8 a substantial probability that the defendant will regain competency
9 within a reasonable period of time, in which case the court may extend
10 the period of commitment for an additional six months. If the defendant
11 remains incompetent at the expiration of the additional six-month period,
12 the charges shall be dismissed without prejudice and either civil commit-
13 ment proceedings shall be instituted or the court shall order the release
14 of the defendant. If the defendant remains incompetent for five years
15 after the charges have been dismissed under this subsection, the defen-
16 dant may not be charged again for an offense arising out of the facts
17 alleged in the original charges, except if the original charge is a
18 class A felony or unclassified felony [MURDER].

19 * Sec. 22. AS 12.45.115(d) is amended to read:

20 (d) A finding by the court that the accused is mentally competent
21 to stand trial in no way prejudices the accused in a defense based on
22 insanity [MENTAL DISEASE OR DEFECT EXCLUDING RESPONSIBILITY]. This
23 finding may not be introduced in evidence on that issue or otherwise be
24 brought to the notice of the jury.

25 * Sec. 23. AS 12 is amended by adding a new chapter to read:

26 CHAPTER 47. INSANITY AND COMPETENCY TO STAND TRIAL.

27 Sec. 12.47.030. GUILTY BUT MENTALLY ILL. A defendant is guilty
28 but mentally ill if, when he engaged in the criminal conduct, he lacked,
29 as a result of a mental disease or defect, the substantial capacity

1 either to appreciate the wrongfulness of his conduct or to conform his
2 conduct to the requirements of law. A defendant found guilty but
3 mentally ill is not relieved of criminal responsibility for his conduct
4 and is subject to the provisions of AS 12.47.050.

5 Sec. 12.47.040. FORM OF VERDICT WHEN EVIDENCE OF MENTAL DISEASE OR
6 DEFECT ADMISSIBLE. (a) In a prosecution for a crime when the affirma-
7 tive defense of insanity is raised under AS 12.45.083, or when evidence
8 of a mental disease or defect of the defendant is otherwise admissible
9 at trial under AS 12.45.085, the trier of fact shall find, and the
10 verdict shall state whether the defendant is

- 11 (1) guilty;
- 12 (2) not guilty;
- 13 (3) not guilty by reason of insanity; or
- 14 (4) guilty but mentally ill.

15 (b) When the jury is instructed as to the verdicts under (a) of
16 this section, it shall also be instructed on the dispositions available
17 under AS 12.47.050 and AS 12.45.090.

18 (c) To return a verdict under (a)(4) of this section, the jury
19 must find beyond a reasonable doubt that the defendant committed the
20 crime and find by a preponderance of the evidence that when he committed
21 the crime he was guilty but mentally ill as set out in AS 12.47.030.

22 Sec. 12.47.050. DISPOSITION OF DEFENDANT FOUND GUILTY BUT MENTALLY
23 ILL. (a) If the trier of fact finds that a defendant is guilty but
24 mentally ill, the court shall sentence the defendant as provided by law
25 and shall enter the verdict of guilty but mentally ill as part of the
26 judgment.

27 (b) The Department of Health and Social Services shall provide
28 mental health treatment to a defendant found guilty but mentally ill.
29 The treatment must continue until the defendant no longer suffers from a

1 mental disease or defect that causes him to be dangerous to the public
2 peace or safety. Subject to (c) and (d) of this section, the department
3 shall determine the course of treatment.

4 (c) When treatment terminates under (b) of this section, the
5 defendant shall be required to serve the remainder of his sentence.

6 (d) Notwithstanding any contrary provision of law, a defendant
7 receiving treatment under (b) of this section may not be released on
8 furlough or work release under AS 33.30.150, 33.30.250, or AS 33.33.260
9 or on parole.

10 (e) Nothing in this section limits the discretion of the court to
11 recommend, or of the Department of Health and Social Services to provide,
12 psychiatrically indicated treatment for a defendant who is not adjudged
13 guilty but mentally ill.

14 (f) Not less than 30 days before the expiration of the sentence of
15 a defendant found guilty but mentally ill, the commissioner of health
16 and social services shall file a petition under AS 47.30.700 for a
17 screening investigation to determine the need for further treatment of
18 the defendant if:

19 (1) the defendant is still receiving treatment under (b) of
20 this section; and

21 (2) the commissioner has good cause to believe that the
22 defendant is suffering from a mental illness that causes him to be
23 dangerous to the public peace or safety; as used in this paragraph,
24 "mental illness" has the meaning ascribed to it in AS 47.30.915.

25 Sec. 12.47.060. POST CONVICTION DETERMINATION OF MENTAL ILLNESS.

26 (a) In a prosecution for a crime when the affirmative defense of insan-
27 ity is not raised and when evidence of mental disease or defect of the
28 defendant is not admitted at trial under AS 12.45.085, and the defendant
29 is convicted of a crime, the defendant, the prosecuting attorney, or the

1 court on its own motion may raise the issue of whether the defendant is
2 guilty but mentally ill. A hearing must be held on this issue at or
3 before the sentencing hearing. At the hearing the court shall determine
4 whether the defendant has been shown to be guilty but mentally ill by a
5 preponderance of the evidence presented at the hearing and any evidence
6 relevant to the issue that was presented at trial.

7 (b) If the court finds that a defendant is guilty but mentally
8 ill, it shall sentence the defendant as provided by law and shall enter
9 the finding of guilty but mentally ill as part of the judgment.

10 (c) A defendant determined to be guilty but mentally ill under
11 this section is subject to the provisions of AS 12.47.050.

12 (d) As used in this section, guilty but mentally ill has the
13 meaning ascribed to it in AS 12.47.030.

14 Sec. 12.47.080. PROCEDURE UPON VERDICT OF NOT GUILTY. (a) If a
15 defendant is found not guilty under AS 12.47.040(a)(1), the district
16 attorney shall, within 24 hours, file a petition under AS 47.30.700 for
17 a screening investigation to determine the need for treatment if the
18 prosecuting attorney has good cause to believe that the defendant is
19 suffering from a mental illness and as a result is gravely disabled or
20 likely to cause serious harm to himself or others.

21 (b) In this section, "mental illness" has the meaning ascribed to
22 it in AS 47.30.915(12).

23 Sec. 12.47.130. DEFINITIONS. As used in this chapter

24 (1) "affirmative defense" has the meaning ascribed to it in
25 AS 11.81.900(b)(1);

26 (2) "mental disease or defect" means a disorder of thought or
27 mood that substantially impairs judgment, behavior, capacity to recognize
28 reality, or ability to cope with the ordinary demands of life; "mental
29 disease or defect" also includes mental retardation, which means a

1 significantly below average general intellectual functioning that impairs
2 a person's ability to adapt to or cope with the ordinary demands of
3 life.

4 * Sec. 24. AS 12.55.025(e) is amended to read:

5 (e) Except as provided in (g) of this section, if [IF] the defen-
6 dant is convicted of two or more crimes before judgment on either has
7 been entered, any sentences of imprisonment shall [MAY] run [CONCURRENTLY
8 OR] consecutively [, AS THE COURT PROVIDES. IF THE COURT DOES NOT
9 SPECIFY, THE SENTENCES OF IMPRISONMENT SHALL RUN CONCURRENTLY. IF THE
10 DEFENDANT IS IMPRISONED UPON A PREVIOUS JUDGMENT OF CONVICTION FOR A
11 CRIME, THE JUDGMENT MAY PROVIDE THAT THE IMPRISONMENT COMMENCES AT THE
12 EXPIRATION OF THE TERM LIMITED BY THE PREVIOUS JUDGMENT OR ON THE DATE
13 OF IMPOSITION OF SENTENCE].

14 * Sec. 25. AS 12.55.025 is amended by adding a new subsection to read:

15 (g) If the defendant is convicted of two or more crimes before the
16 judgment on either has been entered, any sentences of imprisonment may
17 run concurrently if

18 (1) the crimes violate similar societal interests;

19 (2) the crimes are part of a single, continuous criminal
20 episode;

21 (3) there was not a substantial difference in the nature of
22 the criminal objectives involved in the commission of the crime, includ-
23 ing a change in the parties to the crime, the property or type of pro-
24 perty right offended, or the persons offended;

25 (4) the crimes were not committed while the defendant
26 attempted to escape or avoid detection or apprehension after the commis-
27 sion of another crime;

28 (5) the sentence is not for violation of AS 11.41.100 -
29 11.41.140, 11.41.200 - 11.41.250, or 11.41.300 - 11.41.350;

1 (6) the sentence is not for a violation of AS 11.41.500 -
2 11.41.530 that results in physical injury or serious physical injury as
3 those terms are defined in AS 11.41.900; or

4 (7) the sentence is not for a violation of AS 11.41.410 -
5 11.41.455.

6 * Sec. 26. AS 12.50 is amended by adding a new section to read:

7 ARTICLE 3. WITNESSES.

8 Sec. 12.50.110. IMMUNITY OF WITNESSES. (a) If a witness refuses
9 on the basis of the privilege against self-incrimination to testify or
10 provide other information in a criminal proceeding before or ancillary
11 to a court or grand jury of this state, and a judge issues an order
12 under (b) of this section, the witness may not refuse to comply with the
13 order on the basis of the privilege against self-incrimination. If the
14 witness fully complies with the order, no testimony or other information
15 compelled under the order, or information directly or indirectly derived
16 from that testimony or other information, may be used against the witness
17 in a criminal case, except a prosecution based on perjury, giving a
18 false statement or otherwise knowingly providing false information, or
19 hindering prosecution.

20 (b) In the case of an individual who has been or may be called to
21 testify or provide other information in a criminal proceeding before or
22 ancillary to a court or a grand jury of this state, a superior or dis-
23 trict court for the judicial district in which the proceeding is or may
24 be held shall issue, upon the application of the attorney general or his
25 designee in accordance with (d) of this section, an order requiring the
26 individual to give testimony or provide other information that he refuses
27 to give or provide based on the privilege against self-incrimination.

28 (c) An order issued under (b) of this section is effective when
29 communicated to the individual specified in the order.

1 (d) The attorney general or his designee may apply for an order
2 under (b) of this section when, in the attorney general's judgment,

3 (1) the testimony or other information may be necessary to
4 the administration of criminal justice; and

5 (2) the individual who is the subject of the application has
6 refused or is likely to refuse to testify or to provide other information
7 on the basis of the privilege against self-incrimination.

8 (e) As used in this section, "other information" means books,
9 papers, documents, records, recordings, or other similar material.

10 * Sec. 27. AS 12.55.088(a) is amended to read:

11 (a) The court may modify or reduce a sentence by entering a written
12 order within 60 days of the original sentencing [AT ANY TIME DURING A
13 TERM OF IMPRISONMENT IF IT FINDS THAT CONDITIONS OR CIRCUMSTANCES HAVE
14 CHANGED SINCE THE ORIGINAL SENTENCING HEARING SUCH THAT THE PURPOSE OF
15 THE ORIGINAL SENTENCE IS NOT BEING FULFILLED].

16 * Sec. 28. AS 12.55.125(c)(1) is amended to read:

17 (1) if the offense is a first felony conviction [, OTHER THAN
18 FOR MANSLAUGHTER,] and, during the commission of the offense, the defen-
19 dant possessed or used a firearm or used a dangerous instrument or
20 caused serious physical injury, eight [DURING THE COMMISSION OF THE
21 OFFENSE, SIX] years;

22 * Sec. 29. AS 12.55.135(c) is amended to read:

23 (c) A defendant convicted of assault in the fourth [THIRD]
24 degree committed in violation of the provisions of an order issued under
25 AS 09.55.600 or 09.55.610 shall be sentenced to a minimum term of impri-
26 sonment of 20 [10] days. The execution of sentence may not be suspended
27 and probation or parole may not be granted until the minimum term of
28 imprisonment has been served. Imposition of sentence may not be sus-
29 pended, except upon condition that the defendant be [BY] imprisoned for

1 no less than the minimum term of imprisonment provided in this section,
2 and the minimum sentence provided for in this section may not be other-
3 wise reduced.

4 * Sec. 30. AS 12.55.145(a) is repealed and reenacted to read:

5 (a) For purposes of considering prior convictions in imposing
6 sentence under this chapter

7 (1) a prior conviction may not be considered if a period of
8 10 or more years has elapsed between the date of the defendant's uncon-
9 ditional discharge on the immediately preceding offense and commission
10 of the present offense unless the prior conviction was for an unclassi-
11 fied or class A felony;

12 (2) a conviction in this or another jurisdiction of an offense
13 having elements similar to those of a felony defined as such under
14 Alaska law is considered a prior felony conviction;

15 (3) two or more convictions for crimes violating similar
16 societal interests or arising out of a single, continuous criminal
17 episode are considered a single conviction unless

18 (A) there was a substantial change in the nature of the
19 criminal objective, including but not limited to a change in the
20 parties to the crimes, the property or type of property right
21 offended, or the persons offended;

22 (B) the crimes were committed while the defendant
23 attempted to escape or avoid detection or apprehension after the
24 commission of another crime;

25 (C) the sentence is for violation of AS 11.41.100 -
26 11.41.140, AS 11.41.200 - 11.41.250, AS 11.41.300 - 11.41.330, or
27 for a violation of AS 11.41.500 - 11.41.530 that results in physical
28 injury or serious physical injury as those terms are defined in
29 AS 11.41.900 to one or more persons; or

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(D) the sentence is for violation of AS 11.41.410 -
11.41.455.

* Sec. 31. AS 12.55.145(b) is amended to read:

(b) When sentence is imposed under this chapter, prior convictions not expressly admitted by the defendant must be proved by authenticated copies of court records served on the defendant or his counsel at least 20 [10] days before the date set for imposition of sentence.

* Sec. 32. AS 12.55.145(c) is amended to read:

(c) If the defendant denies the authenticity of a prior judgment of conviction, that he is the person named in the judgment, that the elements of a prior offense committed in another jurisdiction are substantially identical to those of a felony defined as such under Alaska law, or that a prior conviction occurred within the period specified in (a)(1) of this section or if he alleges that two or more purportedly separate prior convictions should be considered a single conviction under (a)(3) of this section, the defendant shall file with the court and serve on the prosecuting attorney notice of denial no later than 10 [FIVE] days before the date set for imposition of sentence. The notice of denial shall include a concise statement of the grounds relied upon and may be supported by affidavit or other documentary evidence.

* Sec. 33. AS 12.55.145 is amended by adding a new subsection to read:

(f) When a defendant is convicted of a felony by a court of this state he shall place his fingerprints on the judgment of conviction in open court, on the record, at the time of sentencing. The defendant and the person administering the fingerprinting shall sign their names under the fingerprints.

* Sec. 34. AS 12.55.155(c)(8) is repealed and reenacted to read:

(8) the defendant's prior criminal history includes conduct involving aggravated or repeated instances of assaultive behavior;

1 * Sec. 35. AS 12.55.155(c) is amended by adding new paragraphs to read:

2 (19) the defendant's prior criminal history includes an adjudi-
3 cation as a delinquent for conduct that would have been a felony if
4 committed by an adult;

5 (20) the defendant was on furlough under AS 33.30 or on parole
6 or probation for another felony charge or conviction;

7 (21) the defendant has a criminal history of repeated instances
8 of conduct violative of criminal laws, whether punishable as felonies or
9 misdemeanors, similar in nature to the offense for which the defendant
10 is being sentenced under this section.

11 * Sec. 36. AS 11.41.210(a)(3); AS 12.45.085; AS 12.55.025(e), 12.55.155-
12 (d)(8); AS 47.25.280, 47.25.403, 47.25.405, 47.25.600, 47.25.760, 47.25.950,
13 47.25.983, and 47.25.985(a)(3) are repealed.

14 * Sec. 37. AS 12.55.088(a), amended by sec. 27 of this Act, has the
15 effect of changing Rule 35(a), (b), and (k), Rules of Criminal Procedure, by
16 deleting the provisions for modification or reduction of sentence as a result
17 of changed circumstances and by decreasing from 120 to 60 days the period of
18 time in which a sentence otherwise may be modified or reduced.

19 * Sec. 38. This Act takes effect immediately in accordance with AS 01.10.-
20 070(c).

COMMITTEE REPORT

HOUSE

FURTHER:

Date: _____

Mr. Speaker:

The Committee on _____ has had _____

under consideration and reports it back as follows:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

Original sponsor: Rules/Governor

Offered: 4/19/82
Referred: Finance

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2

HOUSE CS FOR CS FOR SENATE BILL NO. 535 (Judiciary)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

TWELFTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the criminal laws of the state; and
7 changing Rule 35(a), (b), and (k), Rules of Criminal
8 Procedure."

9

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

10

* Section 1. AS 11.41.100 is amended by adding a new subsection to read:

11

(c) If more than one person dies as a result of a person committing
12 murder in the first degree, each death constitutes a separately punish-
13 able offense.

14

* Sec. 2. AS 11 41.110 is amended by adding a new subsection to read:

15

(c) If more than one person dies as a result of a person commit-
16 ting murder in the second degree, each death constitutes a separately
17 punishable offense.

18

* Sec. 3. AS 11.41.120 is amended by adding a new subsection to read:

19

(c) If more than one person dies as a result of a person com-
20 mitting manslaughter, each death constitutes a separately punishable
21 offense.

22

* Sec. 4. AS 11.41.130 is amended by adding a new subsection to read:

23

(c) If more than one person dies as a result of a person com-
24 mitting criminally negligent homicide, each death constitutes a separ-
25 ately punishable offense.

26

* Sec. 5. AS 11.46.484(b) is amended to read:

27

(b) Except as provided in (c) of this section, criminal [CRIMINAL]
28 mischief in the third degree is a class A misdemeanor.

29

* Sec. 6. AS 11.46.484 is amended by adding a new subsection to read:

1 (c) A person convicted under (a)(2) of this section who has been
2 previously convicted under that paragraph or under AS 28.35.010 is
3 guilty of a class C felony.

4 * Sec. 7. AS 11.81.320 is amended by adding a new subsection to read:

5 (b) The justification allowed in (a) of this section is an affirma-
6 tive defense.

7 * Sec. 8. AS 11.81 is amended by adding a new section to read:

8 Sec. 11.81.650. MENTAL DISEASE OR DEFECT EXCLUDING RESPONSIBILITY.

9 (a) In a prosecution for a crime it is an affirmative defense that when
10 the defendant engaged in the criminal conduct he lacked substantial
11 capacity, as a result of a mental disease or defect, either to appre-
12 ciate the wrongfulness of his conduct or to conform his conduct to the
13 requirements of law.

14 (b) Evidence of a mental disease or defect that is manifested only
15 by repeated criminal or other antisocial conduct is not sufficient to
16 establish an affirmative defense under (a) of this section.

17 * Sec. 9. AS 11.81.900(a)(1) is amended to read:

18 (1) a person acts "intentionally" with respect to a result
19 described by a provision of law defining an offense when his conscious
20 objective is to cause that result; when intentionally causing a particu-
21 lar result is an element of an offense, that intent need not be the
22 person's only objective;

23 * Sec. 10. AS 11.81.900(b)(37) is amended to read:

24 (37) "organization" means a legal entity, including a corpora-
25 tion, company, association, firm, partnership, joint stock company,
26 foundation, institution, government, society, union, club, church, or
27 any other group of persons organized for any purpose;

28 * Sec. 11. AS 11.81.900(b)(44) is amended to read:

29 (44) "property" means a domestic pet or livestock regardless

1 of value, an article, substance, or thing of value, including money,
2 tangible and intangible personal property including data or informa-
3 tion stored in a computer program, system, or network, real property, a
4 credit card, choses-in-action, and evidence of debt or of contract; [,]
5 a commodity of a public utility such as gas, electricity, steam, or
6 water constitutes property but the supplying of such a commodity to
7 premises from an outside source by means of wires, pipes, conduits, or
8 other equipment is considered a rendition of a service rather than a
9 sale or delivery of property;

10 * Sec. 12. AS 11.81.900(b)(49) is amended to read:

11 (49) "serious physical injury" means

12 (A) physical injury caused by an act performed under
13 circumstances that create [WHICH CREATES] a substantial risk of
14 death; or

15 (B) physical injury that [WHICH] causes serious and
16 protracted disfigurement, protracted impairment of health, [OR]
17 protracted loss or impairment of the function of a body member or
18 organ, or that [PHYSICAL INJURY WHICH] unlawfully terminates a
19 pregnancy;

20 * Sec. 13. AS 12.55.025 is amended by adding new subsections to read:

21 (g) Except as provided in (h) of this section, if the defendant
22 has been convicted of a crime other than the one for which he is pre-
23 sently being sentenced, the sentences of imprisonment for the two con-
24 victions shall be served consecutively, regardless of whether either
25 judgment specifies that the sentences shall be consecutive.

26 (h) The court may specify that sentences of imprisonment for
27 multiple crimes charged in a single charging document are to be served
28 concurrently if the court finds that the crimes violate similar societal
29 interests or are part of a single continuous criminal episode, unless

1 (1) there was a substantial change in the nature of the
2 criminal objective, including but not limited to a change in the parties
3 to the crimes, the property or type of property right offended, or the
4 persons offended;

5 (2) the crimes were committed while the defendant attempted
6 to escape or avoid detection or apprehension after the commission of
7 another crime;

8 (3) the sentence is for violation of AS 11.41.100 - 11.41.-
9 140, AS 11.41.200 - 11.41.250, AS 11.41.300 - 11.41.350, or for a viola-
10 tion of AS 11.41.500 - 11.41.530 that results in physical injury or
11 serious physical injury as those terms are defined in AS 11.41.900 to
12 one or more persons; or

13 (4) the sentence is for violation of AS 11.41.410 - 11.41.-
14 455.

15 * Sec. 14. AS 12.55.088(a) is amended to read:

16 (a) The court may modify or reduce a sentence by entering a written
17 order within 60 days of the original sentencing [AT ANY TIME DURING A
18 TERM OF IMPRISONMENT IF IT FINDS THAT CONDITIONS OR CIRCUMSTANCES HAVE
19 CHANGED SINCE THE ORIGINAL SENTENCING HEARING SUCH THAT THE PURPOSE OF
20 THE ORIGINAL SENTENCE IS NOT BEING FULFILLED].

21 * Sec. 15. AS 12.55.125(c)(1) is amended to read:

22 (1) if the offense is a first felony conviction [, OTHER THAN
23 FOR MANSLAUGHTER,] and, during the commission of the offense, the defen-
24 dant possessed or used a firearm or used a dangerous instrument or
25 caused serious physical injury, eight [DURING THE COMMISSION OF THE
26 OFFENSE, SIX] years;

27 * Sec. 16. AS 12.55.135(c) is amended to read:

28 (c) A defendant convicted of assault in the fourth [THIRD]
29 degree committed in violation of the provisions of an order issued under

1 AS 09.55.600 or 09.55.610 shall be sentenced to a minimum term of impris-
2 sonment of 20 [10] days. The execution of sentence may not be suspended
3 and probation or parole may not be granted until the minimum term of
4 imprisonment has been served. Imposition of sentence may not be sus-
5 pended, except upon condition that the defendant be [BY] imprisoned for
6 no less than the minimum term of imprisonment provided in this section,
7 and the minimum sentence provided for in this section may not be other-
8 wise reduced.

9 * Sec. 17. AS 12.55.145(a) is repealed and reenacted to read:

10 (a) For purposes of considering prior convictions in imposing
11 sentence under this chapter

12 (1) a prior conviction may not be considered if a period of
13 10 or more years has elapsed between the date of the defendant's uncon-
14 ditional discharge on the immediately preceding offense and commission
15 of the present offense unless the prior conviction was for an unclassi-
16 fied or class A felony;

17 (2) a conviction in this or another jurisdiction of an offense
18 having elements similar to those of a felony defined as such under
19 Alaska law is considered a prior felony conviction;

20 (3) two or more convictions for crimes violating similar
21 societal interests or arising out of a single, continuous criminal
22 episode are considered a single conviction unless

23 (A) there was a substantial change in the nature of the
24 criminal objective, including but not limited to a change in the
25 parties to the crimes, the property or type of property right
26 offended, or the persons offended;

27 (B) the crimes were committed while the defendant
28 attempted to escape or avoid detection or apprehension after the
29 commission of another crime;

1 (C) the sentence is for violation of AS 11.41.100 -
2 11.41.140, AS 11.41.200 - 11.41.250, AS 11.41.300 - 11.41.330, or
3 for a violation of AS 11.41.500 - 11.41.530 that results in physical
4 injury or serious physical injury as those terms are defined in
5 AS 11.41.900 to one or more persons; or

6 (D) the sentence is for violation of AS 11.41.410 -
7 11.41.455.

8 * Sec. 18. AS 12.55.145(b) is amended to read:

9 (b) When sentence is imposed under this chapter, prior convictions
10 not expressly admitted by the defendant must be proved by authenticated
11 copies of court records served on the defendant or his counsel at least
12 20 [10] days before the date set for imposition of sentence.

13 * Sec. 19. AS 12.55.145(c) is amended to read:

14 (c) If the defendant denies the authenticity of a prior judgment
15 of conviction, that he is the person named in the judgment, that the
16 elements of a prior offense committed in another jurisdiction are sub-
17 stantially identical to those of a felony defined as such under Alaska
18 law, or that a prior conviction occurred within the period specified in
19 (a)(1) of this section or if he alleges that two or more purportedly
20 separate prior convictions should be considered a single conviction
21 under (a)(3) of this section, the defendant shall file with the court
22 and serve on the prosecuting attorney notice of denial no later than 10
23 [FIVE] days before the date set for imposition of sentence. The notice
24 of denial shall include a concise statement of the grounds relied upon
25 and may be supported by affidavit or other documentary evidence.

26 * Sec. 20. AS 12.55.145 is amended by adding a new subsection to read:

27 (f) When a defendant is convicted of a felony by a court of this
28 state he shall place his fingerprints on the judgment of conviction in
29 open court, on the record, at the time of sentencing. The defendant and

1 the person administering the fingerprinting shall sign their names under
2 the fingerprints.

3 * Sec. 21. AS 12.55.155(c)(8) is repealed and reenacted to read:

4 (8) the defendant's prior criminal history includes conduct
5 involving aggravated or repeated instances of assaultive behavior;

6 * Sec. 22. AS 12.55.155(c) is amended by adding new paragraphs to read:

7 (19) the defendant's prior criminal history includes an adjudi-
8 cation as a delinquent for conduct that would have been a felony if
9 committed by an adult;

10 (20) the defendant was on furlough under AS 33.30 or on parole
11 or probation for another felony charge or conviction;

12 (21) the defendant has a criminal history of repeated instances
13 of conduct violative of criminal laws, whether punishable as felonies or
14 misdemeanors, similar in nature to the offense for which the defendant
15 is being sentenced under this section.

16 * Sec. 23. AS 12.45.083; AS 12.55.025(e), 12.55.155(d)(8); AS 47.25.280,
17 47.25.403, 47.25.405, 47.25.600, 47.25.760, 47.25.950, 47.25.983, and 47.25.-
18 985(a)(3) are repealed.

19 * Sec. 24. AS 12.55.088(a), amended by sec. 14 of this Act, has the
20 effect of changing Rule 35(a), (b), and (k), Rules of Criminal Procedure, by
21 deleting the provisions for modification or reduction of sentence as a result
22 of changed circumstances and by decreasing from 120 to 60 days the period of
23 time in which a sentence otherwise may be modified or reduced.

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HCS for CSSB 535 (Judiciary)
 Title "An Act relating to the criminal laws of the State."
 Requested by House Judiciary Date April 14, 1982

II. FISCAL DETAIL

Agency Affected Department of Health and Social Services
 Program Category Affected Offender Confinement, Reformation, & Supervision
 BRU, Program, Or Subprogram(s) Affected Adult Confinement
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES				137.4	147.0	2,448.6
200 TRAVEL						17.5
300 CONTRACTUAL				14.4	15.7	355.7
400 COMMODITIES				32.2	35.1	474.1
500 EQUIPMENT						
600 LAND & STRUCTURES		897.0	6,900.0			
700 GRANTS, CLAIMS, ETC.						46.6
TOTAL	0	897.0	6,900.0	184.0	197.8	3,342.5

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	0	897.0	6,900.0	184.0	197.8	3,342.5
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME	0	0	0	5	5	45
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

A. Bed Space estimates:

An analysis of HCS for CSSB 535 (Judiciary) indicates there would be a need for an additional 113 beds in the Alaska Correctional system if the bill were enacted. The following gives a section by section estimate for these increased bed needs.

IV. DATE April 15, 1982

PREPARED BY Roger C. Lange
 AGENCY DHSS - Division of Adult Corrections
 PHONE 465-3376

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)

JCC

Sections 3 and 4: Multiple Deaths

It is estimated that multiple deaths from manslaughter (class A felony) or from criminal negligence (class C felony) will occur one or two times a year each. Therefore, we would expect to average 1 1/2 additional A-Felony convictions and 1 1/2 additional C-Felony convictions per year. The additional cumulative time served would be about 8 man years.
 $(1.5 \times 4.5) + (1.5 \times .82) = 7.98.$

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Section 6: Joyriding - Second Offense

It is estimated that there are likely to be between 90 and 100 joyriding convictions per year. Of these 10% are estimated to be repeat offenders. For these 9 or 10 convicted offenders, the law would require sentencing as Class C felons. Therefore, these 9 or 10 would serve approximately 162 additional days on the average (each). The aggregate impact would be about 1,539 added man days or slightly more than 4 man years.

===

Section 13: Multiple Offenses, Consecutive Sentencing

Multiple charges are not rare. Currently prisoners are rarely sentenced to serve consecutive sentences for more than one offense. A recent survey of in-state offenders showed that among 451 convicted persons, 150 or 33% were imprisoned on more than one charge or count. Of these, 48 appeared to qualify for sentencing consecutively under the statute. A very few of these are now serving consecutive sentences, but the majority have received concurrent sentences. If these 48 could be considered representative of the number and type of multiple offender entering the system annually (which is by no means certain), then we can estimate the additional bed spaces needed to provide for the consecutive sentencing provision of this section. We expect to commit about 80 Class A felons per year. Of these, approximately 55 are first offenders and the remainder are repeaters (25). Homicide convictions yield about 12 admissions annually. A flat 10% of all these admissions would suggest about 9 convicted felons entering the system annually may be eligible for the consecutive sentencing practice. We may delete 2 or 3 of these as not having lead to any injury. Therefore, about 6 or 7 felons will be consecutively sentenced for periods averaging approximately 6 years each, the current sentence for first time A felons using firearms in the commission of a crime. The consecutive provision will add 4.5 years of jail time per person. This produces approximately 30 additional man years of accumulated jail service.

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Section 15: First Offense Felony with Firearm

The impact of this legislation will not be experienced for 4 1/2 years from the date of effect. At the present time, an average of 32 persons are convicted of first offense felonies with the use of a firearm. The current flat time sentence is 4 1/2 years. Under the proposed legislation, the flat time served would be six years. Therefore, the population of inmates for which the Division of Adult Corrections is responsible would increase by 48 persons in the fifth and sixth years that the increased length is in effect. The inclusion of manslaughter among the offenses identified will raise the number of affected sentences by about 10 cases per year. The additional 1 1/2 years of incarceration times 10 yields 15 man years to be added to the 48 identified above. Therefore, the total impact of this section is estimated to be 63 beds.

Section 17: Prior Conviction within past 10 years

The addition of 3 years to the retroactive period during which a convicted offender is in jeopardy changes from 7 to 10 years the span of vulnerability. Since the frequency of recidivism is a monotonically decreasing function we believe that the effect of this provision will be moderate at most. Our investigations have shown that more than 80% of repeat offenses occur during the first three years after release. If the balance were uniformly spread over the remaining seven years then recidivism could occur in the last three years of a ten year period. Further, if the frequency declined uniformly to zero by the end of the tenth year then only about 1.8% of the recidivist population would remain to be convicted after the 7th year. This last value yields an estimated increase in second offender felony convictions of slightly less than 3 per year. These would be spread in a proportionate manner over all classes of felony offenses. The approximate average increase in time served would be about 4.8 years for Class A felons, 1.85 years for Class B, and 1.05 years for Class C. If we had one each of A, B, C felons the aggregate man year increase would be approximately 7.7.

The aggregate total of increased bed space needs is, therefore, 112.6 (rounded up to 113).

B. Cost Estimates

1. Capital Expenditures

113 beds at an estimated cost of \$69,000 per bed.

113 x \$69,000 = \$7,797,000

13 requested in FY 1983

100 requested in FY 1984

2. Operating Expenditures

The major impact of this legislation would not occur for approximately 4 years after its effective date. Therefore, most new positions are not requested until FY 1987.

The operating costs were developed using the Juneau Correctional Center budget as a model since their current bed capacity is very similar to the number of new beds required. This results in a new staff of 45 positions.

Five correctional officers to man one post plus some commodities (food, clothing, etc.) and contractual (medical) are identified beginning in FY 1985.

Proposed revisions for CSSB 535(Jud) am:

→ (I) Replace Sec. 5 with following language:

* Sec. 5. AS 11.46.200 is amended by adding a new subsection to read:

(c) Unlawful use of the entertainment services listed in AS 11.81.900(b)(50) is a class A misdemeanor.

→ (II) In Sec. 6 add the word "commercial" before "telecommunications":

* Sec. 6. AS 11.46.482(a) is amended by adding a new paragraph to read:

(5) that person sells, leases, trades, or offers for sale, lease, or trade, any device designed to intercept cable, microwave, subscription, or pay television, or any other commercial telecommunications service, with intent to defraud another of the lawful charges for the service.

→ (III) In Sec. 7 substitute the words "electromagnetic signals" for the words "satellite telecommunications":

* Sec. 7. AS 11.46.482 is amended by adding a new paragraph to read:

(c) Notwithstanding the provisions of (a) of this section, it is lawful for a person to sell a device for the interception of electromagnetic signals if the interception is not for commercial advantage or is not intended to defraud a commercial provider of a service listed in AS 11.81.900(b)(50).

(IV) In Sec. 10 add the word "commercial" to the proposed new language:

* Sec. 10. AS 11.81.900(b)(50) is amended to read:

(50) "services" includes labor, professional services, transportation, telephone or other communications service, entertainment including cable, microwave, subscription or pay television or any other commercial telecommunications service, the supplying of food, lodging, or other accommodations in hotels, restaurants, or elsewhere, admissions to exhibitions, and the supplying of equipment for use;

Original sponsor: Rules/Governor

Offered: 3/17/82
Referred: Rules

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 535 (Judiciary) am

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the criminal laws of the state."

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

8 * Section 1. AS 11.41.200(a)(1) is amended to read:

9 (1) that person recklessly causes [WITH INTENT TO CAUSE]
10 serious physical injury to another person [, HE CAUSES PHYSICAL INJURY
11 TO ANY PERSON] by means of a dangerous instrument;

12 * Sec. 2. AS 11.41.210(a) is repealed and reenacted to read:

13 (a) A person commits the crime of assault in the second degree if

14 (1) with intent to cause physical injury to another person,
15 that person causes physical injury to another person by means of a
16 dangerous instrument; or

17 (2) that person recklessly causes serious physical injury to
18 another person.

19 * Sec. 3. AS 11.41.220(a) is amended to read:

20 (a) A person commits the crime of assault in the third degree if
21 that person [HE] recklessly

22 (1) places another person in fear of imminent serious physi-
23 cal injury by means of a dangerous instrument; or

24 (2) causes physical injury to another person by means of a
25 dangerous instrument.

26 * Sec. 4. AS 11.41.230(a)(3) is amended to read:

27 (3) by words or other conduct that person recklessly [HE
28 INTENTIONALLY] places another person in fear of imminent physical
29 injury.

1 * Sec. 5. AS 11.46.200 is amended by adding a new subsection to read:

2 (c) Notwithstanding the provisions of this section, it is lawful
3 for a person to intercept satellite telecommunications if the intercep-
4 tion is not for commercial advantage or is not done with the intent to
5 defraud a commercial provider of a service listed in AS 11.81.900(b)(50).

6 * Sec. 6. AS 11.46.482(a) is amended by adding a new paragraph to read:

7 (5) that person sells, leases, trades, or offers for sale,
8 lease, or trade, any device designed to intercept cable, microwave,
9 subscription, or pay television, or any other telecommunications serv-
10 ice, with intent to defraud another of the lawful charges for the
11 service.

12 * Sec. 7. AS 11.46.482 is amended by adding a new subsection to read:

13 (c) Notwithstanding the provisions of (a) of this section, it is
14 lawful for a person to sell a device for the interception of satellite
15 telecommunications if the interception is not for commercial advantage
16 or is not intended to defraud a commercial provider of a service listed
17 in AS 11.81.900(b)(50).

18 * Sec. 8. AS 11.81 is amended by adding a new section to read:

19 Sec. 11.81.635. MENTAL DISEASE OR DEFECT EXCLUDING RESPONSIBILITY.

20 (a) In a prosecution for a crime, it is an affirmative defense that
21 when the defendant engaged in the criminal conduct, that as a result of
22 a mental disease or defect, the defendant lacked substantial capacity
23 either to appreciate the wrongfulness of the conduct engaged in or to
24 conform the conduct engaged in to the requirements of law.

25 (b) Evidence solely of an abnormality which is manifested only by
26 repeated criminal or otherwise antisocial conduct is not sufficient to
27 establish the affirmative defense specified in (a) of this section.

28 * Sec. 9. AS 11.81.900(b)(49) is repealed and reenacted to read:

29 (49) "serious physical injury" means

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

3 (B) physical injury which causes serious and protracted
4 disfigurement, protracted impairment of health, or protracted loss
5 or impairment of the function of a body member or organ, or which
6 unlawfully terminates a pregnancy;

7 * Sec. 10. AS 11.81.900(b)(50) is amended to read:

8 (50) "services" includes labor, professional services, trans-
9 portation, telephone or other communications service, entertainment
10 including cable, microwave, subscription, or pay television or any other
11 telecommunications service, the supplying of food, lodging, or other
12 accommodations in hotels, restaurants, or elsewhere, admissions to
13 exhibitions, and the supplying of equipment for use;

14 * Sec. 11. AS 12.55.155(c)(8) is repealed and reenacted to read:

15 (8) the defendant's prior criminal history includes conduct
16 involving aggravated or repeated instances of assaultive behavior;

17 * Sec. 12. AS 12.55.155(c) is amended by adding new paragraphs to read:

18 (19) the defendant's prior criminal history includes an ad-
19 judication as a delinquent for conduct that would have been a felony if
20 committed by an adult;

21 (20) the defendant knowingly directed the conduct consti-
22 tuting the offense at a victim because of that person's race, sex, color,
23 creed, ancestry, or national origin.

24 * Sec. 13. AS 12.45.083 is repealed.
25
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Offered: 3/17/82
Referred: Rules

Original sponsor: Rules/Governor

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2

CS FOR SENATE BILL NO. 535 (Judiciary)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

TWELFTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the criminal laws of the state."

7

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

8

* Section 1. AS 11.41.200(a)(1) is amended to read:

9

(1) he recklessly causes [WITH INTENT TO CAUSE] serious

10

physical injury to another person [, HE CAUSES PHYSICAL INJURY TO ANY

11

PERSON] by means of a dangerous instrument;

12

* Sec. 2. AS 11.41.210(a) is repealed and reenacted to read:

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(a) A person commits the crime of assault in the second degree if

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person.

19

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(a) A person commits the crime of assault in the third degree if

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he recklessly

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(1) places another person in fear of imminent serious physi-
cal injury by means of a dangerous instrument; or

23

24

(2) causes physical injury to another person by means of a

25

dangerous instrument.

26

* Sec. 4. AS 11.41.230(a)(3) is amended to read:

27

(3) by words or other conduct he recklessly [INTENTIONALLY]

28

places another person in fear of imminent physical injury.

29

* Sec. 5. AS 11.46.200 is amended by adding a new subsection to read:

1 (c) Notwithstanding the provisions of this section, it is lawful
2 for a person to intercept satellite telecommunications if the intercep-
3 tion is not for commercial advantage or is not done with the intent to
4 defraud a commercial provider of a service listed in AS 11.81.900(b)(50).

5 * Sec. 6. AS 11.46.482(a) is amended by adding a new paragraph to read:

6 (5) he sells, leases, trades, or offers for sale, lease, or
7 trade, any device designed to intercept cable, microwave, subscription,
8 or pay television, or any other telecommunications service, with intent
9 to defraud another of the lawful charges for the service.

10 * Sec. 7. AS 11.46.482 is amended by adding a new subsection to read:

11 (c) Notwithstanding the provisions of (a) of this section, it is
12 lawful for a person to sell a device for the interception of satellite
13 telecommunications if the interception is not for commercial advantage
14 or is not intended to defraud a commercial provider of a service listed
15 in AS 11.81.900(b)(50).

16 * Sec. 8. AS 11.81 is amended by adding a new section to read:

17 Sec. 11.81.635. MENTAL DISEASE OR DEFECT EXCLUDING RESPONSIBILITY.

18 (a) In a prosecution for a crime, it is an affirmative defense that
19 when the defendant engaged in the criminal conduct, that as a result of
20 a mental disease or defect, he lacked substantial capacity either to
21 appreciate the wrongfulness of his conduct or to conform his conduct to
22 the requirements of law.

23 (b) Evidence solely of an abnormality which is manifested only by
24 repeated criminal or otherwise antisocial conduct is not sufficient to
25 establish the affirmative defense specified in (a) of this section.

26 * Sec. 9. AS 11.81.900(b)(49) is repealed and reenacted to read:

27 (49) "serious physical injury" means

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

1 (B) physical injury which causes serious and protracted
2 disfigurement, protracted impairment of health, or protracted loss
3 or impairment of the function of a body member or organ, or which
4 unlawfully terminates a pregnancy;

5 * Sec. 10. AS 11.81.900(b)(50) is amended to read:

6 (50) "services" includes labor, professional services, trans-
7 portation, telephone or other communications service, entertainment
8 including cable, microwave, subscription, or pay television or any other
9 telecommunications service, the supplying of food, lodging, or other
10 accommodations in hotels, restaurants, or elsewhere, admissions to
11 exhibitions, and the supplying of equipment for use;

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14 involving aggravated or repeated instances of assaultive behavior;

15 * Sec. 12. AS 12.55.155(c) is amended by adding a new paragraph to read:

16 (19) the defendant's prior criminal history includes an ad-
17 judication as a delinquent for conduct that would have been a felony if
18 committed by an adult.

19 * Sec. 13. AS 12.45.083 is repealed.
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April 30, 1981

The Honorable Jalmar Kerttula
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill making a number of miscellaneous amendments to the criminal laws of the state. The bill is patterned after last year's legislation amending the revised criminal code (ch. 102, SLA 1980) in that it clarifies ambiguities in current law to avoid unnecessary litigation and makes several substantive amendments to the state's criminal law. Additionally, the bill incorporates a number of the amendments to the criminal code proposed by the House Task Force on Violent Crime as well as several changes that have been identified as necessary during testimony before the legislature this year on the subjects of computer crime, the insanity defense, and domestic violence legislation.

Among the substantive amendments of particular interest included in this bill are provisions: (1) redefining the crime of assault to substantially reduce the applicability of the defense of intoxication to negate criminal intent; (2) increasing from six years to eight years the presumptive sentence for first offense class A felonies (including sexual assault in the first degree) committed when the defendant possesses a firearm, uses a deadly weapon, or causes serious physical injury; (3) requiring a defendant who raises the defense of insanity in a criminal trial to establish the defense by a preponderance of the evidence (under current law, a defendant can be found not guilty by reason of insanity by merely raising a reasonable doubt that he was sane at

the time of his crime); (4) restricting the right to use force to resist an arrest; (5) eliminating the right to bail pending sentencing for defendants convicted of unclassified or class A felonies.

Sincerely,

S/SSH

Jay S. Hammond
Governor

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. AB 535
Title An Act Relating to the criminal laws of the State
Requested by Governor Date _____

II. FISCAL DETAIL

Agency Affected Public Safety
Program Category Affected Administration of Justice
BRU, Program, or Subprogram(s) Affected Detachments and CIB

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		-0-	-0-	-0-		

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

This bill will have no fiscal impact on this Department.

IV. DATE 4/28/81

PREPARED BY

Michael J. Clemens
Michael J. Clemens

AGENCY

Public Safety

PHONE

465-4336

Original: Legislative Finance

cc: Budget and Management

COMMITTEE REPORT
SENATE

5/4/81

FURTHER:

Finance

Date:

5/12/81

Mr. President:

The Committee on TRANSPORTATION has had SB 541

making a special appropriation to the Bristol Bay Borough for the purchase of a grader for the Kipnuk airport runway

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations: *as follows*

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Bill Ray

John Archett

MEMBERS HAVING
OTHER RECOMMENDATIONS:

2 _____

2 Don Gilman No Rec

1 Bill Ray
CHAIRMAN

Funding Information
General Fund \$70,000
Other Funds -0-
\$70,000

Introduced: 5/4/81
Referred: Transportation and
Finance

1 IN THE SENATE

BY HOHMAN

2 SENATE BILL NO. 541

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act making a special appropriation to the Bristol
7 Bay Borough for the purchase of a grader for the
8 Kipnuk airport runway; and providing for an effective
9 date."

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

11 * Section 1. The sum of \$70,000 is appropriated from the general fund
12 for payment as a grant to the Bristol Bay Borough for the purchase of a
13 grader for the Kipnuk airport runway.

14 * Sec. 2. The appropriation made by this Act shall be disbursed in
15 accordance with AS 37.05.315.

16 * Sec. 3. This Act takes effect immediately in accordance with AS 01.10.-
17 070(c).

ALASKA STATE LEGISLATURE

TWELFTH Legislature FIRST Session

SENATE BILL NO. 541

By HOHMAN

"An Act making a special appropriation to the Bristol Bay Borough for the purchase of a grader for the Kipnuk airport runway; and providing for an effective date."

Introduced in the Senate 5/4/81, 19....

HISTORY IN THE SENATE

19	81	Read first time and referred to Committee on
5	4	Transportation and Finance
		Reported back with <i>Tranp</i> recommendation that <i>2 ill. pass. 2 no rec. to Finance</i>
		Read second time and
		Read third time and
		PASS Effective Date
		Yeas Yeas
		Nays Nays
		Absent Absent
		Excused Excused
		Reconsideration
		PASS Effective Date
		Yeas Yeas
		Nays Nays
		Absent Absent
		Excused Excused
		Reported correctly engrossed
		Signed by President
		Sent to House
SECRETARY OF THE SENATE		

HISTORY IN THE HOUSE

19		Read first time and referred to Committee on
		Reported back with recommendation that
		Read second time and
		Read third time and
		PASS Effective Date
		Yeas Yeas
		Nays Nays
		Absent Absent
		Excused Excused
		Reconsideration
		PASS Effective Date
		Yeas Yeas
		Nays Nays
		Absent Absent
		Excused Excused
		Reported correctly engrossed
		Signed by Speaker
		Returned to Senate
CHIEF CLERK OF THE HOUSE		

HISTORY IN THE SENATE

19		Received from House
		To enrolling
		Reported correctly enrolled
		Sent to Governor
	 by Governor
		Filed with Lt. Governor
		Chapter No.

Funding Information
General Fund \$70,000
Other Funds -0-
\$70,000

Introduced: 5/4/81
Referred: Transportation and
Finance

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BY HOHMAN

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