

**ALASKA LEGISLATURE**

**2691**

**HOUSE and SENATE FINANCE COMMITTEE FILES, 2003-2004**

May 1, 2003

Senate Finance Committee  
Alaska State Senate  
State Capitol, Room 518  
Juneau, AK 99801

RE: SB 168 Tobacco Tax Stamp Legislation

Dear Committee Members:

On behalf of Alaskan based wholesale tobacco distributors we would like to thank the Senate Labor and Commerce Committee for their deliberation and approval of SB 168, the Tobacco Tax Stamp bill. We were especially pleased that Senator Bunde was willing to support the inclusion of language providing for an Unfair Cigarette Sales Act as part of SB 168.

We support SB 168 (Labor & Commerce) as passed by the committee and we would ask the Senate Finance Committee to schedule this bill for consideration as soon as possible.

Alaska is one of only four states in the union that does not have a tobacco tax stamp. The implementation of a tax stamp will effectively stop the illegal importation of cigarettes into Alaska and will enhance state revenue. Alaska tobacco distributors will see an increase in sales as product presently being diverted to black market supply channels finds its way back into the legal supply chain through state-licensed distributors.

Alaska tobacco distributors routinely perform tax collection and reporting duties in support of their remittance to the State for the tobacco excise tax. In addition to the services already provided to the state the financial burden of the new tax stamp will also fall to the distributors. SB 168 provides Alaska licensed distributors with a much-earned discount for the purchase and application of the tobacco stamp. While the discount is beneficial, it supplants the current commission paid to distributors for services performed and the discount alone will not cover the cost of stamping for Alaska-based distributors.

SB 168 addresses the concerns of Alaska-based distributors with the inclusion of an Unfair Cigarette Sales Act. This measure would prohibit the sale of cigarettes below cost and is similar to legislation on the books in 25 other states. The prohibition of below-cost cigarette sales strengthens Alaska's stance on restricting youth access to tobacco products. The measure is vitally important to Alaska-based distributors because in addition to the youth access issue it creates a level playing field for those of us competing against large, national multi-state chain stores who are selling cigarettes at or below cost.

The Department of Revenue has estimated that for every 1% increase in cigarette tax collections the state will increase revenue by \$400,000. Several years ago when Michigan implemented a tax stamp they experienced an 8% growth in cigarette collections. Even if Alaska experiences only a modest 4% growth in tax collections the state should realize \$1,600,000 in revenue growth.

We believe that SB 168 is good legislation for the following reasons:

1. The state will experience an increase in tobacco tax collections
2. Alaska tobacco distributors will see increased business as black market distribution channels are shut down.
3. Alaska-based tobacco distributors will be able to compete on a level playing field with large out-of-state distributors employing predatory pricing practices.
4. Youth access to cigarettes will be further restricted as the State tightens control on the sale of below-cost sales of cigarettes.

On behalf of Alaska-based tobacco distributors we respectfully request that the Senate Finance Committee schedule this bill for a hearing as soon as possible and vote in support of this measure.

Thank you for your consideration.

Sincerely yours,

Bob Galosich  
Vice President o. Wholesale Operations  
Alaska Commercial Company

Michael J. Elerding  
President  
Northern Sales Company of Alaska

**SENATE COMMITTEE REPORT  
First Committee of Referral**

DATE: 4/4/03

FURTHER: Finance

Date of 5-Day Notice: 4/10/03  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: 4/28/03

Labor and Commerce Committee considered SENATE BILL NO. 168

**SB 168 CIGARETTE SALE/DISTRIBUTION**

"An Act relating to issuance and revocation of licenses for the importation, sale, distribution, or manufacture of cigarettes and tobacco products; relating to a tax refund or credit for unsaleable, returned, or destroyed tobacco products; relating to restrictions on shipping or transporting cigarettes; relating to records concerning the sale of cigarettes; amending and adding definitions relating to cigarette taxes; relating to the payment of cigarette taxes; relating to penalties applicable to cigarette taxes; relating to the definition of the wholesale price of tobacco products; relating to payment of cigarette taxes through the use of cigarette tax stamps; relating to provisions making certain cigarettes contraband and subject to seizure and forfeiture; relating to certain crimes, penalties, and interest concerning tobacco taxes and sales; and providing for an effective date."

and recommends:

- be replaced with \_\_\_\_\_ CS SB 168 (LEC)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

**Senate Bill:**

- same title
- new title

**House Bill:**

- same title
- technical title
- new: SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#
RFV	4/25	✓		1
LAW	4/15		✓	2

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURE AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Betty Davis</i>			X	
<i>DOE</i>			X	
<i>Stevens</i>	✓		X	
<i>Seekins</i>				
<b>CHAIR: <i>Car Bando</i></b>	✓			

Davis  
French  
Stevens  
Seekins  
  
Bando

SENATE FINANCE COMMITTEE

SIGN-IN

SB 168-CIGARETTE SALE/DISTRIBUTION

NAME: Johanna Bales Subject/Bill No: \_\_\_\_\_

Co./Dept./Title: Dept. of Revenue / Revenue Auditor Phone: 269-4628

Address: 550 W. 7th Ave., Suite 500 Anchorage Zip: 99501

Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_

Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_

Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_

Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions





**SB**

**169**

**SFIN**

**FILE**

SB 169

was referred to the  
Senate Finance  
Committee

No hearing was held  
on this bill

FRANK H. MURKOWSKI  
GOVERNOR  
GOVERNOR@GOV.STATE.AK.US



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STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

April 3, 2003

The Honorable Gene Therriault  
President of the Senate  
Alaska State Legislature  
State Capitol, Room 107  
Juneau, AK 99801-1182

Dear President Therriault:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that would establish state agency program performance management and audit powers in the Office of the Governor. This bill would establish powers in the office of management and budget necessary to evaluate program performance by executive branch agencies. These powers would include express authorization for the exercise of internal audit powers. It is my intent that this authority permit the centralization of the internal audit function, which had been a declining effort under previous Administrations. I intend to use internal audits as a management tool in my Administration's continuing effort to streamline and make efficient the operations of state agencies.

The bill also would make certain audit records confidential. This provision mirrors the powers given to legislative auditors and is considered necessary to make the auditors effective in the performance of their duties.

I urge your favorable consideration of this bill.

Sincerely,

A handwritten signature in black ink that reads "Frank H. Murkowski".

Frank H. Murkowski  
Governor

COMMITTEE COPY

**SB**

**170**

**HFIN**

**FILE**

**HOUSE COMMITTEE REPORT**

Referred to Committee: April 30, 2004

FURTHER REFERRALS:

\_\_\_\_\_ of Committee Action: 5/5/04

The FINANCE Committee considered:

CSSB 170(JUD)

**CS FOR SENATE BILL NO. 170(JUD)**

**CRIMINAL LAW/SENTENCING/ PROBATION/PAROLE**

"An Act relating to murder in the second degree, the justification of defense of self or others, immunity from prosecution, sentencing, probation, discretionary parole, and the right to representation in certain criminal proceedings; relating to violation of a custodian's duty; relating to sexual abuse of a minor; relating to release of information concerning certain cases involving a minor; relating to local options regarding alcoholic beverages, the offense of furnishing or delivery of alcoholic beverages to a person under 21 years of age, and forfeiture of property used in, and money or other items of value used in financial transactions derived from, violation of certain laws relating to alcoholic beverages; relating to assault by means of a dangerous instrument; relating to operating or driving a motor vehicle, aircraft, or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance, to the refusal to submit to a chemical test, and to the presumptions concerning the chemical analysis of breath or blood; and providing for an effective date."

Recommends it be replaced with  HCS or  CS for SB 170 (F.W.)

For Senate Bills with new title:  Technical Title  New Title: HCR \_\_\_\_\_  Same Title  New Title

- attach amendments
- add new referral to \_\_\_\_\_ Committee
- Letter of Introduction: \_\_\_\_\_ Committee

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

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
LAW				✓

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
COR	3	✓		
ADM	4	✓		

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
<i>[Signature]</i>	Meyer			X	
<i>[Signature]</i>	Hawkins	X			
<i>[Signature]</i>	STOLTZ			X	
<i>[Signature]</i>	Joule			X	
<i>[Signature]</i>	CREPT			✓	
<i>[Signature]</i>	MOSES			X	
<i>[Signature]</i>	Cherault			X	
<i>[Signature]</i>	Foster			✓	
<i>[Signature]</i>	Foster	X			
Chair: <i>[Signature]</i>	NARRIS			X	
Chair: <i>[Signature]</i>				X	

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: SB170-LAW-CDCO-3-9-2  
Bill Version: CSSB170(JUD)-LAW-CE  
( ) Publish Date: \_\_\_\_\_

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

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

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

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

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

Prepared by: Robert Meiners, Admin. Services Manager Phone: \_\_\_\_\_  
Division: Administrative Services Date/Time: 3/9/04 4:45 PM  
Approved by: Robert Meiners for Gregg D. Renkes, Attorney General Date: 3/9/2004  
Agency: Department of Law

FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. SB170

ANALYSIS CONTINUATION

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

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

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 3  
 Bill Version: CSSB 170(JUD)  
 (S) Publish Date: 4/2/04

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

**Expenditures/Revenues (Thousands of Dollars)**

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	3.4	54.6	98.9	174.2	195.0	225.7
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>3.4</b>	<b>54.6</b>	<b>98.9</b>	<b>174.2</b>	<b>195.0</b>	<b>225.7</b>

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	3.4	54.6	98.9	174.2	195.0	225.7
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>3.4</b>	<b>54.6</b>	<b>98.9</b>	<b>174.2</b>	<b>195.0</b>	<b>225.7</b>

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

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

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

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

See attached:

Prepared by: Jerry D. Burnett, Director Phone (907) 465-3339  
 Division Administrative Services Date/Time 3/10/04 7:30 AM  
 Approved by: Portia C.K. Parker, Deputy Commissioner Date 3/10/2004  
 Agency Department of Corrections

FISCAL NOTE #3

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. CSSB 170(JUD)

ANALYSIS CONTINUATION

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

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 4  
Bill Version: CSSB 170(JUD)  
(S) Publish Date: 4/16/04

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

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	74.5	74.5	74.5	74.5	74.5	74.5
Travel	2.1	2.1	2.1	2.1	2.1	2.1
Contractual	6.5	6.5	6.5	6.5	6.5	6.5
Supplies	1.0	1.0	1.0	1.0	1.0	1.0
Equipment	6.7	0.7	0.7	0.7	0.7	0.7
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>90.8</b>	<b>84.8</b>	<b>84.8</b>	<b>84.8</b>	<b>84.8</b>	<b>84.8</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

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

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

The Public Defender's operations will be fiscally affected by the first aspect of this proposed legislation, Sections 1-11, should it become law. If established villages and municipalities adopt lower amounts of alcohol for local option purposes than established in Title 4 that would increase the number of prosecutions per year, depending upon the number of local option areas that adopt lower amounts. The Agency cannot predict how many local option areas will lower the amounts, so the fiscal impact cannot be quantified. Clarifying the applicable local option law in overlapping areas may have a fiscal impact, but it is not possible to predict the impact with any accuracy. It is unknown how many cases involve importation or possession from overlapping areas. Expanding the circumstances under which the offense of furnishing alcohol to a minor is a class C felony instead of a class A misdemeanor, to include violations that occur See attached page.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)-334-4416  
Division Public Defender Agency Date/Time 4/8/04 9:55 AM  
Approved by: Kevin Jardell, Assistant Commissioner Date 4/8/2004  
Agency Department of Administration

**ANALYSIS CONTINUATION**

within the boundaries of a local option area will have a fiscal impact on the operations of the Agency. Increasing what was a misdemeanor to a felony increases the workload of the Agency. Felonies are more difficult cases and often require more work, investigation, and resources to defend, especially in rural areas, that would be most impacted by this change. Allowing the forfeiture of money and other items used in financial transactions derived from prohibited activity violative of local option laws, will have a fiscal impact on the operations of the Agency, but more importantly Section 11 requiring forfeiture of aircraft, and vehicles or watercraft in certain circumstances, will surely have a fiscal impact, because there will be more hearings on the issue of forfeiture involving potential claims by lienholders, owners, and others with an interest in the property subject to forfeiture.

Section 14 expands the crime of assault in the third degree, a class C felony, to include when a person with criminal negligence causes serious physical injury by means of a dangerous instrument. This conduct is currently an A misdemeanor. Expanding the crime of third degree assault, a C felony, to include causing serious physical injury with criminal negligence, by means of a dangerous instrument, most likely a vehicle, will certainly have a fiscal impact on Agency operations. Increasing what is now a misdemeanor to a felony level offense increases the workload of the Agency. Felonies are more difficult cases that require more resources to defend. It cannot be accurately predicted however what the increased number of cases from misdemeanor to felony will be, that are the target of this section.

Section 17 (with conforming Sections 12 and 33(a)) seeks to increase the penalties for and create a new criminal offense for violations of a court-ordered third party custodian's duty. Changing what is now a contempt violation to a charge for a class A or B misdemeanor with significantly stiffer penalties will result in less clients getting out of jail on bail, which will increase the need to more quickly prepare a case for trial and then go to trial more quickly for these clients to ensure their right to a speedy trial. It will also increase the Public Defender Agency's caseloads because it may be appointed to represent many of these custodians charged with these misdemeanors for failing to immediately report a violation.

Section 18 will have a fiscal affect on the Agency operations because more cases will be prosecuted where self-defense used to be legitimately raised, but now will be disallowed, however, it is impossible to accurately predict how many of these new prosecutions will result.

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

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

Sections 25-29 concern drunk driving and refusal laws under Title 28. It broadens felony DUI and refusal to include a person driving under the influence who has any prior conviction for felony DUI or refusal. Making any subsequent DUI or refusal a felony if there is a prior conviction for felony DUI or refusal will impact the operations of the agency, probably not immediately, but in the future. It is unknown how many people convicted of felony DUI or refusal will allegedly reoffend after 10 years has elapsed. Since the enactment of felony DUI and refusal in 1996, the number of these cases handled by the Agency has increased every year. In FY 99 the Agency handled approximately 125 felony DUI and refusals, but in FY02 it handled over 300. Felony prosecutions are more difficult cases and require more work, investigation, and resources to defend, especially in rural areas.

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

AMENDMENT ~~\_\_\_~~ ~~\_\_\_~~ \

OFFERED IN THE HOUSE FINANCE COMMITTEE

By: \_\_\_\_\_

TO: CSSB 170(JUD)

Page 11, following line 5:

Insert a new bill section to read:

“\* Sec. 19. AS 11.81 is amended by adding a new section to read:

Sec. 11.81.345. **Defense of self and others.** A court may instruct the jury about justification described in AS 11.81.330 - 11.81.340 if the court, sitting without a jury, finds that there is some plausible evidence to warrant a reasonable jury to find elements of the justification.”

Renumber the following bill sections accordingly.

AMENDMENT 2

OFFERED IN THE HOUSE FINANCE COMMITTEE

By: \_\_\_\_\_

TO: CSSB 170(JUD)

Page 11, following line 5:

Insert new bill sections to read:

“\* Sec. 19. AS 12.30.020(b)(1) is amended to read:

(1) place the person in the custody of a designated person or organization agreeing as a custodian to supervise the person; the court shall, personally and in writing, inform the custodian about the duties required of a custodian, and that failure to report immediately in accordance with the terms of the order that the person released has violated a condition of release may result in the custodian's being held criminally liable [IN CONTEMPT] under AS 11.56.758 [AS 09.50.010];

\* Sec. 20. AS 12.30.020 is amended by adding a new subsection to read:

(i) The court shall issue written or oral findings to demonstrate why conditions provided under (b)(1) of this section needed to be imposed.”

Renumber the following bill sections accordingly.

AMENDMENT 3

OFFERED IN THE HOUSE FINANCE COMMITTEE

By: \_\_\_\_\_

TO: CSSB 170(JUD)

Page 3, line 9:

Delete “.”

Insert “;”

Page 3, following line 9:

Insert the following:

“(3) opt to not apply a class C felony to violations of AS 04.16.051 that apply solely by reason of the municipality or established village adopting a local option under this section.”

Page 4, line 19:

After “AS 04.11.491”:

Insert “and has not opted out of applying a class C felony to violations of this section under AS 04.11.491(g)”

AMENDMENT   4  

OFFERED IN THE HOUSE FINANCE COMMITTEE

By: \_\_\_\_\_

TO: CSSB 170(JUD)

Page 9, line 15:

Following "injury":

Insert "under AS 11.81.900(b)(55)(B)"

AMENDMENT 5

OFFERED IN THE HOUSE FINANCE COMMITTEE

By: \_\_\_\_\_

TO: CSSB 170(JUD)

Page 11, following line 20:

Insert the following:

“(1) “higher-level felony” means an unclassified or class A felony;

(2) “lower-level felony” means a class B or class C felony;”

Renumber the following paragraphs accordingly.

Page 12, lines 17 and 18:

Delete all material and insert:

“(i) If the court finds that the witness has a valid claim of privilege, it shall advise an attorney designated by the attorney general of that finding and inform the attorney of the category or categories of offense to which the privilege applies: a higher-level felony, a lower-level felony, or a misdemeanor. If the designated attorney decides that granting immunity to the witness is appropriate, the designated attorney shall inform the prosecution of that decision, and shall deliver or cause to be delivered a letter to the witness, or an attorney for the witness, granting immunity to the witness. The designated attorney may not disclose the category of offense to anyone.”

AMENDMENT 6

OFFERED IN THE HOUSE FINANCE COMMITTEE

By: \_\_\_\_\_

TO: CSSB 170(JUD)

Page 15, line 5:

Delete "on the person"

Insert "within the last 20 years"

Page 16, line 17:

Delete "on the person"

Insert "within the last 20 years"

AMENDMENT 7

OFFERED IN THE HOUSE FINANCE COMMITTEE

By: \_\_\_\_\_

TO: CSSB 170(JUD)

Page 14, lines 19 - 30:

Delete all material and insert the following:

“(a) A person commits the crime of driving while under the influence of an alcoholic beverage, inhalant, or controlled substance if the person operates or drives a motor vehicle or operates an aircraft or a watercraft

(1) while under the influence of an alcoholic beverage, intoxicating liquor, inhalant, or any controlled substance, singly or in combination; or

(2) and if [WHEN], as determined by a chemical test taken within four hours after the alleged operating or driving [OFFENSE WAS COMMITTED], there is 0.08 percent or more by weight of alcohol in the person’s blood or 80 milligrams or more of alcohol per 100 millileters of blood, or if [WHEN] there is 0.08 grams or more of alcohol per 210 liters of the person’s breath [; OR

(3) WHILE THE PERSON IS UNDER THE COMBINED INFLUENCE OF AN ALCOHOLIC BEVERAGE, AN INTOXICATING LIQUOR, AN INHALANT, AND A CONTROLLED SUBSTANCE].”

AMENDMENT 7 B

OFFERED IN THE HOUSE FINANCE COMMITTEE

By: \_\_\_\_\_

TO: CSSB 170(JUD)

**Page 16, lines 7-11, delete all material and insert:**

“(s) In a prosecution under (a) of this section, a person may introduce evidence of the amount of alcohol consumed before or after operating or driving the motor vehicle, aircraft, or watercraft to rebut or explain the results of a chemical test, but the consumption of alcohol before operating or driving may not be used as a defense that the chemical test did not measure the blood alcohol at the time of the operating or driving. Consumption of alcohol after operating or driving may be used to raise such a defense.”

## Amendment 8 By Williams

CSSB 170 (JUD)

Delete:

Section 13 (page 7 line 30 through – page 8 line 27.)

This amendment would delete section 13, which would expand the felony-murder rule to include the death of a participant in the crime.

5.05.04

Failed 1-9

AMENDMENT # 1

OFFERED IN THE HOUSE FINANCE COMMITTEE

By: \_\_\_\_\_

TO: CSSB 170(JUD)

Page 11, following line 5:

Insert a new bill section to read:

“\* Sec. 19. AS 11.81 is amended by adding a new section to read:

**Sec. 11.81.345. Defense of self and others.** A court may instruct the jury about justification described in AS 11.81.330 - 11.81.340 if the court, sitting without a jury, finds that there is some plausible evidence to warrant a reasonable jury to find elements of the justification.”

Renumber the following bill sections accordingly.

# 2004 HOUSE FINANCE COMMITTEE VOTE SHEET

DATE: 5.5.04

Amendment: # 1 SB 170

MEMBER	Favor	Oppose
MOSES		
STOLTZE		✓
CHENAULT		✓
CROFT		✓
FATE		✓
FOSTER		✓
HAWKER	✓	
JOULE		✓
MEYER		✓
WILLIAMS		✓
HARRIS		✓

Yea 1

Nay 9

5.5.04

Adopted

no/obj

Revised #2

- SB 170 -

(Previously #5)

AMENDMENT

OFFERED IN THE HOUSE FINANCE COMMITTEE

By: \_\_\_\_\_

TO: CSSB 170(JUD)

Page 11, following line 20:

Insert the following:

“(1) “higher-level felony” means an unclassified or class A felony;

(2) “lower-level felony” means a class B or class C felony;”

Renumber the following paragraphs accordingly.

Page 12, lines 17 and 18:

Delete all material and insert:

“(i) If the court finds that the witness has a valid claim of privilege, it shall advise an attorney designated by the attorney general of that finding and inform the attorney of the category or categories of offense to which the privilege applies: a higher-level felony, a lower-level felony, or a misdemeanor. If the designated attorney decides that granting immunity to the witness is appropriate, the designated attorney shall inform the prosecution of that decision, and shall deliver or cause to be delivered a letter to the witness, or an attorney for the witness, granting immunity to the witness. The designated attorney may not disclose the category of offense to anyone.”

Adopted  
5.5.04

23-GS1024\S  
Luckhaupt  
5/5/04

HOUSE CS FOR CS FOR SENATE BILL NO. 170(FIN)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the justification of defense of self or others, immunity from  
2 prosecution, sentencing, probation, discretionary parole, and the right to representation  
3 in certain criminal proceedings; relating to violation of a custodian's duty; relating to  
4 sexual abuse of a minor; relating to release of information concerning certain cases  
5 involving a minor; relating to local options regarding alcoholic beverages, the offense of  
6 furnishing or delivery of alcoholic beverages to a person under 21 years of age, and  
7 forfeiture of property used in, and money or other items of value used in financial  
8 transactions derived from, violation of certain laws relating to alcoholic beverages;  
9 relating to assault by means of a dangerous instrument; relating to operating or driving  
10 a motor vehicle, aircraft, or watercraft while under the influence of an alcoholic  
11 beverage, inhalant, or controlled substance, to the refusal to submit to a chemical test,  
12 and to the presumptions concerning the chemical analysis of breath or blood; and

1 providing for an effective date."

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

3 \* Section 1. AS 04.11.010(c) is amended to read:

4 (c) Unless a municipality or established village has adopted a more  
5 restrictive local option under AS 04.11.491(g), in [IN] a criminal prosecution for  
6 possession of alcoholic beverages for sale in violation of (a) of this section, the fact  
7 that a person

8 (1) possessed more than 12 liters of distilled spirits, 24 liters or more  
9 of wine, or 12 gallons or more of malt beverages in an area where the sale of alcoholic  
10 beverages is restricted or prohibited under AS 04.11.491 creates a presumption that  
11 the person possessed the alcoholic beverages for sale;

12 (2) sends, transports, or brings more than 12 liters of distilled  
13 spirits, 24 liters or more of wine, or 12 gallons or more of malt beverages to an  
14 area where the sale of alcoholic beverages is restricted or prohibited under  
15 AS 04.11.491 creates a presumption that the person sent, transported, or brought  
16 the alcoholic beverages for sale in the area.

17 \* Sec. 2. AS 04.11.010 is amended by adding a new subsection to read:

18 (d) In this section,

19 (1) "bring" has the meaning given in AS 04.11.499;

20 (2) "send" has the meaning given in AS 04.11.499;

21 (3) "transport" has the meaning given in AS 04.11.499.

22 \* Sec. 3. AS 04.11.150(g) is amended to read:

23 (g) If a shipment is to an area that has restricted the sale of alcoholic  
24 beverages under AS 04.11.491(a)(1), (2), or (3) or (b)(1) or (2), a package store  
25 licensee, agent, or employee may not ship to a purchaser more than 10 and one-half  
26 liters of distilled spirits, 24 liters or more of wine, or 12 gallons or more of malt  
27 beverages in a calendar month, or a lower amount of distilled spirits, wine, or malt  
28 beverages if the municipality or established village has adopted the lower amount  
29 by local option under AS 04.11.491(g).

30 \* Sec. 4. AS 04.11.491 is amended by adding a new subsection to read:

1 (g) If a municipality or established village has adopted a local option under  
2 (a)(1), (2), (3), or (4), or (b)(1), (2), or (3) of this section, the municipality or  
3 established village, as part of the local option question or questions placed before the  
4 voters, may

5 (1) adopt an amount of alcoholic beverages that may be imported that  
6 is less than the amounts set out in AS 04.11.150(g);

7 (2) adopt an amount of alcoholic beverages that would give rise to a  
8 presumption that the person possessed the alcoholic beverages for sale; the amounts  
9 adopted under this paragraph may be lower than those set out in AS 04.11.010(c);

10 (3) opt to not apply a class C felony to violations of AS 04.16.051 that  
11 apply solely by reason of the municipality or established village adopting a local  
12 option under this section.

13 \* Sec. 5. AS 04.11.508(b) is amended to read:

14 (b) If the perimeter of an established village determined under (a) of this  
15 section includes any area that is

16 (1) within a municipality

17 (A) that has adopted a local option, the local option adopted  
18 by the municipality applies in the overlapping area;

19 (B) the local option adopted by the established village does  
20 not apply in the overlapping area;

21 (2) within the perimeter of another established village and, if the  
22 other established village has

23 (A) also adopted a local option under AS 04.11.491, the  
24 local option of the established village that is less restrictive applies in the  
25 overlapping area;

26 (B) not adopted a local option under AS 04.11.491, the local  
27 option does not apply in the overlapping area [OR WITHIN THE  
28 PERIMETER OF ANOTHER ESTABLISHED VILLAGE, THE  
29 PERIMETER DESCRIBED UNDER (a) OF THIS SECTION IS LIMITED  
30 TO AN AREA THAT INCLUDES ONLY THE ESTABLISHED VILLAGE].

31 \* Sec. 6. AS 04.11.508(c) is amended to read:

1 (c) If the board determines that the perimeter of an established village as  
2 provided under (a) and (b) of this section does not accurately reflect the perimeter of  
3 the established village, the board may establish the perimeter of the established village  
4 and the areas of overlapping perimeter described under (b) of this section for  
5 purposes of applying a local option selected under this chapter.

6 \* Sec. 7. AS 04.16.051(d) is amended to read:

7 (d) A person acting with criminal negligence who violates this section is guilty  
8 of a class C felony if

9 (1) within the five years preceding the violation, the person has been  
10 previously convicted under

11 (A) this section; or

12 (B) a law or ordinance of this or another jurisdiction with  
13 elements substantially similar to this section; [OR]

14 (2) the person who receives the alcoholic beverage negligently causes  
15 serious physical injury to or the death of another person while under the influence of  
16 the alcoholic beverage received in violation of this section; in this paragraph,

17 (A) "negligently" means acting with civil negligence; and

18 (B) "serious physical injury" has the meaning given in  
19 AS 11.81.900; or

20 (3) the violation occurs within the boundaries of a municipa'ity or  
21 the perimeter of an established village that has adopted a local option under  
22 AS 04.11.491 and has not opted out of applying a class C felony to violations of  
23 this section under AS 04.11.491(g).

24 \* Sec. 8. AS 04.16.220(a) is amended to read:

25 (a) The following are subject to forfeiture:

26 (1) alcoholic beverages manufactured, sold, offered for sale or  
27 possessed for sale, bartered or exchanged for goods and services in this state in  
28 violation of AS 04.11.010; alcoholic beverages possessed, stocked, warehoused, or  
29 otherwise stored in violation of AS 04.21.060; alcoholic beverages sold, or offered for  
30 sale in violation of a local option adopted under AS 04.11.491; alcoholic beverages  
31 transported into the state and sold to persons not licensed under this chapter in

1 violation of AS 04.16.170(b);

2 (2) materials and equipment used in the manufacture, sale, offering for  
3 sale, possession for sale, barter or exchange of alcoholic beverages for goods and  
4 services in this state in violation of AS 04.11.010; materials and equipment used in the  
5 stocking, warehousing, or storage of alcoholic beverages in violation of AS 04.21.060;  
6 materials and equipment used in the sale or offering for sale of an alcoholic beverage  
7 in an area in violation of a local option adopted under AS 04.11.491;

8 (3) aircraft, vehicles, or vessels used to transport, or facilitate the  
9 transportation of

10 (A) alcoholic beverages manufactured, sold, offered for sale or  
11 possessed for sale, bartered or exchanged for goods and services in this state in  
12 violation of AS 04.11.010;

13 (B) property stocked, warehoused, or otherwise stored in  
14 violation of AS 04.21.060;

15 (C) alcoholic beverages imported into a municipality or  
16 established village in violation of AS 04.11.499;

17 (4) alcoholic beverages found on licensed premises that do not bear  
18 federal excise stamps if excise stamps are required under federal law;

19 (5) alcoholic beverages, materials or equipment used in violation of  
20 AS 04.16.175;

21 (6) money, securities, negotiable instruments, or other things of  
22 value used in financial transactions derived from activity prohibited under  
23 AS 04.11.010 or in violation of a local option adopted under AS 04.11.491.

24 \* Sec. 9. AS 04.16.220(e) is amended to read:

25 (e) The owner of property subject to forfeiture under (a) or (i) of this section  
26 is entitled to relief from the forfeiture in the nature of remission of the forfeiture if, in  
27 an action under (d) of this section, the owner shows that the owner

28 (1) was not a party to the violation;

29 (2) [AND] had no actual knowledge or reasonable cause to believe  
30 that the property was used or was to be used in violation of the law; and

31 (3) had no actual knowledge or reasonable cause to believe that the

person committing the violation had(A) a criminal record for violating this title; or(B) committed other violations of this title.

\* Sec. 10. AS 04.16.220(f) is amended to read:

(f) A person other than the owner holding, or the assignee of, a lien, mortgage, conditional sales contract on, or the right to possession to property subject to forfeiture under (a) or (i) of this section is entitled to relief from the forfeiture in the nature of remission of the forfeiture if, in an action under (d) of this section, the person shows that the person

(1) was not a party to the violation subjecting the property to forfeiture;

(2) [AND] had no actual knowledge or reasonable cause to believe that the property was [USED OR WAS] to be used in violation of the law; and

(3) had no actual knowledge or reasonable cause to believe that the person committing the violation had

(A) a criminal record for violating this title; or(B) committed other violations of this title.

\* Sec. 11. AS 04.16.220 is amended by adding new subsections to read:

(i) Upon conviction for a violation of AS 04.11.010 or 04.11.499, if an aircraft, vehicle, or watercraft is subject to forfeiture under (a) of this section, the court shall, subject to remission to innocent parties under this section,

(1) order the forfeiture of an aircraft to the state;

(2) order the forfeiture of a vehicle or watercraft if

(A) the defendant has a prior felony conviction for a violation of AS 11.41 or a similar law in another jurisdiction;

(B) the defendant is on felony probation or parole;

(C) the defendant has a prior conviction for violating AS 04.11.010 or 04.11.499; or

(D) the quantity of alcohol transported in violation of this title was twice the presumptive amounts in AS 04.11.010(c).

(j) Notwithstanding (i) of this section, a court is not required to order the

1 forfeiture of a vehicle or watercraft if the court determines that

2 (1) the vehicle or watercraft is the sole means of transportation for a  
3 family residing in a village;

4 (2) the court may impose conditions that will prevent the defendant's  
5 use of the vehicle or watercraft; and

6 (3) either

7 (A) a member of the family would be entitled to remission  
8 under this section if the family member were an owner of or held a security  
9 interest in the vehicle or watercraft; or

10 (B) if a member of the family would not be entitled to  
11 remission, the family member was unable as a practical matter to stop the  
12 violation making the vehicle or watercraft subject to forfeiture.

13 (k) When forfeiting property under (a), (d), or (i) of this section, a court may  
14 award to a municipal law enforcement agency that participated in the arrest or  
15 conviction of the defendant, the seizure of property, or the identification of property  
16 for seizure, (1) the property if the property is worth \$5,000 or less and is not money or  
17 some other thing that is divisible, or (2) up to 75 percent of the property or the value of  
18 the property if the property is worth more than \$5,000 or is money or some other thing  
19 that is divisible. In determining the percentage a municipal law enforcement agency  
20 may receive under this subsection, the court shall consider the municipal law  
21 enforcement agency's total involvement in the case relative to the involvement of the  
22 state.

23 (l) In this section, "village" means a community of fewer than 1,000 persons  
24 located off the interconnected state road system.

25 \* Sec. 12. AS 09.50.020(a) is amended to read:

26 (a) A person who is guilty of contempt is punishable by a fine of not more  
27 than \$300 or by imprisonment for not more than six months. However, when the  
28 contempt is one mentioned in AS 09.50.010(3) - (12), or in an action before a  
29 magistrate, the person is punishable by a fine of not more than \$100 unless it appears  
30 that a right or remedy of a party to an action or proceeding was defeated or prejudiced  
31 by the contempt, in which case the penalty shall be as prescribed for contempts

1 described in AS 09.50.010(1) and [,] (2) [, AND (13)].

2 \* Sec. 13. AS 11.41.220(a) is amended to read:

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

4 (1) recklessly

5 (A) places another person in fear of imminent serious physical  
6 injury by means of a dangerous instrument;

7 (B) causes physical injury to another person by means of a  
8 dangerous instrument; or

9 (C) while being 18 years of age or older

10 (i) causes physical injury to a child under 10 years of  
11 age and the injury reasonably requires medical treatment;

12 (ii) causes physical injury to a child under 10 years of  
13 age on more than one occasion;

14 (2) with intent to place another person in fear of death or serious  
15 physical injury to the person or the person's family member makes repeated threats to  
16 cause death or serious physical injury to another person; [OR]

17 (3) while being 18 years of age or older, knowingly causes physical  
18 injury to a child under 16 years of age but at least 10 years of age and the injury  
19 reasonably requires medical treatment; or

20 (4) with criminal negligence causes serious physical injury under  
21 AS 11.81.900(b)(55)(B) to another person by means of a dangerous instrument.

22 \* Sec. 14. AS 11.41.438(a) is amended to read:

23 (a) An offender commits the crime of sexual abuse of a minor in the third  
24 degree if

25 (1) being under 16 years of age, the offender engages in sexual  
26 penetration with a person who is under 13 years of age and at least three years  
27 younger than the offender;

28 (2) being 16 years of age or older, the offender engages in sexual  
29 contact with a person who is 13, 14, or 15 years of age and at least three years younger  
30 than the offender; or

31 (3) [(2)] being 18 years of age or older, the offender engages in sexual

1 penetration with a person who is 16 or 17 years of age and at least three years younger  
2 than the offender, and the offender occupies a position of authority in relation to the  
3 victim.

4 \* **Sec. 15.** AS 11.41.440(a) is amended to read:

5 (a) An offender commits the crime of sexual abuse of a minor in the fourth  
6 degree if

7 (1) being under 16 years of age, the offender engages in [SEXUAL  
8 PENETRATION OR] sexual contact with a person who is under 13 years of age and  
9 at least three years younger than the offender; or

10 (2) being 18 years of age or older, the offender engages in sexual  
11 contact with a person who is 16 or 17 years of age and at least three years younger  
12 than the offender, and the offender occupies a position of authority in relation to the  
13 victim.

14 \* **Sec. 16.** AS 11.56 is amended by adding a new section to read:

15 **Sec. 11.56.758. Violation of custodian's duty.** (a) A person commits the  
16 crime of violation of custodian's duty if the person knowingly fails, when acting as a  
17 custodian appointed by the court for a released person under AS 12.30, to report  
18 immediately as directed by the court that the person released has violated a condition  
19 of release.

20 (b) Violation of custodian's duty is

21 (1) a class A misdemeanor if the released person is charged with a  
22 felony;

23 (2) a class B misdemeanor if the released person is charged with a  
24 misdemeanor.

25 \* **Sec. 17.** AS 11.81.330(a) is amended to read:

26 (a) A person may use nondeadly force upon another when and to the extent the  
27 person reasonably believes it is necessary for self defense against what the person  
28 reasonably believes to be the use of unlawful force by the other, unless

29 (1) the force involved was the product of mutual combat not  
30 authorized by law;

31 (2) the person claiming the defense of justification provoked the

1 other's conduct with intent to cause physical injury to the other; [OR]

2 (3) the person claiming the defense of justification was the initial  
3 aggressor; or

4 (4) the force applied was the result of using a deadly weapon the  
5 person claiming the defense of justification possessed while

6 (A) acting alone or with others to further a felony criminal  
7 objective of the person or one or more other persons; or

8 (B) a participant in a felony transaction or purported  
9 transaction or in immediate flight from a felony transaction or purported  
10 transaction in violation of AS 11.71.

11 \* Sec. 18. AS 12.30.020(b)(1) is amended to read:

12 (1) place the person in the custody of a designated person or  
13 organization agreeing as a custodian to supervise the person; the court shall,  
14 personally and in writing, inform the custodian about the duties required of a  
15 custodian, and that failure to report immediately in accordance with the terms of the  
16 order that the person released has violated a condition of release may result in the  
17 custodian's being held criminally liable [IN CONTEMPT] under AS 11.56.758  
18 [AS 09.50.010];

19 \* Sec. 19. AS 12.30.020 is amended by adding a new subsection to read:

20 (i) The court shall issue written or oral findings to demonstrate why conditions  
21 provided under (b)(1) of this section needed to be imposed.

22 \* Sec. 20. AS 12.50.101(a) is amended to read:

23 (a) If a witness refuses, on the basis of the privilege against self-incrimination,  
24 to testify or provide other information in a criminal proceeding before or ancillary to a  
25 court or grand jury of this state, and a judge issues an order under (b) of this section,  
26 the witness may not refuse to comply with the order on the basis of the privilege  
27 against self-incrimination. If the witness fully complies with the order, the witness  
28 may not be prosecuted for an offense about which the witness is compelled to  
29 testify [NO TESTIMONY OR OTHER INFORMATION COMPELLED UNDER  
30 THE ORDER, OR INFORMATION DIRECTLY OR INDIRECTLY DERIVED  
31 FROM THAT TESTIMONY OR OTHER INFORMATION, MAY BE USED

1 AGAINST THE WITNESS IN A CRIMINAL CASE], except in a prosecution based  
2 on perjury, giving a false statement [,] or otherwise knowingly providing false  
3 information, or hindering prosecution.

4 \* Sec. 21. AS 12.50.101(e) is amended to read:

5 (e) In [AS USED IN] this section,

6 (1) "other information" means books, papers, documents, records,  
7 recordings, or other similar material;

8 (2) "proffer" means a written or oral statement by the attorney for  
9 the witness, stating the attorney's good faith belief of the substance of the  
10 witness's testimony or other information.

11 \* Sec. 22. AS 12.50.101 is amended by adding new subsections to read:

12 (f) If a witness refuses, or there is reason to believe the witness will refuse, to  
13 testify or provide other information based on the privilege against self-incrimination,  
14 and if the attorney general or the attorney general's designee has not applied for an  
15 order under (b) of this section, the court shall inform the witness of the right to be  
16 represented by an attorney, and that an attorney will be appointed for the witness if the  
17 witness qualifies for counsel under AS 18.85. The court shall recess the proceeding to  
18 allow the witness to consult with the attorney for the witness.

19 (g) If the attorney general or the attorney general's designee declines to seek  
20 an order under (b) of this section after the witness has had an opportunity to consult  
21 with an attorney, and the witness continues to refuse to testify or provide other  
22 information, the court shall hold a hearing to determine the validity of the claim of  
23 privilege by the witness. The hearing shall be in camera.

24 (h) At the hearing under (g) of this section, the attorney for the witness, in the  
25 form of a proffer, shall describe the testimony or other information that the witness  
26 claims is privileged. The proffer must include a description of how the testimony or  
27 other information could connect the witness with a crime. The proffer is privileged  
28 and inadmissible for any other purpose. If the proffer establishes a factual basis that  
29 there is a real or substantial danger that the testimony or other information to be  
30 compelled would support a conviction or would furnish a link in the chain of evidence  
31 leading to conviction for a crime, the court may find that the witness has a valid claim

1 of privilege.

2 (i) If the court finds that the witness has a valid claim of privilege, it shall  
3 advise the prosecution of that finding.

4 \* **Sec. 23.** AS 12.55.025(c) is amended to read:

5 (c) Except as provided in (d) [AND (e)] of this section, when a defendant is  
6 sentenced to imprisonment, the term of confinement commences on the date of  
7 imposition of sentence unless the court specifically provides that the defendant must  
8 report to serve the sentence on another date. If the court provides another date to  
9 begin the term of confinement, the court shall provide the defendant with written  
10 notice of the date, time, and location of the correctional facility to which the defendant  
11 must report. A defendant shall receive credit for time spent in custody pending trial,  
12 sentencing, or appeal, if the detention was in connection with the offense for which  
13 sentence was imposed. A defendant may not receive credit for more than the actual  
14 time spent in custody pending trial, sentencing, or appeal. The time during which a  
15 defendant is voluntarily absent from official detention after the defendant has been  
16 sentenced may not be credited toward service of the sentence.

17 \* **Sec. 24.** AS 12.55 is amended by adding a new section to read:

18 **Sec. 12.55.127. Consecutive and concurrent terms of imprisonment.** (a) If  
19 a defendant is required to serve a term of imprisonment under a separate judgment, a  
20 term of imprisonment imposed in a later judgment, amended judgment, or probation  
21 revocation shall be consecutive.

22 (b) Except as provided in (c) of this section, if a defendant is being sentenced  
23 for two or more crimes in a single judgment, terms of imprisonment may be  
24 concurrent or partially concurrent.

25 (c) If the defendant is being sentenced for

26 (1) escape, the term of imprisonment shall be consecutive to the term  
27 for the underlying crime;

28 (2) two or more crimes under AS 11.41, a consecutive term of  
29 imprisonment shall be imposed for at least

30 (A) the mandatory minimum term under AS 12.55.125(a) for  
31 each additional crime that is murder in the first degree;

1 (B) the mandatory minimum term for each additional crime  
2 that is an unclassified felony governed by AS 12.55.125(b);

3 (C) the presumptive term specified in AS 12.55.125(c) or the  
4 active term of imprisonment, whichever is less, for each additional crime that  
5 is

6 (i) manslaughter; or

7 (ii) kidnapping that is a class A felony;

8 (D) two years or the active term of imprisonment, whichever is  
9 less, for each additional crime that is criminally negligent homicide;

10 (E) one-fourth of the presumptive term under AS 12.55.125(c)  
11 or (i) for each additional crime that is sexual assault in the first degree under  
12 AS 11.41.410 or sexual abuse of a minor in the first degree under  
13 AS 11.41.434, or an attempt, solicitation or conspiracy to commit those  
14 offenses; and

15 (F) some additional term of imprisonment for each additional  
16 crime, or each additional attempt or solicitation to commit the offense, under  
17 AS 11.41.200 - 11.41.250, 11.41.420 - 11.41.432, 11.41.436 - 11.41.458, or  
18 11.41.500 - 11.41.520.

19 (d) In this section,

20 (1) "active term of imprisonment" means the total term of  
21 imprisonment imposed for a crime, minus suspended imprisonment;

22 (2) "additional crime" means a crime that is not the primary crime;

23 (3) "primary crime" means the crime

24 (A) for which the sentencing court imposes the longest active  
25 term of imprisonment; or

26 (B) that is designated by the sentencing court as the primary  
27 crime when no single crime has the longest active term of imprisonment.

28 \* Sec. 25. AS 18.85.100 is amended by adding a new subsection to read:

29 (f) Notwithstanding (a) of this section, an indigent person is entitled to the  
30 representation and necessary services and facilities of representation as provided in (a)  
31 of this section when the person is a witness who refuses or there is reason to believe

1 will refuse to testify or provide other information based on the privilege against self-  
2 incrimination.

3 \* Sec. 26. AS 28.35.030(a) is amended to read:

4 (a) A person commits the crime of driving while under the influence of an  
5 alcoholic beverage, inhalant, or controlled substance if the person operates or drives a  
6 motor vehicle or operates an aircraft or a watercraft

7 (1) while under the influence of an alcoholic beverage, intoxicating  
8 liquor, inhalant, or any controlled substance, singly or in combination; or

9 (2) and if [WHEN], as determined by a chemical test taken within four  
10 hours after the alleged operating or driving [OFFENSE WAS COMMITTED], there  
11 is 0.08 percent or more by weight of alcohol in the person's blood or 80 milligrams or  
12 more of alcohol per 100 milliliters of blood, or if [WHEN] there is 0.08 grams or more  
13 of alcohol per 210 liters of the person's breath [; OR

14 (3) WHILE THE PERSON IS UNDER THE COMBINED  
15 INFLUENCE OF AN ALCOHOLIC BEVERAGE, AN INTOXICATING LIQUOR,  
16 AN INHALANT, AND A CONTROLLED SUBSTANCE].

17 \* Sec. 27. AS 28.35.030(n) is amended to read:

18 (n) A person is guilty of a class C felony if the person is convicted under (a) of  
19 this section and either has been previously convicted two or more times since  
20 January 1, 1996, and within the 10 years preceding the date of the present offense, or  
21 punishment under this subsection or under AS 28.35.032(p) was previously  
22 imposed within the last 20 years. For purposes of determining minimum sentences  
23 based on previous convictions, the provisions of (r)(4) of this section apply. Upon  
24 conviction, the court

25 (1) shall impose a fine of not less than \$10,000 and a minimum  
26 sentence of imprisonment of not less than

27 (A) 120 days if the person has been previously convicted twice;

28 (B) 240 days if the person has been previously convicted three  
29 times;

30 (C) 360 days if the person has been previously convicted four  
31 or more times;

1 (2) may not

2 (A) suspend execution of sentence or grant probation except on  
3 condition that the person serve the minimum imprisonment under (1) of this  
4 subsection; or

5 (B) suspend imposition of sentence;

6 (3) shall permanently revoke the person's driver's license, privilege to  
7 drive, or privilege to obtain a license subject to restoration of the license under (o) of  
8 this section;

9 (4) may order that the person, while incarcerated or as a condition of  
10 probation or parole, take a drug or combination of drugs, intended to prevent the  
11 consumption of an alcoholic beverage; a condition of probation or parole imposed  
12 under this paragraph is in addition to any other condition authorized under another  
13 provision of law;

14 (5) shall order forfeiture under AS 28.35.036 of the vehicle, watercraft,  
15 or aircraft used in the commission of the offense, subject to remission under  
16 AS 28.35.037; and

17 (6) shall order the department to revoke the registration for any vehicle  
18 registered by the department in the name of the person convicted under this  
19 subsection; if a person convicted under this subsection is a registered co-owner of a  
20 vehicle or is registered as a co-owner under a business name, the department shall  
21 reissue the vehicle registration and omit the name of the person convicted under this  
22 subsection.

23 \* Sec. 28. AS 28.35.030 is amended by adding a new subsection to read:

24 (s) In a prosecution under (a) of this section, a person may introduce evidence  
25 on the amount of alcohol consumed before or after operating or driving the motor  
26 vehicle, aircraft, or watercraft to rebut or explain the results of a chemical test, but the  
27 consumption of alcohol before operating or driving may not be used as a defense that  
28 the chemical test did not measure the blood alcohol at the time of the operating or  
29 driving. Consumption of alcohol after operating or driving the motor vehicle, aircraft,  
30 or watercraft may be used to raise such a defense.

31 \* Sec. 29. AS 28.35.032(p) is amended to read:

1 (p) A person is guilty of a class C felony if the person is convicted under this  
2 section and either has been previously convicted two or more times since January 1,  
3 1996, and within the 10 years preceding the date of the present offense, or  
4 punishment under this subsection or under AS 28.35.030(n) was previously  
5 imposed within the last 20 years. For purposes of determining minimum sentences  
6 based on previous convictions, the provisions of AS 28.35.030(r)(4) apply. Upon  
7 conviction,

8 (1) the court shall impose a fine of not less than \$10,000 and a  
9 minimum sentence of imprisonment of not less than

10 (A) 120 days if the person has been previously convicted twice;

11 (B) 240 days if the person has been previously convicted three  
12 times;

13 (C) 360 days if the person has been previously convicted four  
14 or more times;

15 (2) the court may not

16 (A) suspend execution of the sentence required by (1) of this  
17 subsection or grant probation, except on condition that the person serve the  
18 minimum imprisonment under (1) of this subsection; or

19 (B) suspend imposition of sentence;

20 (3) the court shall permanently revoke the person's driver's license,  
21 privilege to drive, or privilege to obtain a license subject to restoration under (q) of  
22 this section;

23 (4) the court may order that the person, while incarcerated or as a  
24 condition of probation or parole, take a drug, or combination of drugs, intended to  
25 prevent consumption of an alcoholic beverage; a condition of probation or parole  
26 imposed under this paragraph is in addition to any other condition authorized under  
27 another provision of law;

28 (5) the sentence imposed by the court under this subsection shall run  
29 consecutively with any other sentence of imprisonment imposed on the person;

30 (6) the court shall order forfeiture under AS 28.35.036, of the motor  
31 vehicle, aircraft, or watercraft used in the commission of the offense, subject to

1 remission under AS 28.35.037; and

2 (7) the court shall order the department to revoke the registration for  
3 any vehicle registered by the department in the name of the person convicted under  
4 this subsection; if a person convicted under this subsection is a registered co-owner of  
5 a vehicle, the department shall reissue the vehicle registration and omit the name of  
6 the person convicted under this subsection.

7 \* **Sec. 30.** AS 28.35.033(c) is amended to read:

8 (c) Except as provided in AS 28.35.030(s), the [THE] provisions of (a) of  
9 this section may not be construed to limit the introduction of any other competent  
10 evidence bearing upon the question of whether the person was or was not under the  
11 influence of intoxicating liquor.

12 \* **Sec. 31.** AS 33.16.090(b) is amended to read:

13 (b) Except as provided in (e) of this section, a prisoner is not eligible for  
14 discretionary parole during the term of a presumptive sentence; however, a prisoner is  
15 eligible for discretionary parole during a term of sentence enhancement imposed under  
16 AS 12.55.155(a) or during the term of a consecutive or partially consecutive  
17 presumptive sentence imposed under AS 12.55.127 [AS 12.55.025(e) OR (g)]. A  
18 prisoner sentenced to a mandatory 99-year term under AS 12.55.125(a) or a definite  
19 term under AS 12.55.125(f) is not eligible for discretionary parole during the entire  
20 term.

21 \* **Sec. 32.** AS 33.16.090(c) is amended to read:

22 (c) Except as provided in (e) of this section, a prisoner eligible for  
23 discretionary parole during a period of sentence enhancement imposed under  
24 AS 12.55.155(a) or during a consecutive or partially consecutive presumptive sentence  
25 imposed under AS 12.55.127 [AS 12.55.025(e) OR (g)] shall serve the unenhanced  
26 portion of the sentence or the initial presumptive sentence before being otherwise  
27 eligible for discretionary parole under AS 33.16.100(c) or (d). For purposes of this  
28 subsection, the sentence for the most serious offense in the case of consecutive or  
29 partially consecutive presumptive sentences shall be considered the initial presumptive  
30 sentence. The unenhanced sentence or the initial presumptive sentence is considered  
31 served for purposes of discretionary parole on the date the unenhanced or initial

1 presumptive sentence is due to expire less good time earned under AS 33.20.010.

2 \* Sec. 33. AS 47.12.310 is amended by adding a new subsection to read:

3 (k) A state or municipal agency, other than a state or municipal law  
4 enforcement agency, or authorized employee may disclose to the public information  
5 regarding a case as may be necessary to protect the safety of the public provided the  
6 disclosure is authorized by regulations adopted by the department.

7 \* Sec. 34. (a) AS 09.50.010(13) is repealed.

8 (b) AS 12.55.025(e), 12.55.025(g), and 12.55.025(h) are repealed.

9 \* Sec. 35. The uncodified law of the State of Alaska is amended by adding a new section to  
10 read:

11 APPLICABILITY. (a) The changes made in secs. 7 - 11, 13 - 15, 17, 23, 24, 26, 31,  
12 32, and 34(b) of this Act apply to offenses committed on or after the respective effective date  
13 of those sections.

14 (b) Sections 27 and 29 of this Act apply to offenses occurring on or after the effective  
15 date of those sections, except that previous punishment, referred to in AS 28.35.030(n), as  
16 amended by sec. 27 of this Act, and in AS 28.35.032(p), as amended by sec. 29 of this Act,  
17 includes punishment imposed before, on, or after the effective date of secs. 27 and 29 of this  
18 Act.

19 (c) Sections 16, 18, and 19 of this Act applies to custodians who fail to report on or  
20 after the effective date of secs. 16, 18, and 19 of this Act, for persons released for offenses  
21 committed before, on, or after the effective date of secs. 16, 18, and 19 of this Act.

22 (d) The changes made in secs. 20, 22, 25, 28, and 30 of this Act apply to criminal  
23 proceedings for offenses committed before, on, or after the effective date of those sections.

24 (e) Section 33 of this Act applies to an offense occurring before, on, or after the  
25 effective date of this Act.

26 \* Sec. 36. This Act takes effect July 1, 2004.

house  
campaign  
Bill

23-GH1024S

**CS FOR HOUSE BILL NO. 244( 2d JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/21/04  
Referred: Finance

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to murder in the second degree, the justification of defense of self or  
2 others, rights of arrested persons, release before trial, immunity from prosecution,  
3 sentencing, probation, discretionary parole, and the right to representation in certain  
4 proceedings; relating to violation of a custodian's duty; relating to sexual abuse of a  
5 minor; relating to release of certain agency records; relating to local options regarding  
6 alcoholic beverages, the offense of furnishing or delivery of alcoholic beverages to a  
7 person under 21 years of age, and forfeiture of money or other items of value used in  
8 financial transactions derived from violation of certain laws relating to alcoholic  
9 beverages; relating to assault by means of a dangerous instrument; relating to operating  
10 or driving a motor vehicle, aircraft, or watercraft while under the influence of an  
11 alcoholic beverage, inhalant, or controlled substance, to the refusal to submit to a  
12 chemical test, and to the presumptions and chemical analysis of breath or blood; and

1 providing for an effective date."

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

3 \* Section 1. AS 04.11.010(c) is amended to read:

4 (c) Unless a municipality or established village has adopted a more  
 5 restrictive local option under AS 04.11.491(g), in [IN] a criminal prosecution for  
 6 possession of alcoholic beverages for sale in violation of (a) of this section, the fact  
 7 that a person

8 (1) possessed more than 12 liters of distilled spirits, 24 liters or more  
 9 of wine, or 12 gallons or more of malt beverages in an area where the sale of alcoholic  
 10 beverages is restricted or prohibited under AS 04.11.491 creates a presumption that  
 11 the person possessed the alcoholic beverages for sale;

12 (2) sends, transports, or brings more than 12 liters of distilled  
 13 spirits, 24 liters or more of wine, or 12 gallons or more of malt beverages to an  
 14 area where the sale of alcoholic beverages is restricted or prohibited under  
 15 AS 04.11.491 creates a presumption that the person sent, transported, or brought  
 16 the alcoholic beverages for sale in the area.

17 \* Sec. 2. AS 04.11.010 is amended by adding a new subsection to read:

18 (d) In this section,

19 (1) "bring" has the meaning given in AS 04.11.499;

20 (2) "send" has the meaning given in AS 04.11.499;

21 (3) "transport" has the meaning given in AS 04.11.499.

22 \* Sec. 3. AS 04.11.150(g) is amended to read:

23 (g) If a shipment is to an area that has restricted the sale of alcoholic  
 24 beverages under AS 04.11.491(a)(1), (2), or (3) or (b)(1) or (2), a package store  
 25 licensee, agent, or employee may not ship to a purchaser more than 10 and one-half  
 26 liters of distilled spirits, 24 liters or more of wine, or 12 gallons or more of malt  
 27 beverages in a calendar month, or a lower amount of distilled spirits, wine, or malt  
 28 beverages if the municipality or established village has adopted the lower amount  
 29 by local option under AS 04.11.491(g).

30 \* Sec. 4. AS 04.11.491 is amended by adding a new subsection to read:

1 (g) If a municipality or established village has adopted a local option under  
 2 (a)(1), (2), (3), or (4), or (b)(1), (2), or (3) of this section, the municipality or  
 3 established village, as part of the local option question or questions placed before the  
 4 voters, may

5 (1) adopt an amount of alcoholic beverages that may be imported that  
 6 is less than the amounts set out in AS 04.11.150(g);

7 (2) adopt an amount of alcoholic beverages that would give rise to a  
 8 presumption that the person possessed the alcoholic beverages for sale; the amounts  
 9 adopted under this paragraph may be lower than those set out in AS 04.11.010(c);

10 (3) opt to not apply a class C felony to violations of AS 04.16.051 that  
 11 apply solely by reason of the municipality or established village adopting a local  
 12 option under this section.

13 \* Sec. 5. AS 04.16.051(d) is amended to read:

14 (d) A person acting with criminal negligence who violates this section is guilty  
 15 of a class C felony if

16 (1) within the five years preceding the violation, the person has been  
 17 previously convicted under

18 (A) this section; or

19 (B) a law or ordinance of this or another jurisdiction with  
 20 elements substantially similar to this section; [OR]

21 (2) the person who receives the alcoholic beverage negligently causes  
 22 serious physical injury to or the death of another person while under the influence of  
 23 the alcoholic beverage received in violation of this section; in this paragraph,

24 (A) "negligently" means acting with civil negligence; and

25 (B) "serious physical injury" has the meaning given in  
 26 AS 11.81.900; or

27 (3) the violation occurs within the boundaries of a municipality or  
 28 the perimeter of an established village that has adopted a local option under  
 29 AS 04.11.491 and has not opted out of applying a class C felony to violations of  
 30 this section under AS 04.11.491(g).

31 \* Sec. 6. AS 04.16.220(a) is amended to read:

1 (a) The following are subject to forfeiture:

2 (1) alcoholic beverages manufactured, sold, offered for sale or  
3 possessed for sale, bartered or exchanged for goods and services in this state in  
4 violation of AS 04.11.010; alcoholic beverages possessed, stocked, warehoused, or  
5 otherwise stored in violation of AS 04.21.060; alcoholic beverages sold, or offered for  
6 sale in violation of a local option adopted under AS 04.11.491; alcoholic beverages  
7 transported into the state and sold to persons not licensed under this chapter in  
8 violation of AS 04.16.170(b);

9 (2) materials and equipment used in the manufacture, sale, offering for  
10 sale, possession for sale, barter or exchange of alcoholic beverages for goods and  
11 services in this state in violation of AS 04.11.010; materials and equipment used in the  
12 stocking, warehousing, or storage of alcoholic beverages in violation of AS 04.21.060;  
13 materials and equipment used in the sale or offering for sale of an alcoholic beverage  
14 in an area in violation of a local option adopted under AS 04.11.491;

15 (3) aircraft, vehicles, or vessels used to transport, or facilitate the  
16 transportation of

17 (A) alcoholic beverages manufactured, sold, offered for sale or  
18 possessed for sale, bartered or exchanged for goods and services in this state in  
19 violation of AS 04.11.010;

20 (B) property stocked, warehoused, or otherwise stored in  
21 violation of AS 04.21.060;

22 (C) alcoholic beverages imported into a municipality or  
23 established village in violation of AS 04.11.499;

24 (4) alcoholic beverages found on licensed premises that do not bear  
25 federal excise stamps if excise stamps are required under federal law;

26 (5) alcoholic beverages, materials or equipment used in violation of  
27 AS 04.16.175;

28 (6) money, securities, negotiable instruments, or other things of  
29 value used in financial transactions derived from activity prohibited under  
30 AS 04.11.010 or in violation of a local option adopted under AS 04.11.491.

31 \* Sec. 7. AS 04.16.220 is amended by adding a new subsection to read:

1 (i) When forfeiting property under (a) or (d) of this section, a court may award  
 2 to a municipal law enforcement agency that participated in the arrest or conviction of  
 3 the defendant, the seizure of property, or the identification of property for seizure,

4 (1) the property if the property is worth \$5,000 or less and is not  
 5 money or some other thing that is divisible; or

6 (2) up to 75 percent of the property or the value of the property if the  
 7 property is worth more than \$5,000 or is money or some other thing that is divisible;  
 8 in determining the percentage a municipal law enforcement agency may receive under  
 9 this subsection, the court shall consider the municipal law enforcement agency's total  
 10 involvement in the case relative to the involvement of the state.

11 \* **Sec. 8.** AS 09.50.020(a) is amended to read:

12 (a) A person who is guilty of contempt is punishable by a fine of not more  
 13 than \$300 or by imprisonment for not more than six months. However, when the  
 14 contempt is one mentioned in AS 09.50.010(3) - (12), or in an action before a  
 15 magistrate, the person is punishable by a fine of not more than \$100 unless it appears  
 16 that a right or remedy of a party to an action or proceeding was defeated or prejudiced  
 17 by the contempt, in which case the penalty shall be as prescribed for contempts  
 18 described in AS 09.50.010(1) and [,] (2) [, AND (13)].

19 \* **Sec. 9.** AS 11.41.110(a) is amended to read:

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

21 (1) with intent to cause serious physical injury to another person or  
 22 knowing that the conduct is substantially certain to cause death or serious physical  
 23 injury to another person, the person causes the death of any person;

24 (2) the person knowingly engages in conduct that results in the death  
 25 of another person under circumstances manifesting an extreme indifference to the  
 26 value of human life;

27 (3) under circumstances not amounting to murder in the first degree  
 28 under AS 11.41.100(a)(3), while acting either alone or with one or more persons, the  
 29 person commits or attempts to commit arson in the first degree, kidnapping, sexual  
 30 assault in the first degree, sexual assault in the second degree, sexual abuse of a minor  
 31 in the first degree, sexual abuse of a minor in the second degree, burglary in the first

1 degree, escape in the first or second degree, robbery in any degree, or misconduct  
 2 involving a controlled substance under AS 11.71.010(a), 11.71.020(a), 11.71.030(a)(1)  
 3 or (2), or 11.71.040(a)(1) or (2) and, in the course of or in furtherance of that crime or  
 4 in immediate flight from that crime, any person causes the death of a person except  
 5 when the killing is of a participant and is the direct result of felony criminal  
 6 conduct by a nonparticipant [OTHER THAN ONE OF THE PARTICIPANTS];

7 (4) acting with a criminal street gang, the person commits or attempts  
 8 to commit a crime that is a felony and, in the course of or in furtherance of that crime  
 9 or in immediate flight from that crime, any person causes the death of a person except  
 10 when the killing is of a participant and is the direct result of felony criminal  
 11 conduct by a nonparticipant [OTHER THAN ONE OF THE PARTICIPANTS]; or

12 (5) the person with criminal negligence causes the death of a child  
 13 under the age of 16, and the person has been previously convicted of a crime involving  
 14 a child under the age of 16 that was

15 (A) a felony violation of AS 11.41;

16 (B) in violation of a law or ordinance in another jurisdiction  
 17 with elements similar to a felony under AS 11.41; or

18 (C) an attempt, a solicitation, or a conspiracy to commit a  
 19 crime listed in (A) or (B) of this paragraph.

20 \* Sec. 10. AS 11.41.220(a) is amended to read:

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

22 (1) recklessly

23 (A) places another person in fear of imminent serious physical  
 24 injury by means of a dangerous instrument;

25 (B) causes physical injury to another person by means of a  
 26 dangerous instrument; or

27 (C) while being 18 years of age or older

28 (i) causes physical injury to a child under 10 years of  
 29 age and the injury reasonably requires medical treatment;

30 (ii) causes physical injury to a child under 10 years of  
 31 age on more than one occasion;

1 (2) with intent to place another person in fear of death or serious  
2 physical injury to the person or the person's family member makes repeated threats to  
3 cause death or serious physical injury to another person; [OR]

4 (3) while being 18 years of age or older, knowingly causes physical  
5 injury to a child under 16 years of age but at least 10 years of age and the injury  
6 reasonably requires medical treatment; or

7 (4) with criminal negligence causes serious physical injury under  
8 AS 11.81.900(b)(55)(B) to another person by means of a dangerous instrument.

9 \* Sec. 11. AS 11.41.438(a) is amended to read:

10 (a) An offender commits the crime of sexual abuse of a minor in the third  
11 degree if

12 (1) being under 16 years of age, the offender engages in sexual  
13 penetration with a person who is under 13 years of age and at least three years  
14 younger than the offender;

15 (2) being 16 years of age or older, the offender engages in sexual  
16 contact with a person who is 13, 14, or 15 years of age and at least three years younger  
17 than the offender; or

18 (3) [(2)] being 18 years of age or older, the offender engages in sexual  
19 penetration with a person who is 16 or 17 years of age and at least three years younger  
20 than the offender, and the offender occupies a position of authority in relation to the  
21 victim.

22 \* Sec. 12. AS 11.41.440(a) is amended to read:

23 (a) An offender commits the crime of sexual abuse of a minor in the fourth  
24 degree if

25 (1) being under 16 years of age, the offender engages in [SEXUAL  
26 PENETRATION OR] sexual contact with a person who is under 13 years of age and  
27 at least three years younger than the offender; or

28 (2) being 18 years of age or older, the offender engages in sexual  
29 contact with a person who is 16 or 17 years of age and at least three years younger  
30 than the offender, and the offender occupies a position of authority in relation to the  
31 victim.

1 \* Sec. 13. AS 11.56 is amended by adding a new section to read:

2       **Sec. 11.56.758. Violation of custodian's duty.** (a) A person commits the  
3 crime of violation of custodian's duty if the person knowingly fails, when acting as a  
4 custodian appointed by the court for a released person under AS 12.30, to report  
5 immediately as directed by the court that the person released has violated a condition  
6 of release.

7       (b) Violation of custodian's duty is a

8               (1) class A misdemeanor if the released person is charged with a  
9 felony;

10              (2) class B misdemeanor if the released person is charged with a  
11 misdemeanor.

12 \* Sec. 14. AS 11.81.330(a) is amended to read:

13       (a) A person may use nondeadly force upon another when and to the extent the  
14 person reasonably believes it is necessary for self defense against what the person  
15 reasonably believes to be the use of unlawful force by the other, unless

16              (1) the force involved was the product of mutual combat not  
17 authorized by law;

18              (2) the person claiming the defense of justification provoked the  
19 other's conduct with intent to cause physical injury to the other; [OR]

20              (3) the person claiming the defense of justification was the initial  
21 aggressor; or

22              (4) the force applied was the result of using a deadly weapon that  
23 the person claiming the defense of justification possessed while

24                      (A) acting alone or with others to further a felony criminal  
25 objective of the person or one or more other persons; or

26                      (B) participating in a felony transaction or purported  
27 transaction, or in immediate flight from a felony transaction or purported  
28 transaction in violation of AS 11.71.

29 \* Sec. 15. AS 11.81 is amended by adding a new section to read:

30       **Sec. 11.81.345. Defense of self and others.** A court may instruct a jury about  
31 the justification described in AS 11.81.330 - 11.81.340 if the court, sitting without a

1 jury, finds that there is some plausible evidence to warrant a reasonable jury to find  
2 the elements of the justification.

3 \* Sec. 16. AS 12.25.150(b) is repealed and reenacted to read:

4 (b) Immediately after an arrest, a prisoner has the right to (1) telephone or  
5 otherwise communicate with the prisoner's attorney; (2) telephone or otherwise  
6 communicate with any relative or friend; (3) an immediate visit from an attorney at  
7 law entitled to practice in the courts of Alaska requested by the prisoner; and (4) a  
8 visit from a relative or friend requested by the prisoner. This subsection does not  
9 provide a prisoner with the right to initiate communication or attempt to initiate  
10 communication under circumstances proscribed under AS 11.56.755.

11 \* Sec. 17. AS 12.30.020(b)(1) is amended to read:

12 (1) place the person in the custody of a designated person or  
13 organization agreeing as a custodian to supervise the person; the court shall,  
14 personally and in writing, inform the custodian about the duties required of a  
15 custodian, and that failure to report immediately in accordance with the terms of the  
16 order that the person released has violated a condition of release may result in the  
17 custodian's being held criminally liable [IN CONTEMPT] under AS 11.56.758  
18 [AS 09.50.010];

19 \* Sec. 18. AS 12.30.020 is amended by adding a new subsection to read:

20 (i) The court shall issue written or oral findings to demonstrate why conditions  
21 provided under (b)(1) of this section needed to be imposed.

22 \* Sec. 19. AS 12.50.101(a) is amended to read:

23 (a) If a witness refuses, on the basis of the privilege against self-incrimination,  
24 to testify or provide other information in a criminal proceeding before or ancillary to a  
25 court or grand jury of this state, and a judge issues an order under (b) of this section,  
26 the witness may not refuse to comply with the order on the basis of the privilege  
27 against self-incrimination. If the witness fully complies with the order, the witness  
28 may not be prosecuted for an offense about which the witness is compelled to  
29 testify [NO TESTIMONY OR OTHER INFORMATION COMPELLED UNDER  
30 THE ORDER, OR INFORMATION DIRECTLY OR INDIRECTLY DERIVED  
31 FROM THAT TESTIMONY OR OTHER INFORMATION, MAY BE USED

1 AGAINST THE WITNESS IN A CRIMINAL CASE,] except in a prosecution based  
 2 on perjury, giving a false statement, or otherwise knowingly providing false  
 3 information, or hindering prosecution.

4 \* Sec. 20. AS 12.50.101(e) is amended to read:

5 (e) As used in this section,

6 (1) "higher-level felony" means an unclassified or a class A felony;

7 (2) "lower-level felony" means a class B or class C felony;

8 (3) "other information" means books, papers, documents, records,  
 9 recordings, or other similar material;

10 (4) "proffer" means a written or oral statement by the attorney for  
 11 the witness, stating the attorney's good faith belief of the substance of the  
 12 witness's testimony or other information.

13 \* Sec. 21. AS 12.50.101 is amended by adding new subsections to read:

14 (f) If a witness refuses, or there is reason to believe the witness will refuse, to  
 15 testify or provide other information based on the privilege against self-incrimination,  
 16 and if the attorney general or the attorney general's designee has not applied for an  
 17 order under (b) of this section, the court shall inform the witness of the right to be  
 18 represented by an attorney, and that an attorney will be appointed for the witness if the  
 19 witness qualifies for counsel under AS 18.85. The court shall recess the proceeding to  
 20 allow the witness to consult with the attorney for the witness.

21 (g) If the attorney general or the attorney general's designee declines to seek  
 22 an order under (b) of this section after the witness has had an opportunity to consult  
 23 with an attorney, and the witness continues to refuse to testify or provide other  
 24 information, the court shall hold a hearing to determine the validity of the claim of  
 25 privilege by the witness. The hearing shall be in camera.

26 (i.) At the hearing under (g) of this section, the attorney for the witness, in the  
 27 form of a proffer, shall describe the testimony or other information that the witness  
 28 claims is privileged. The proffer must include a description of how the testimony or  
 29 other information could connect the witness with a crime. The proffer is privileged  
 30 and inadmissible for any other purpose. If the proffer establishes a factual basis that  
 31 there is a real or substantial danger that the testimony or other information to be

1 compelled would support a conviction or would furnish a link in the chain of evidence  
2 leading to conviction for a crime, the court may find that the witness has a valid claim  
3 of privilege.

4 (i) If the court finds that the witness has a valid claim of privilege, it shall  
5 advise an attorney designated by the attorney general of that finding and inform the  
6 attorney of the category or categories of offense to which the privilege applies: a  
7 higher-level felony, a lower-level felony, or a misdemeanor. If the designated attorney  
8 decides that granting immunity to the witness is appropriate, the designated attorney  
9 shall deliver or cause to be delivered a letter to that effect to the witness or an attorney  
10 for the witness. The designated attorney may not disclose the category of offense to  
11 anyone.

12 \* **Sec. 22.** AS 12.55.025(c) is amended to read:

13 (c) Except as provided in (d) [AND (e)] of this section, when a defendant is  
14 sentenced to imprisonment, the term of confinement commences on the date of  
15 imposition of sentence unless the court specifically provides that the defendant must  
16 report to serve the sentence on another date. If the court provides another date to  
17 begin the term of confinement, the court shall provide the defendant with written  
18 notice of the date, time, and location of the correctional facility to which the defendant  
19 must report. A defendant shall receive credit for time spent in custody pending trial,  
20 sentencing, or appeal, if the detention was in connection with the offense for which  
21 sentence was imposed. A defendant may not receive credit for more than the actual  
22 time spent in custody pending trial, sentencing, or appeal. The time during which a  
23 defendant is voluntarily absent from official detention after the defendant has been  
24 sentenced may not be credited toward service of the sentence.

25 \* **Sec. 23.** AS 12.55 is amended by adding a new section to read:

26 **Sec. 12.55.127. Consecutive terms of imprisonment.** (a) If a defendant is  
27 required to serve a term of imprisonment under a separate judgment, a term of  
28 imprisonment imposed in a later judgment, amended judgment, or probation  
29 revocation shall be consecutive.

30 (b) Except as provided in (c) of this section, if a defendant is being sentenced  
31 for two or more crimes in a single judgment, terms of imprisonment may be

1 concurrent or partially concurrent.

2 (c) If the defendant is being sentenced for

3 (1) escape, the term of imprisonment shall be consecutive to the term  
4 for the underlying crime;

5 (2) two or more crimes under AS 11.41, a consecutive term of  
6 imprisonment shall be imposed for at least

7 (A) the mandatory minimum term under AS 12.55.125(a) for  
8 each additional crime that is murder in the first degree;

9 (B) the mandatory minimum term for each additional crime  
10 that is an unclassified felony governed by AS 12.55.125(b);

11 (C) the presumptive term specified in AS 12.55.125(c) or the  
12 active term of imprisonment, whichever is less, for each additional crime that  
13 is

14 (i) manslaughter; or

15 (ii) kidnapping that is a class A felony;

16 (D) two years or the active term of imprisonment, whichever is  
17 less, for each additional crime that is criminally negligent homicide;

18 (E) one-fourth of the presumptive term under AS 12.55.125(c)  
19 or (i) for each additional crime that is sexual assault in the first degree under  
20 AS 11.41.410, or sexual abuse of a minor in the first degree under  
21 AS 11.41.434, or an attempt, solicitation, or conspiracy to commit those  
22 offenses; and

23 (F) some additional term of imprisonment for each additional  
24 crime, or each additional attempt or solicitation to commit the offense, under  
25 AS 11.41.200 - 11.41.250, 11.41.420 - 11.41.432, 11.41.436 - 11.41.458, or  
26 11.41.500 - 11.41.520.

27 (d) In this section,

28 (1) "active term of imprisonment" means the total term of  
29 imprisonment imposed for a crime minus suspended imprisonment;

30 (2) "additional crime" means a crime that is not the primary crime;

31 (3) "primary crime" means the crime

1 (A) for which the sentencing court imposes the longest active  
2 term of imprisonment; or

3 (B) that is designated by the sentencing court as the primary  
4 crime when no single crime has the longest active term of imprisonment.

5 \* Sec. 24. AS 18.85.100 is amended by adding a new subsection to read:

6 (f) Notwithstanding (a) of this section, an indigent person is entitled to the  
7 representation and necessary services and facilities of representation as provided in (a)  
8 of this section when the person is a witness who refuses, or there is reason to believe  
9 will refuse, to testify or provide other information based on the privilege against self-  
10 incrimination.

11 \* Sec. 25. AS 28.35.030(a) is amended to read:

12 (a) A person commits the crime of driving while under the influence of an  
13 alcoholic beverage, inhalant, or controlled substance if the person operates or drives a  
14 motor vehicle or operates an aircraft or a watercraft

15 (1) while under the influence of an alcoholic beverage, intoxicating  
16 liquor, inhalant, or any controlled substance, singly or in combination; or

17 (2) and if [WHEN], as determined by a chemical test taken within four  
18 hours after the alleged operating or driving [OFFENSE WAS COMMITTED], there  
19 is 0.08 percent or more by weight of alcohol in the person's blood or 80 milligrams or  
20 more of alcohol per 100 milliliters of blood, or if [WHEN] there is 0.08 grams or more  
21 of alcohol per 210 liters of the person's breath [; OR

22 (3) WHILE THE PERSON IS UNDER THE COMBINED  
23 INFLUENCE OF AN ALCOHOLIC BEVERAGE, AN INTOXICATING LIQUOR,  
24 AN INHALANT, AND A CONTROLLED SUBSTANCE].

25 \* Sec. 26. AS 28.35.030(n) is amended to read:

26 (n) A person is guilty of a class C felony if the person is convicted under (a) of  
27 this section and either has been previously convicted two or more times since  
28 January 1, 1996, and within the 10 years preceding the date of the present offense, or  
29 punishment under this subsection or under AS 28.35.032(p) was previously  
30 imposed within the last 20 years. For purposes of determining minimum sentences  
31 based on previous convictions, the provisions of (r)(4) of this section apply. Upon

1 conviction, the court

2 (1) shall impose a fine of not less than \$10,000 and a minimum  
3 sentence of imprisonment of not less than

4 (A) 120 days if the person has been previously convicted twice;

5 (B) 240 days if the person has been previously convicted three  
6 times;

7 (C) 360 days if the person has been previously convicted four  
8 or more times;

9 (2) may not

10 (A) suspend execution of sentence or grant probation except on  
11 condition that the person serve the minimum imprisonment under (1) of this  
12 subsection; or

13 (B) suspend imposition of sentence;

14 (3) shall permanently revoke the person's driver's license, privilege to  
15 drive, or privilege to obtain a license subject to restoration of the license under (o) of  
16 this section;

17 (4) may order that the person, while incarcerated or as a condition of  
18 probation or parole, take a drug or combination of drugs, intended to prevent the  
19 consumption of an alcoholic beverage; a condition of probation or parole imposed  
20 under this paragraph is in addition to any other condition authorized under another  
21 provision of law;

22 (5) shall order forfeiture under AS 28.35.036 of the vehicle, watercraft,  
23 or aircraft used in the commission of the offense, subject to remission under  
24 AS 28.35.037; and

25 (6) shall order the department to revoke the registration for any vehicle  
26 registered by the department in the name of the person convicted under this  
27 subsection; if a person convicted under this subsection is a registered co-owner of a  
28 vehicle or is registered as a co-owner under a business name, the department shall  
29 reissue the vehicle registration and omit the name of the person convicted under this  
30 subsection.

31 \* Sec. 27. AS 28.35.030 is amended by adding a new subsection to read:

1 (s) In a prosecution under (a) of this section, a person may introduce evidence  
 2 on the amount of alcohol consumed before or after operating or driving the motor  
 3 vehicle, aircraft, or watercraft to rebut or explain the results of a chemical test, but the  
 4 consumption of alcohol before operating or driving may not be used as a defense that  
 5 the chemical test did not measure the blood alcohol at the time of the operating or  
 6 driving. Consumption of alcohol after operating or driving the motor vehicle, aircraft,  
 7 or watercraft may be used to raise such a defense.

8 \* Sec. 28. AS 28.35.032(p) is amended to read:

9 (p) A person is guilty of a class C felony if the person is convicted under this  
 10 section and either has been previously convicted two or more times since January 1,  
 11 1996, and within the 10 years preceding the date of the present offense, or  
 12 punishment under this subsection or under AS 28.35.030(n) was previously  
 13 imposed within the last 20 years. For purposes of determining minimum sentences  
 14 based on previous convictions, the provisions of AS 28.35.030(r)(4) apply. Upon  
 15 conviction,

16 (1) the court shall impose a fine of not less than \$10,000 and a  
 17 minimum sentence of imprisonment of not less than

18 (A) 120 days if the person has been previously convicted twice;

19 (B) 240 days if the person has been previously convicted three  
 20 times;

21 (C) 360 days if the person has been previously convicted four  
 22 or more times;

23 (2) the court may not

24 (A) suspend execution of the sentence required by (1) of this  
 25 subsection or grant probation, except on condition that the person serve the  
 26 minimum imprisonment under (1) of this subsection; or

27 (B) suspend imposition of sentence;

28 (3) the court shall permanently revoke the person's driver's license,  
 29 privilege to drive, or privilege to obtain a license subject to restoration under (q) of  
 30 this section;

31 (4) the court may order that the person, while incarcerated or as a

1 condition of probation or parole, take a drug, or combination of drugs, intended to  
2 prevent consumption of an alcoholic beverage; a condition of probation or parole  
3 imposed under this paragraph is in addition to any other condition authorized under  
4 another provision of law;

5 (5) the sentence imposed by the court under this subsection shall run  
6 consecutively with any other sentence of imprisonment imposed on the person;

7 (6) the court shall order forfeiture under AS 28.35.036, of the motor  
8 vehicle, aircraft, or watercraft used in the commission of the offense, subject to  
9 remission under AS 28.35.037; and

10 (7) the court shall order the department to revoke the registration for  
11 any vehicle registered by the department in the name of the person convicted under  
12 this subsection; if a person convicted under this subsection is a registered co-owner of  
13 a vehicle, the department shall reissue the vehicle registration and omit the name of  
14 the person convicted under this subsection.

15 \* Sec. 29. AS 28.35.033(c) is amended to read:

16 (c) Except as provided in AS 28.35.030(s), the [THE] provisions of (a) of  
17 this section may not be construed to limit the introduction of any other competent  
18 evidence bearing upon the question of whether the person was or was not under the  
19 influence of intoxicating liquor.

20 \* Sec. 30. AS 33.16.090(b) is amended to read:

21 (b) Except as provided in (e) of this section, a prisoner is not eligible for  
22 discretionary parole during the term of a presumptive sentence; however, a prisoner is  
23 eligible for discretionary parole during a term of sentence enhancement imposed under  
24 AS 12.55.155(a) or during the term of a consecutive or partially consecutive  
25 presumptive sentence imposed under AS 12.55.127 [AS 12.55.025(e) OR (g)]. A  
26 prisoner sentenced to a mandatory 99-year term under AS 12.55.125(a) or a definite  
27 term under AS 12.55.125(l) is not eligible for discretionary parole during the entire  
28 term.

29 \* Sec. 31. AS 33.16.090(c) is amended to read:

30 (c) Except as provided in (e) of this section, a prisoner eligible for  
31 discretionary parole during a period of sentence enhancement imposed under

1 AS 12.55.155(a) or during a consecutive or partially consecutive presumptive sentence  
 2 imposed under AS 12.55.127 [AS 12.55.025(e) OR (g)] shall serve the unenhanced  
 3 portion of the sentence or the initial presumptive sentence before being otherwise  
 4 eligible for discretionary parole under AS 33.16.100(c) or (d). For purposes of this  
 5 subsection, the sentence for the most serious offense in the case of consecutive or  
 6 partially consecutive presumptive sentences shall be considered the initial presumptive  
 7 sentence. The unenhanced sentence or the initial presumptive sentence is considered  
 8 served for purposes of discretionary parole on the date the unenhanced or initial  
 9 presumptive sentence is due to expire less good time earned under AS 33.20.010.

10 \* Sec. 32. AS 47.12.310 is amended by adding a new subsection to read:

11 (k) A state or municipal agency or authorized employee, other than a state or  
 12 municipal law enforcement agency under (c) of this section, may disclose to the public  
 13 information regarding a case as may be necessary to protect the safety of the public,  
 14 provided the disclosure is authorized by regulations adopted by the department.

15 \* Sec. 33. (a) AS 09.50.010(13) is repealed.

16 (b) AS 12.55.025(e), 12.55.025(g), and 12.55.025(h) are repealed.

17 \* Sec. 34. The uncodified law of the State of Alaska is amended by adding a new section to  
 18 read:

19 APPLICABILITY. (a) The changes made in secs. 5, 6, 9 - 12, 14, 15, 22, 23, 30, 31,  
 20 and 33(b) of this Act apply to offenses committed on or after the respective effective date of  
 21 those sections.

22 (b) Sections 25, 26, and 28 of this Act apply to offenses occurring on or after the  
 23 effective date of those sections, except that previous punishment, referred to in  
 24 AS 28.35.030(n), as amended by sec. 26 of this Act, and in AS 28.35.032(p), as amended by  
 25 sec. 28 of this Act, includes punishment imposed before, on, or after the effective date of secs.  
 26 26 and 28 of this Act.

27 (c) Sections 8, 13, and 17 of this Act apply to custodians who fail to report on or after  
 28 the effective date of those sections of this Act, for persons released for offenses committed  
 29 before, on, or after the effective date of those sections of this Act.

30 (d) The changes made in secs. 7, 16, 19 - 21, 27, and 30 of this Act apply to criminal  
 31 proceedings for offenses committed before, on, or after the effective date of those sections.

1 (e) Section 32 of this Act applies to an offense occurring before, on, or after the  
2 effective date of this Act.

3 \* Sec. 35. This Act takes effect July 1, 2004.

SB 170



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STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

April 3, 2003

The Honorable Gene Therriault  
President of the Senate  
Alaska State Legislature  
State Capitol, Room 107  
Juneau, AK 99801-1182

Dear President Therriault:

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

The bill proposes the following changes in criminal procedures.

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

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

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

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

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

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

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

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

Consecutive sentences. This bill also would strengthen and clarify the law regarding consecutive sentences for conviction of more than one crime. In 1982, AS 12 55.025(e) and (g), which mandated full consecutive sentences for each count of homicide, assault, and sexual offense, were enacted. But because of imprecise drafting, this clear expression of legislative intent was instead interpreted to be merely a "legislative preference" for consecutive

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

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

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

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

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

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

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

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

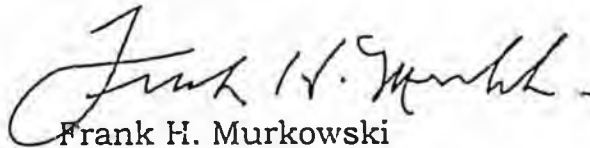
The Honorable Gene Therriault  
April 3, 2003  
Page 6

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

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

I urge your prompt and favorable consideration of this bill.

Sincerely,



Frank H. Murkowski  
Governor

Highlights of Governor's 2004 Crime Bill (CSSB 170)

The bill has five main themes:

1. **RECOGNIZES AND PROTECTS VICTIMS OF MULTIPLE CRIMES**
2. **MAKES DANGEROUS CRIMINALS THINK TWICE**
3. **HELPS COMMUNITIES THAT CHOOSE TO REDUCE ALCOHOL USE**
4. **PROVIDES GREATER PROTECTION FOR JUVENILES**
5. **STRENGTHENS DRUNK DRIVING LAWS**

To recognize and protect victims of multiple crimes, this bill adopts sentencing procedures so that **some consecutive term is imposed for each victim or each conviction of a serious crime**. Under this bill, courts still retain significant sentencing discretion, and for most crimes may impose sentences that are concurrent. However, for homicide, kidnapping, and serious sex offenses, the bill specifies the minimum amount of consecutive time that must be imposed.

As much as we don't like to admit it, the streets in some urban areas in Alaska are gang territory, and a haven for drug dealers. These are dangerous businesses, and gunfights occasionally break out on our streets. And when that happens, everyone claims self-defense, and no one can be punished. The hands of the police are tied by a self-defense law that was written in another era and that simply doesn't work when the bullets start to fly in a drug deal gone bad. **If you are carrying a gun because you are furthering the felony crimes for a gang, or because you are participating in a felony drug crime, you shouldn't be allowed to claim self-defense when you shoot someone.** This was probably the provision in the bill that was most closely reviewed. A proposed House Judiciary amendment requires that evidence of self-defense not be implausible.

The bill **expands the "felony-murder" rule** so gang members that commit dangerous crimes can be charged with second-degree murder for any foreseeable death, even if it is their accomplice who is killed.

**The bill also helps local option communities control alcohol.** For example, it allows communities to adopt lower limits of alcohol possession and importation as part of the local option system, and it strengthens the forfeiture law for bootlegging offenses. It also increases the penalty for persons who furnish alcohol to minors in local option communities, and a proposed House Judiciary amendment would permit municipalities to opt out of that increased penalty if they so choose.

Defendants who are out on bail, often are released into the custody of a "third-party custodian". This is a person who promises the court that he will report any bail violation committed. Unfortunately, many of these third-parties do not take the responsibility seriously, which puts victims at risk. **This bill makes it a misdemeanor crime to not immediately report bail violations.** A proposed House Judiciary amendment requires the court to make written findings why a custodian is necessary.

**The bill adopts a uniform procedure for deciding whether to grant immunity to witnesses.** A proposed House Judiciary amendment would allow a specially designated attorney for the state to be told the seriousness of the crime for which the witness wants immunity, which gives the state a basis for making an intelligent decision, but the designated attorney is prohibited from telling this information, including the prosecutor or investigator in the case.

**The bill increases the penalty for sexual abuse of young children by teenagers, and allows greater disclosure of information about juvenile offenders under to be adopted regulations by the Department of Health and Social Services.**

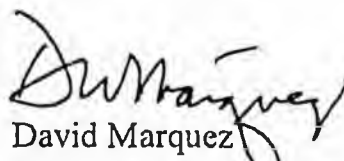
With drunk driving cases, the bill recognizes that **once a person has committed felony drunk driving, all future drunk driving should be treated as a felony.** A proposed House Judiciary amendment would limit application of this rule to 20 years.

Causing long-term and debilitating injuries by driving while impaired justifies higher penalties, and thus the bill also **increases the penalty for vehicular offenses that cause serious physical injury,** and a proposed House Judiciary amendment would limit application of this law to only the most serious injuries.

Finally, the bill closes a loophole opened by a court interpretation that creates a defense for drinking drivers who have "one for the road." **This so-called "big gulp" defense in drunk driving cases is just plain wrong.** A proposed House Judiciary amendment makes technical drafting changes needed to accomplish this.

I hope the committee finds this information helpful.

Sincerely,



David Marquez  
Assistant Attorney General

Comparison of CSSB 170 (JUD) and CSHB 244 (Jud)

	CSSB 170 (JUD) as passed	CSHB 244 (Jud)
Self-defense Standards	Prohibits a claim of self-defense if a deadly weapon (i.e., guns or knives) is used to further the felony criminal objectives of other persons (i.e., gang activity), or in a felony drug transaction.	Identical provision. Also includes provision which states that the court may instruct a jury on self-defense only if the court finds there is some plausible evidence to support it.
Felony-Murder	Expands felony-murder rule so offenders committing dangerous crimes can be charged with second-degree murder if an accomplice is killed.	Identical, except that it does not allow prosecution if "the killing is of a participant and is the direct result of felony criminal conduct by a nonparticipant."
Rights of Attorneys	No similar provision	Clarified that a relative or attorney does not have a right to interrupt an interview with the police if the arrested person has consented to the interview after being advised of his rights.
Immunity for witnesses	Conforms statutory law with State v. Gonzales, 853 P.2d 526 (Alaska 1993), that requires complete immunity if a person is compelled to testify after claiming a valid privilege against self-incrimination. Establishes orderly procedure for the court to decide if the witness has a valid claim. An attorney is appointed to represent the witness and a closed hearing is held with only the judge, the witness, and the appointed attorney. After the hearing, the judge informs the prosecutor only whether a valid claim exists. The prosecutor is then forced to decide whether to grant immunity.	Establishes an identical procedure. However, it further provides that the Attorney General shall designate a special attorney to find out from the court the seriousness level of the crime, but not the specific crime the witness may have committed. The designated attorney makes the decision whether to grant immunity to the witness, and is prohibited from telling anyone about the seriousness level of the crime.
Misdemeanor Offense for Third Party Custodians Who Violate Court Orders	Provision makes it a misdemeanor offense for a court-appointed third party custodian to knowingly fail to report that the defendant released to his custody has violated court-imposed conditions.	Identical provision. However, it requires that judges make written or oral findings why a third party custodian is necessary. The House Judiciary bill also includes a letter of intent that judges should "more rigorously apply the statutory framework" for appointing third party custodians.
Drunk Driving	Once a person has committed felony drunk driving, all subsequent drunk driving offenses would be treated as felonies.	Similar provision, however, limits its application to all subsequent drunk driving offenses within 20 years.
Drunk Driving	Closes loophole in law by creating an assault 3 provision which applies when someone acts with criminal negligence and causes serious physical injury by means of a dangerous instrument.	Similar provision, however, it is limited to only the first prong of the definition of "serious physical injury".
Drunk Driving	Prohibits the "big gulp" defense in drunk driving cases.	Identical provision.

Comparison of CSSB 170 (JUD) and CSHB 244 (Jud)

	CSSB 170 (JUD) as passed	CSHB 244 (Jud)
<b>Bootlegging: Furnishing to Minors</b>	Increases penalty to a class C felony for furnishing alcohol to minors in local options areas.	Similar provision, however, communities are allowed to opt-out of the increased penalty.
<b>Bootlegging: Perimeters</b>	Closes a loophole regarding the local option perimeters around villages. ✓	No similar provisions.
<b>Bootlegging: Mandatory Forfeiture</b>	Makes forfeiture mandatory for vehicles used in bootlegging, except when the vehicle is the sole transportation for a family in rural Alaska. ✓	No similar provisions.
<b>Bootlegging: Generally</b>	Allows communities to adopt lower limits of alcohol possession and importation under the local option system. Increases the penalty for bootleggers in urban areas who send alcohol to local option areas. Allows forfeiture of money used in financial transactions. Allows the state to share forfeited property with municipal law enforcement agencies that assist.	Identical provisions.
<b>Protects the Public from Juvenile Sex Offenders</b>	Increases penalty for sexual abuse of young children by teenagers. Allows greater disclosure of information about juvenile offenders.	Identical provisions.
<b>Consecutive sentences: Generally</b>	Adopts guidelines for judges sentencing defendants for more than one crime. In 1982, the legislature enacted AS 12.55.025 (e) and (g), which requires consecutive sentences for each count of homicide, assault, and sexual assault. Because of imprecise drafting, the courts have interpreted these statutes as a legislative preference for consecutive sentences. This preference is frequently ignored.	Identical provision.
<b>Consecutive sentences: Serious Person Crimes</b>	For homicide, kidnapping, first-degree sexual assault, and first-degree sexual abuse (penetration), the bill adopts minimum requirements for consecutive sentences in cases with multiple convictions.	Identical provision.
<b>Consecutive sentences: Other Person Crimes</b>	For less serious crimes against a person, such as a misdemeanor assaults, the court must impose some period of consecutive time for each crime.	Identical provision.
<b>Consecutive sentences: Other</b>	For other less serious crimes, the bill allows the court to impose sentences that are concurrent or partially concurrent.	Identical provision.

## CS for SENATE BILL 170(JUD)

(April 5, 2004)

### Sectional Summary

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

**Sections 5 and 6** close a local option loophole. Under current law a local option limiting alcohol applies in a five-mile radius around the center of the village. This circle helps protect against bootleggers on skiffs and snowmachines from bringing alcohol to sell in local option villages. If villages are close together, the areas of protection may overlap, and a loophole in the law essentially wipes away the protective circle for both villages, and limits alcohol only in the village itself. These sections provide that the least restrictive local option applies in the overlapping areas.

**Section 7** raises the penalty for furnishing alcohol to a person under 21 years of age from a class A misdemeanor to a class C felony, if the offense occurs in a village or municipality that has adopted a local option.

**Sections 8 - 11** improve the law for forfeiture of property used in bootlegging in several ways. First, **Section 8** allows for the forfeiture of money used in bootlegging offenses. Second, **Sections 9 and 10** strengthen forfeiture law for vehicles, watercraft, and aircraft used to bootleg alcohol by making it harder for people to claim that they are innocent owners of the property used in bootlegging. Third, **Section 11** makes it mandatory that means of transportation used in bootlegging be forfeited if (a) the bootlegger has a conviction for a violent felony or is on felony probation or parole; (b) the bootlegger has a prior bootlegging conviction; or (c) the alcohol transported was at least twice the amount presumed to be possessed for sale (24 liters of hard liquor, 48 liters of wine, or 24 gallons of beer). There is no exception to forfeiture if the property is an aircraft. A court is not required to forfeit a car, truck, snowmachine, fourwheeler, or watercraft if it is the only means of transportation for a family in a village, and if the members of the family were innocent or could not prevent the bootlegging. **Section 11** also allows the state to share the proceeds from forfeited property with municipal law enforcement agencies that participate in the arrest or conviction of a bootlegger.

**Section 12** is a conforming amendment to the change described in **Section 17**.

**Section 13** expands the felony-murder rule so that an offender who commits a dangerous crime can be charged with second-degree murder if an accomplice is killed. The current

felony-murder rule allows an offender to be charged with second-degree murder if a person, such as a bystander, is killed during the commission of the crime, even if the offender did not directly cause the death. The purpose of the felony-murder rule is to discourage serious crimes. It will be more effective if it also applies to the death of a participant in the crime.

**Section 14** increases the penalty from a class A misdemeanor to a class C felony for criminally negligent conduct that causes serious physical injury with a dangerous instrument. One example of this conduct is a person who drives partly impaired (but not enough to be DUI), drives in a dangerous manner, and causes serious injury to another person.

**Sections 15 - 16** increase the penalty for sexual abuse of very young children by teenagers from a class A misdemeanor to a class C felony.

**Section 17** adopts a new crime - that of violating a person's duty as a third party custodian. It applies to a person who agrees to be a third party custodian, but does not report to authorities if the person in custody violates release conditions. It is either a class A or class B misdemeanor, depending on the crime with which the person released is charged.

**Section 18** disallows self-defense if the force applied resulted from use of a deadly weapon by the person claiming the defense, and the state proves that the defendant was furthering his own criminal objectives or those of a gang, or was buying or selling illegal drugs.

**Sections 19 - 21 and 24** adopt a fair and uniform procedure to determine if a witness has a valid Fifth Amendment privilege against self-incrimination. An attorney is appointed for the witness, and the court makes the determination in a closed proceeding outside the presence of the prosecution.

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

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

**Sections 26 and 28** provide that once a person has been convicted of felony drunk driving or felony refusal to submit to a chemical test, any subsequent drunk driving or refusal offense will also be a felony.

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

**Section 33** provides conforming repealers.

**Sections 34 and 35** include applicability and effective date provisions.



**MADD**  
Activism | Victim Services | Education™

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

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

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

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

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

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

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

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

MADD supports the recommended changes in CSSB 170 for House Bill 224 as a way of deterring further drunk driving tragedies and improving Alaska's restorative justice system.

Sincerely,

Cindy Cashen  
Executive Director

THE  
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Attn: LouAnn

# MEMORANDUM

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**There are 9 Amendments that have been prepared for offering on SB 170. I have been asked to submit in writing the Public Defender Agency's position on these amendments.**

The Public Defender Agency would first like to acknowledge the hard work of the sponsor on this bill and the efforts of the Department of Law to fine-tune and further refine this bill to make it a better piece of legislation. We sincerely appreciate the opportunity we have been given by the sponsor and by the committee chairs to comment and share our concerns about the potential impact of the bill in all of the previous committee hearings and before this committee.

**Amendment #1 – PDA does not support this amendment.**

The Public Defender Agency does not support this amendment because it takes away from the jury the issue of self-defense if a defendant can't convince a judge of the plausibility of the evidence in support of self-defense. Currently a defendant must produce "some evidence" before a jury instruction on self-defense may be given to a jury. This amendment adds the requirement that the evidence be "plausible." Plausibility often turns on credibility, which is an issue better left for the jury, not to be taken away from them by the judge. The judge should not be the one who decides whether the evidence is credible or believable when there is a jury hearing the trial; the jury should decide the issue. The Senate specifically deleted this section from the bill.

**Amendment #2 – PDA supports this amendment.**

**Amendment #3 – PDA supports this amendment.**

**Amendment #4 – PDA supports this amendment.**