1641 HJ SB 392 - SB 535

Question presented: Whether a state statute reserving for the state the exclusive power to regulate the insurance industry prohibited a municipal equal rights commission from making an investigation into a charge of discrimination.

Laws considered: AS 21.03.060.

Analysis: The Supreme Court held that the municipal equal rights commission could "investigate" a claim of unfair discrimination; the Court implied that the commission could not issue an order arising out of the investigation that would constitute a "regulation of the insurance industry." The opinon makes clear the distinction between the regulation of the insurance industry which is prohibited under AS 21.03.060 and the regulation of employment practices, for example, within the insurance industry which would be permitted to the municipal commission.

Two justices dissented. They stated that the investigatory exception that is carved out of the pre-emption provisions of AS 21.03.060 are unique and that in fact the power to investigate closely approaches the power to regulate in the potential burdens on the insurance industry it permits.

Recommendation: The law interpreted by the Supreme Court is neither unclear nor ambiguous. The Court has, however, engrafted an unusual exception to the usual pre-emption concept. If the legislature dislikes the policy results achieved by the Court in the area addressed, legislation is appropriate.

Allstate Ins. Co. v. Municipality of Anchorage, 599 P.2d 140.

Question presented: Whether a contractor with the state Department of Highways, after an adverse decision from the department's contracting officer, could file suit in superior court to challenge the decision or whether the contractor was limited to an Appellate Rule 45 procedure.

Laws considered: AS 09.50.250, AS 22.10.020(a).

Analysis: The Supreme Court held that the review of a decision of the contract claims review board was the review of a decision of an administrative agency, whether it was created by the legislature or not. The law establishing the court system provides that appeals from a decision of "an administrative agency" are on the record of the agency unless the superior court, in its discretion, directs otherwise. The Court acknowledged that the AS 09 provisions appear to permit a direct suit in superior court in this kind of case. The Court considered that the provisions of AS 09 which deal with procedural matters and which are inconsistent with AS 22 had been superseded by the Supreme Court's adoption of Appellate Rule 45.

Recommendation: The foundation for the decision in this case reached back to Keiner v. City of Anchorage, 378 P.2d 406 (1963). The Court has been consistent in its interpretation of the provisions of AS 22 and its authority under Art. IV, secs. 1 and 15 of the Alaska Constitution. Considering these premises and the apparent acquiescence by the legislature in this conclusion, it seems that the Supreme Court construed the law according to the apparent legislative intent. A legislative review of AS 09 generally is recommended.

State v. Lundgren Pacific Const. Co., Inc., 603 P.2c 889.

Question presented: Whether the mandatory release of an incarcerated prisoner under AS 33.20.030 - 33.20.040 may be revoked by the board of parole.

Laws considered: AS 33.20.030, AS 33.20.040, AS 33.15.190.

Analysis: The Supreme Court held that it could be revoked.

The defendant was convicted in April, 1974, sentenced to six years in prison, was granted parole in November, 1976, only to have it revoked in October, 1977, on his pleas of guilty to robbery. He was sentenced to serve seventeen and one-half months of the original sentence, without possibility of parole.

He was released in March, 1979, under AS 33.20.030 - 33.20.040 which directs the release of a prisoner when he has served the time to which he was sentenced less good time. At that time he had 545 days of good time. The division of corrections considered that he was on parole under AS 33.20.040(a) which directs that when a prisoner is released with more than 180 days remaining on his sentence, he is considered as if released on parole until the maximum term for which sentenced less 180 has passed.

In June 1979, he violated the terms of parole and was re-arrested. He sought his release, arguing that AS 33.15.190 required it. The latter law, which the Court describes as "almost hopelessly in conflict" with the provisions of AS 33.20.030 - 33.20.040, provides that "A prisoner released on parole remains in the legal custody of the [parole] board until the expiration of the maximum term or terms to which he was sentenced, less good time allowances provided by law."

The Court's resolution of the matter was achieved by concluding that the board could revoke a parole for a violation of the parole, regardless of whether the board had technical custody of the parolee.

Two justices concurred in the result but used a different analysis: They would conclude that the phrase "good time allowances provided by law" should be interpreted as limiting the parolee to the 180 days under AS 33.20.040(a).

Recommendation: The Supreme Court characterized the laws, as noted, as being "almost hopelessly in conflict". The Court's resolution of the conflict, necessitated by the facts of the case before it that required an answer, does not necessarily eliminate the need for legislative review of the conflict. Review is recommended.

Morton v. Hammond, 604 P.2d 1.

Question presented: Whether an employee who voluntarily withdraws from employment and moves to a small community which has no employment available is entitled to unemployment compensation.

Laws considered: AS 23.20.380.

Analysis: The Commissioner of Labor had held that because the employee voluntarily moved from a labor market to an area where little employment was available, the employee had removed herself from the labor market and was not entitled to unemployment compensation.

The Supreme Court held that unemployment benefits are conditioned on an employee being genuinely attached to a labor force. Where the applicant moved from an area in which her services are in demand to an area where work is essentially non-existent in her profession, the move is relevant to a determination whether the applicant is genuinely attached to a labor market.

One justice dissented: The Department of Labor had the burden of showing that the employee's availability does not extend to a substantial field of employment. The employee had worked in the area before and said she was available again. "There is no requirement [in the law] that a claimant must be available for work in the area in which [she] last worked."

Recommendation: The two opinions in the case indicate that entirely different policy results can be reached using the same statutory language. Review of the law is recommended.

Lind v. Employment Sec. Division, etc., 608 P.2d 1.

Question presented: Whether the municipality properly leased real property.

Laws considered: AS 29.48.260.

Analysis: The Supreme Court held that the lease of the municipal real property was subject to competitive bid requirements.

The law permits a municipality to lease real property to persons who agree to operate a "beneficial new industry;" the lease may be on terms agreed upon by the parties. The law establishes specific procedures which were not complied with.

The Court noted that the phrase "beneficial new industry" is not defined in the law. After reviewing cases from other jurisidictions construing similar phrases, the Court found that the phrase "refers to any newly organized business that is not a mere expansion or continuation of a business that has operated in the municipality." The Court noted that the law required a "new industry," that is, a newly organized enterprise. The law also requires that it be "beneficial;" the Court interpreted this to mean a business that was not then presently in place in the community -- a new line of activity, unless the existing lines of similar activity were not adequate to service the community.

The Court then considered whether sec. 260(e), which permits a lease on ". . . terms and conditions the assembly or council considers advantageous . . ." allows the assembly or council to negotiate a lease. Using statutory construction analysis, the Court refused to read into the statute the specific waiver for beneficial new industry of the otherwise general requirements for competitive bidding.

One justice concurred: He agreed with the result but reached it by a different analysis.

Recommendation: The Supreme Court construed the law according to the apparent legislative intent. While the Court agreed that the law was not entirely free from ambiguities, the result seems reasonable. No legislative action is recommended.

Libby v. City of Dillingham, 612 P.2d 33.

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SB

421

(SEE HB

556)

SB

485

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

COUNCIL ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

JAY S. HAMMOND, GOVERNOR

POUCH N
ROOM 312, GOLDSTEIN BUILDING
JUNEAU, ALASKA 99811
PHONE:

March 11, 1982

The Honorable Ramona Barnes
House of Representatives
Pouch V
Juneau, Ak. 99811

Dear Representative Barnes:

The Council on Domestic Violence and Sexual Assault would like to express their strong support of legislation which will permit young victims of sexual assault to have their testimony videotaped instead of having such victims be further traumatized by appearing in a public court.

Because of the trauma of such an experience for a young victim, the Council has determined that videotape legislation is of the highest priority.

Your assistance will be appreciated.

Sincerely

Betsey W. McGuire

Betsey W. McGuire
Executive Director

BWMc

2-L16LH

SENATOR
PATRICK M. RODEY
3271 MONTCLAIRE COURT
ANCHORAGE, AK 99503

SENATE MAJORITY LEADER
CHAIRMAN
SENATE JUDICIARY COMMITTEE
CHAIRMAN
SENATE SPECIAL COMMITTEE
ON BANKING

ALASKA STATE LEGISLATURE
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3717

March 8, 1982

Mr. Paul Conger
Department of Public Safety
Pouch N
Juneau, AK 99811

Dear Paul:

I have recently received the attached fiscal note from your department. There would appear to be no actual fiscal impact on your department since the testimony would be recorded under the auspices of the court system, not Public Safety.

I suggest you have your analyst review the bill again.

Sincerely,

Kevin K. Bruce

KKB/ds

cc: Representative Barnes, House Judiciary
Senator Parr

I. REQUEST

Bill/Resolution No. CS for Senate Bill No. 485 (Judiciary)

Title "An Act permitting....videotaping of testimony...sexual offenses."

Requested by _____ Date _____

II. FISCAL DETAIL

Agency Affected Department of Public Safety

Program Category Affected Administration of Justice

BRU, Program, Or Subprogram(s) Affected Alaska State Troopers

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

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES	-0-	.1	.1	.1	.1	.2
500 EQUIPMENT		36.0				10.0
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL	-0-	36.1	.1	.1	.1	10.2

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	36.1	.1	.1	.1	10.2
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						
	-0-	-0-	-0-	-0-	-0-	-0-

DEPT. OF PUBLIC SAFETY MAR 2 '82 FINANCE SECTION JUNEAU, ALASKA

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

The Division review of the potential impact of this Bill upon its operations indicates the needs to provide videotape equipment in each of the five Alaska State Trooper detachments located throughout the State. Each location would require a portable color camera and recorder plus accessories totalling approximately $7,200.00. Partial replacement of the equipment would be estimated to be needed by FY'87, assuming the Bill became effective in FY'83. The commodities noted above would cover the estimated cost of the video cassette tapes.

IV. DATE March 1, 1982 PREPARED BY Francis C. Allan

AGENCY Department of Public Safety

PHONE 269-5691

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SB 485
Title VideoTaping of Testimony
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Alaska Court System
Program Category Affected Administration of Justice
BRU, Program, Or Subprogram(s) Affected Trial Courts
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		5.6	6.0	6.6	7.2	8.0
400 COMMODITIES						
500 EQUIPMENT		55.9				
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL		61.5	6.0	6.6	7.2	8.0

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

SB 485 envisions the State producing video recordings for playback at trials. As the bill now stands, and with the current Court System policy about purchasing video equipment, the Court will be required to provide the necessary cameras and playback units in at least all the Superior Court locations, as well as the locations where Superior Court cases are frequently held, such as Barrow or Palmer. This will require a minimum of 13 complete video units at a cost of $4,300 each. The annual maintenance cost is estimated at $5,600. The first year cost will therefore be $61,500, with ongoing costs of $5,600 plus inflation.

IV. DATE 2/22/82 PREPARED BY Richard P. Barrier
AGENCY Alaska Court System
PHONE 264-0545

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

SB

535

#1

12/9/82
For Marty of Mat-Su

SB535 Chapt. 143 - 1982.

SOURCES IN LRL (HAVE REQUESTED H. FINANCE MATERIALS – WILL MAIL)

bill history

SENATE

S. Judiciary Committee — minutes

1982 Tapes (minutes) — bill file

- #2 1/18
- #7 1/29
- #20 3/10
- #26 3/26
- #45 5/13
- #46 5/14 } SB898 (insanity defense)

1981 { #55 5/29/81
#58 6/5/81

HOUSE

H. Judiciary Committee

Tapes (minutes) — bill file

1982
- #26 4/17
- #27 5/18-5/19
- #28 5/20-24
- #29 5/25-5/26
- #30 5/30
- #31 5/15 Statewide teleconference

H.J. Supplement #63 (June 1, 1982)

H. L + Commerce — bill file

Tapes (minutes) — file for 4/5/82

54 4/5

see also: RF 7/29/82 letter to Linda Zuckerman

SECTIONAL ANALYSIS OF HCSCSSB535 (JUDICIARY) AND
COMPARISON OF HCSCSSB535 JUDICIARY TO CSSB535 (JUDICIARY)

I.
Section Analysis of HCSCSSB535
(Judiciary)

Page & Line	Analysis
1;10	Sections 1,2,3, and 4. These Sections amend the homicide statutes, to make it clear that the convicted killer will receive a sentence for each death for which he is responsible. This is necessary because of two Alaska Supreme Court decisions, Thessen v. State 508 P2d 1192 (Alaska Supreme Court 1973) and State v. Souter, 606 P2d 399 (Alaska Supreme Court 1980). Thessen held, notwithstanding that the defendant was convicted of the manslaughter of 14 people in a hotel arson fire, he could only be sentenced for one of those deaths. Some years later, in a triple death D.W.I. case, the Supreme Court reaffirmed that single sentence rule. State v. Souter, 606 P2d. 359 (Alaska, 1980). These amendments to the statutes would remedy that problem.
1;26	Section 5. Housekeeping, relating to Section 6, infra.
1;29	Section 6. This section increases joyriding from a A misdemeanor to a C felony if the person was previously convicted of (a)(2) - Joyriding and had been previously convicted of Joyriding. The enhancement factor would not apply to any other subsection of Criminal Mischief In The Third Degree.
2;4	Section 7. This amends the Justification by Necessity Statute, as specified by the Department of Law in original SB553, to make it an Affirmative Defense.
2;7	Section 8. This adds a section to the Criminal Code, establishing the Affirmative Defense of what is basically a "plea of insanity." Under present law, if the defendant had presented any evidence of insanity, the prosecution must prove beyond a reasonable doubt that the defendant was either:

1. Not suffering from a mental disease or defect, or
2. If so, that he nevertheless had substantial capacity to both:

a. appreciate the wrongfulness of his act, and
b. conform his actions to law. This last part is sometimes described as the "policemen at the elbow" test -- whether he would still have pulled the trigger if the policemen at the elbow had warned him not to do so.

The wording of this Section is exactly as requested by the Department of Law in original SB535 and as in Section 8 of the CSSB535 (Judiciary), and the HCS includes the repeal of the present "insanity statute," AS 12.45.083, at Section 23.

2;17 Section 9. Exactly as in the original SB535, this alters the definition of "intentionally," as specified by the Department of Law.

2;23 Section 10. Exactly as in the original SB535, this alters the definition of "organizatic ' to include "government" as requested by the Department of Law.

2;28 Section 11. As in the original SB535, this redefines "property" to include property "including data or information stored in the computer program, system or network." However, the HCS definition also includes under property "domestic pets and livestock regardless of value" to remedy the present law where these are not strictly specified and must be interpreted into "property" by the court. The phrase "regardless of value" is included to avoid the necessity of proving the value of a domestic pet where one is accused of killing or damaging a pet belonging to another person. It would still be necessary to show the value of the pet if theft were charged and a degree of theft requiring a certain value were specified in the charge.

3;10 Section 12. This is exactly the same as the amendment to the definition of "serious physical injury" in the original SB535 and in Section 9 of CSSB535 (Judiciary), as specified by the Department of Law.

3;20 Section 13. This Section significantly amends AS 12.55.025.

3;21 1. At (g), specifies that a convicted defendant must be sentenced consecutively for separately charged crimes. This prevents concurrent or merged sentences, which are sometimes given even when the crimes were of a different character, occurred at different places and times, and different victims were involved.

3;26 2. At (h), allows the court to sentence concurrently only for non-violent crimes which are part of "a single continuous criminal episode" or "violate similar societal interests," unless (1) if the crime was during an escape [Present statutory law] or (2) there was a substantial change in the nature of the criminal objective. The "similar societal interests" test is from current Alaska case law.

4;15 Section 14. This Section amends AS 12.55.088(a). That part of the sentencing law was drastically amended in 1978 to allow a judge to reduce a sentence at any time during the term of imprisonment. Recent cases have occurred where this has been abused. E.g., one where four years after sentencing, after the sentencing judge had died, and just prior to time for the first Parole Board Application, the prisoner moved under this section for a reduction to be considered by another judge.

The abuse possible under Section 088 is obvious, and this amendment would restrict the judges to reducing their sentences within a 60 day period after the original sentencing. It is thought that, considering the detailed "Presentence Reports" and great consideration put into an original sentencing hearing, that the courts in most instances give a "correct sentence" on the actual sentencing day, and prisoners should not be allowed to move for a reduction of a sentence after some considerable period of time has passed, the publicity on the original sentence has died down, and the judge may not recall all of the nuances of the crime as brought out during the trial.

Of course this does not restrict the court from reducing or altering any sentence that was "illegal" at the time given. That provision, constitutional in any event, is still found at Criminal Rule 35(a).

4;21 Section 15. Here, AS 12.55.125(c)(1) -- the statute setting the presumptive term for the first A felony is amended. As specified by the Department of Law and original SB535, the term is increased to eight years from the present six. However, the HCS section makes these changes from the original bill:

1. Manslaughter is clearly covered, allowing this presumptive term to be used in D.W.I. -- manslaughter cases, which is not true under either present law or the original SB535.

2. The words "possessed or used" are used in the HCS, instead of "possessed a firearm," and the terminology "dangerous instrument" is used, since that would include motor vehicles but the original language of "deadly weapon" would not.

3. The wording changes make it clear that the possession of the firearm must have occurred "during the commission of the offense," a distinction that was not clear in the original wording.

4;27 Section 16. As in the original bill, this section changes the present law from Assault in the Third Degree to Fourth Degree, and pertains to violation of Domestic Violence Orders. This is set out more clearly in the HCS section and also the section in the HCS increases the minimum term from 10 days to 20 days imprisonment for violation of such Domestic Violence Orders by committing Fourth Degree Assault.

5;9 Sections 17-20. This is a considerable rewrite of present AS 12.55.145 and basically makes the following changes:

5;10 Section 17. Under present Section 145, the court cannot consider a prior felony or misdemeanor conviction if "a period of seven or more years has elapsed between the date of the defendant's unconditional discharge on the immediately preceding offense on commission of the present offense." This section at (a)(1) changes that to increase the period to 10 years and exclude the application to unclassified or class A felonies. In other words, the court would always be able to consider a previous conviction for an unclassified or class A felony, regardless of the time frame.

5;20 2. A "single continuous criminal episode" is re-stated at (3) to exclude crimes where persons are injured, killed, or are victims of sexual contact or sexual penetration crimes. Incidents of escape are already excluded from the definition of present law, and this is not changed. However, there is the additional specification at (A) [line 23] that for criminal incidents to be considered a "single continuous criminal episode", there must have been no substantial changes in the nature of the criminal objective, including the specific property which was subject to the crimes or the particular person who ultimately suffered as a result of the crime. This is similar language as that found at Section 13, AS 12.55.025(g) and (h).

6;8 Section 18. Amends AS 12.55.145(b) to increase the notice requirement from 10 days to 20 days, for the prosecutor to serve authenticated copies of court records on the defense attorney, if the defendant did not expressly admit to prior convictions.

6;13 Section 19. Amends AS 12.55.145(c) to increase the period from 5 days to 10 days prior to the sentencing for the defense attorney to put the prosecutor on notice of denial of the authenticity of the court document, or any other of the sentencing allegations which are presently in Section 145 and are repeated at Section 19 of the bill.

6;26 Section 20. Amends AS 12.55.145 to add a new subsection, (h) requiring the defendant in a felony conviction to place his fingerprints on the judgment of conviction open court, on the record, at the time of sentencing. This is the same as specified by the Department of Law in the original bill, except that "thumbprints" is changed to "fingerprints." It is understood that the District Attorney from Fairbanks has suggested this procedure to avoid disputes about whether a particular defendant is the same one named in a previous judgment of conviction.

7;3 Section 21. As specified by the Department of Law in the original bill this reworded existing aggravating factor (8).

7;6 Section 22. As specified by the Department of Law in the original bill, this adds additional aggravating factor (19), pertaining to juvenile conduct.

7;10 Also, this Section adds another additional aggravating factor (20) that the defendant was on felony probation, felony parole, or furlough from prison at the time he committed the crime. Under present AS 12.55.155(a)(12) the court may at the time of a felony sentencing consider the fact that a defendant was released on bail or a personal recognizance at the time he committed the felony. However, the court cannot consider as an aggravating factor the fact that the defendant was on parole, probation, or furlough at the time he committed the felony.

7;12 Lastly, aggravating factor (21) is added, to allow the court to consider prior criminal conduct similar to the crime for which the defendant is being sentenced.

7;16 Section 23. As indicated previously, this repeals the present "insanity" statute, AS 12.45.083, as in the original bill as well as AS 12.55.025(e) which is essentially replaced by Section 13 of the HCS. Also, this section of the CS would repeal AS 12.55.155(d)(8), a mitigating factor that states that the court shall consider mitigating the sentence down if "a prior felony considered for the purpose of invoking the presumptive terms this chapter was of a less serious class of offense in the present offense." In effect, that wording rewards a criminal for "moving up" in crime, committing more serious crimes each time, so that the previous ones would be considered as mitigation. An example would be where a defendant "moved up" from Burglary II, a C felony, to Burglary I, a B felony. Lastly, the repealer sections repeals eight criminal sections from Title 47 - Public Assistance which are duplicative of Criminal Code Sections. The Department of Health and Social Services requested these repealers.

7;11 Section 24. Notes that the change in AS 12.55.088(a) [SECTION 14] has the effect of changing Criminal Rule 35.

II.
Explanation of Changes in CSSB535 (Judiciary)
to HCSCSSB535 (Judiciary).

Sections 1-4. These were deleted because they are already covered in HB575, which has passed the House of Representatives.

Sections 5,6,7, and 10. This was deleted because it was understood that the question of criminalizing sale or use of microwave television interception devices was under consideration in another committee substitute. Language for this was considered and voted down in the House Judiciary Committee.

Section 8. This is the same change as Section 8 in the HCS.

Section 9. This is the same as Section 12 of the HCS.

Section 11. This is exactly the same as Section 21 of the HCS.

Section 12. This is exactly the same as (19) under Section 22 of the HCS.

Section 13. This is exactly the same as the first statute repealed in Section 23 of the HCS.

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

May 25, 1982

The Honorable Ramona Barnes
Chairperson
House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Barnes:

I am writing to suggest that to the extent time permits in your committee's work on CSSB 535 consideration be given to the inclusion of provisions dealing with the subject of witness immunity in criminal prosecutions. As you may recall, I have submitted legislation in the past on this subject. It was favorably acted upon in the House but subsequently defeated in the Senate.

More recently during the course of a complex grand jury investigation, the state obtained a ruling from the Alaska Supreme Court that even in the absence of legislation the state could compel a witness to testify who asserted the privilege against self-incrimination through a conferral of immunity. The Supreme Court, however, subsequently ruled that the form of immunity which must be granted must be "transactional." This means that in order to obtain necessary testimony an individual must be given a full grant of immunity from prosecution for the subject matter of his testimony. The court imposed this requirement as a "rule of practice" rather than as a constitutional requirement. The state had contended that a lesser form of immunity, referred to as "use immunity", was all that is constitutionally required to substitute for the privilege against self-incrimination. The court, however, did not decide the constitutional question and the form of immunity which must be conferred in order to obtain testimony is therefore still a proper subject for legislative resolution.

Upon making inquiry, State Troopers in Anchorage recently advised me that they believed the problems which were encountered in the recent prosecutions in Anchorage in the Walker and Hopkins cases demonstrated the need for immunity legislation. After subsequent discussions with the Department of Law I fully share that belief. I also believe that these cases demonstrate why "use immunity" is

preferable to "transactional" as a matter of public policy. At present, Alaska is one of the very few jurisdictions which does not have a statutory framework for obtaining necessary testimony in criminal cases by providing immunity to witnesses. The National Advisory Committee on Criminal Justice Standards and Goals recommended in its Report of the Task Force on Organized Crime, released in December of 1976, that

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

Particularly with offenses that are conspiratorial in nature and committed under a high degree of secrecy by sophisticated or professional criminals, the key tool available in successfully solving and prosecuting the crime is the ability to compel testimony from a less culpable participant or an uncooperative witness.

The technical distinctions between the two types of immunity are usually understood only by persons trained in law. However, as a result of the publicity generated by two recent trials in Juneau, it is fair to say that Alaska citizens know far more about witness immunity than most people. In talking with members of the public it is clear that most citizen's notions of common sense are offended by the idea that under a "transactional" immunity standard, a convicted perjuror, for example, can be set completely free simply because his testimony is used to convict a co-defendant in a later trial. That result would not have occurred if the required immunity was "use and derivative use."

I have enclosed a draft of suggested amendments to CSSB 535 that would, if adopted, enact a "use immunity" statute in Alaska. These provisions are patterned after current federal law enacted in the Organized Crime Control Act of 1970. The constitutionality of this statute has been specifically upheld by the United States Supreme Court. While the Alaska Supreme Court has to date declined to decide the question, I am advised that there is good reason to conclude that such a statute would be upheld under the Alaska Constitution. The enclosed draft has been prepared at my request by the Chief Prosecutor who will be available to work with you and your committee on this subject if you wish. While I know the hour is exceedingly late, because of your demonstrated diligence and concern for matters of this nature plus the crescendo of current public interest, I am hopeful that in the time remaining in the current session

your committee will be able to address this important addition to CSSB 535 along with the amendments to the insanity defense on which I know your committee has already expended considerable effort.

Sincerely,

Jay S. Hammond
Governor

cc: Daniel W. Hickey
Chief Prosecutor

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

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May 17, 1982

The Honorable Ramona Barnes
Chairperson, Judiciary Committee
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Barnes:

You have asked us to respond to a series of questions concerning the Administration's proposal to substantially alter the applicability of the insanity defense in criminal trials in Alaska. The questions that have been asked by your committee are sufficiently distinct that we have set out in this letter each separate question followed by our response.

1. Why has the Department of Law recommended that part of the insanity defense be retained? Doesn't such an approach create the possibility that a new body of case law will be developed which will eventually bring the law back to the point where we are today?

It is the view of the Department of Law that the principal problem with the insanity defense is not that it exists but that is has been abused; the definition of legal insanity has been overly broadened. Under the ALI test currently used in this state, legal insanity rests upon a person's ability to appreciate the "wrongfulness" of his conduct, or, alternatively, his capacity to "conform his conduct to the requirements of law". Many mental health professionals, and especially clinicians, feel that these determinations are beyond the expertise of the psychiatric community. They feel that the law asks psychiatrists to delve into an area not founded in science, but rather into the area of ethical and political problems that should be -- and ultimately can only be -- resolved by the Legislature when it establishes the

view actions in terms of right and wrong, good and evil. The person who is unable to think in terms of good and evil, who is unable to conceptualize basic ideas of what ought to be done and what ought not to be done, should not be treated as a moral agent. But this does not mean that a person is insane merely because he entertains a delusion that his conduct is morally justified or morally compelled. The person who believes, for example, that God has ordered him to kill does not qualify as insane under the definition proposed here. Such a defendant would indeed have a notion of good and evil; this is proved by the fact that he feels compelled to do what God commands. Although the defendant, because of a delusion, may have a different view about whether his actions are morally justified or morally compelled, this does not mean that the idea of good versus evil, right versus wrong, is meaningless to him. Quite to the contrary.

It is only the person who, because of mental disease or defect, lacks the ability to think in terms of good and evil, right and wrong, that should be excluded from criminal responsibility. The person who understands the idea of evaluating actions from a moral perspective is sane for these purposes, even though his moral perspective may be quite eccentric or deluded. See generally the discussion of the M'Naghten test in Perkins, Criminal Law 858-875 (2d ed. 1969).

In answer to the second part of the Committee's question, the bill intentionally uses the terms of art found in the M'Naghten test so that no particular judge's or psychiatrist's definition of the terms will be substituted. The use of these terms is meant to effectuate the goals of the bill, and to insure against any tendency to broaden the test for insanity.

2. What possible problems does the Department of Law see from the adoption of the language submitted by the Governor to the Senate? What signs would evidence a serious problem with this approach to the insanity defense?

The principal problem with tightening the insanity defense in the manner suggested by the proposed legislation is addressed in the answer to question no. 7 infra. Because the insanity defense has in the past generally afforded a favorable resolution of a criminal case from the defense viewpoint, there have been few attempts to present the existence of mental illness as rebuttal to the existence of the required mens rea.

The second problem with the legislation is not what it attempts to accomplish, but what it does not attempt to accomplish. Under the proposed law, a criminal sentence will be imposed on many offenders who would be adjudged mentally ill under the current law, and a fixed date will be established for the termination of their custody. For crimes such as first degree assault, for example, the maximum term is twenty years. All persons who have been sentenced under the criminal law and AS 12.45.082 will be released at some point.

In order that these people be released to the community under the safest possible circumstances, it is imperative that some sort of carefully monitored gradual release program be available. Our country did not, for example, ask its Vietnam prisoners of war to readjust to society "cold turkey" following their lengthy confinement; instead, the government offered programs designed to assist in the difficult process of returning to a life of freedom in changed surroundings. We should institute similar programs of assistance to cushion the blow (both to the individual and to society) of the eventual release of mentally ill offenders.

Under present law, there is no mechanism for gradual release. This is a tragic and dangerous omission. The present legislation does not address this issue due to the complexity of determining what type of release program will adequately balance the interests of individual readjustment, on the one hand, and societal safety while the adjustment program is in progress, on the other.

The Department of Law would, however, recommend to the Legislature that a program similar to the one already instituted in Oregon be looked into. Oregon has a civilian board, similar to a parole board, specifically created for mentally ill offenders. The board oversees a variety of programs for the placement of persons who, having been committed, have demonstrated that they are entitled to release, or who, having been sentenced as guilty but mentally ill, are to be released in the future by operation of law (that is, when their sentences expire).

Such a program will require careful thought and adequate funding. The problem of keeping the community safe from the mentally ill and dangerous offender cannot be adequately addressed, much less solved, until provisions are made for after-care programs in the community with a system designed to carefully monitor those who are conditionally released. The Department of

Law recommends that the Legislature take steps to see that this issue is studied and taken up in the next legislative session.

3. What is the history of the Department of Law's efforts to develop a new approach to the insanity defense?

Throughout the development of Alaska's revised criminal code by the Criminal Law Revision Subcommission, the Department raised a number of problems with the approach to the insanity defense that has been in effect in Alaska since 1972. We urged that modifications be made at least in the applicable burden of proof. During the 1978 legislative session, members of the Department testified before both the House and Senate Judiciary committees urging adoption of a provision that would make the insanity defense an affirmative defense consistent with other similar defenses in the new criminal code. The Legislature was, however, unwilling to make any changes in the insanity defense at that time, principally because the current definition of the defense had been enacted relatively recently.

Since the adoption of the new criminal code in 1978, the Department has continued to urge at each subsequent legislative session that an affirmative defense approach be adopted regarding insanity: first, during the major revision to Alaska's mental commitment statutes, and more recently in a bill introduced during the 1981 session to make a number of corrective amendments to the criminal code. Serious attention was given by the Department, both during the 1981 session and again at the beginning of the current session, to submission of a proposal comprehensively changing the insanity defense -- either a total elimination of the defense, or a substantial limiting of the defense along the lines of the bill recently introduced by Governor Hammond. Because of the past unwillingness of the Legislature to take action on this subject, it was judged more prudent not to formalize such a proposal, rather than jeopardize favorable legislative consideration of the badly-needed modification of the burden of proof following commitment under a "not guilty by reason of insanity" verdict.

4. Has the Department of Law submitted the proposed language on the insanity defense to prosecutors around the state for their comments?

The bill introduced by Governor Hammond in the Senate, and which is under consideration as a "working draft" in your Committee, was prepared through the joint efforts of at least five attorneys in the criminal division of the Department, including the attorney in the Office of Special Prosecutions and Appeals who represented the State in the series of Supreme Court cases which judicially defined the current statutory version of the insanity defense. Additionally, I have had the proposed bill reviewed by a group of district attorneys and assistant district attorneys from throughout the state during this past weekend. (These prosecutors were assembled in Anchorage in conjunction with their attendance at the annual state judicial conference to review this and other issues with Alaska's judges.)

5. Has the Department of Law considered adopting an approach similar to that used in the State of Idaho for the prosecution of mentally disturbed defendants? If you have, why was that approach rejected? If rejected on constitutional grounds, what grounds? Please cite relevant case law.

Yes, the Department did consider the Idaho approach, which abolished the insanity defense, retains diminished capacity, and provides treatment for those who would have previously been found insane. The Department also considered Montana, which also abolished the insanity defense.

The Department rejected complete abolition of the insanity defense because this would not protect society. Society needs protection from those persons who suffer from an extreme form of mental illness and commit crimes. The best way to do this is to have a narrow class of insanity acquittees who will be indefinitely committed to a hospital. This is preferable to convicting such persons and sending them to prison where early release on parole is available.

6. Has the Department of Law considered adopting an approach similar to that used in the States of Indiana and Michigan for the prosecution of mentally disturbed defendants? What defects exist in those laws?

Yes, the Department did consider the approaches of Indiana and Michigan, which make the "guilty but mentally ill" determination a special jury verdict, part of the adjudicative (guilt or innocence) phase.

These laws have several defects. First, Indiana and Michigan retain the insanity defense and the broad ALI definition of insanity. Thus these laws have not significantly reduced the number of persons who are not acquitted nor have they lessened the danger to society posed by the premature release of these insanity acquittees.

Second, these states provide essentially no mental health treatment for those persons found "guilty but mentally ill". The Michigan statute provides for treatment, but does not make it mandatory, nor does it make the goal of that treatment to eliminate the person's danger to society, as the proposed bill would. Indiana has no treatment provision at all. These state legislatures have failed to recognize the danger to the community from the release, after prison terms are served, of mentally ill defendants who have never been treated. Also, in those states juries are probably misled into thinking their "guilty but mentally ill" verdict means the person will receive treatment, when this is not so.

Third, the Department felt it was better to make the "guilty but mentally ill" determination part of the dispositional (sentencing) phase for several reasons. Alaska has traditionally left the question of mental health treatment during incarceration to the recommendation of the sentencing judge and the final determination of the Department of Health and Social Services. This is considered preferable because these institutions have more expertise in these matters than any jury, and the question of proper treatment is not germane to the jury's task, which is to determine guilt or innocence. Also, it is believed that more and better treatment will result from the Alaska approach. Mental health professionals will more likely aid the sentencing judge in making the determination about mental health when the question is one of treatment during incarceration as opposed to the weighty question of whether the person is

judge?

jury's task

find facts

guilty or innocent.

7. Under the proposed law, what assurances do we, the legislature have, that trial judges will not permit all of the evidence that formerly was probative of a mental disease or defect to be admitted on the issue of specific intent?

The insanity defense under present law goes far beyond constitutional requirements governing proof of mens rea. Under present law, the prosecution is required to prove the defendant's sanity beyond a reasonable doubt once the defense of insanity is properly presented. The new bill tightens the insanity defense substantially. It is written in the legislative intent of the bill, however, that nothing in the bill be read as relieving the state of its burden of proving the relevant culpable mental state beyond a reasonable doubt.

This means that with a tightened defense, more defendants may attempt to rebut mens rea as a result of the existence of a mental disease or defect. This opportunity exists under present law and is constitutionally mandated. As a practical matter, however, defendants have not resorted to this approach given the advantages of the insanity defense as it exists now.

Because the insanity defense has been in its present form for so many years, it is difficult to predict precisely how attempts to rebut mens rea as a result of mental illness will be accomplished. There is nothing the legislature can do, however, to prevent a defendant from claiming that a mental disease or defect prevented him from forming a required culpable mental state. Allowance of such a defense is required by the due process clauses of the state and federal consitutions.

8. Describe the effect of this legislation on the doctrine of diminished capacity. Johnson v. State, 511 P2d 118, 1973.

This legislation has no impact on the defense of diminished capacity as described in Johnson v. State, 511 P2d 138 (Alaska 1973). Diminished capacity is an area of the law that is closely allied with the requirements of the constitution that every element of the offense be

proved beyond a reasonable doubt. Any attempt to restrict the doctrine of diminished capacity would require a careful reexamination of the required culpable mental states within Title 11 as they relate to the defense of diminished capacity. This legislation does not reflect an attempt to do that.

A defense of diminished capacity is rarely a complete defense to crime. When successfully pleaded, it serves only to reduce the charge from a more serious specific intent crime to a less serious "lesser included" crime. E.g., first degree murder reduced to manslaughter.

9. What safeguards exist in the language that is proposed here to prevent confusion by the jury between the affirmative defense of mental disease or defect excluding responsibility and the new "guilty but mentally ill" section?

The "guilty but mentally ill" determination is not a jury issue. Except for an instruction similar to the Kinsman instruction, (see answer to question no. 10 infra), the jury would not address the issue of "guilty but mentally ill." The available jury verdicts would be as under present law; guilty, not guilty, and not guilty by reason of mental disease or defect. The new provision for "guilty but mentally ill" is encountered at disposition by the court following a jury verdict of guilty.

10. The proposed AS 12.45.082 appears to make no mention of a special "guilty but mentally ill" verdict. How is a jury to know that if they find the defendant guilty he may still receive appropriate treatment for mental illness?

The issue of whether a verdict of "guilty but mentally ill" is appropriate is an issue addressed at disposition. It is not a determination made by the jury. As the statutory scheme is presently written the jury would probably be unaware of the "guilty but mentally ill" disposition much as the jury is frequently unaware of available sentencing decisions under present law.

The committee's question does, however, raise a good point. It may be advisable that a jury be informed that their verdict of guilty does not preclude court-ordered

treatment for a defendant. An analogous situation already exists under Alaska law dealing with the relationship between the defense of insanity and the post-insanity commitment statute.

In Kinsman v. State, 512 P2d 901, 904 (Alaska 1973) the Alaska Supreme Court held that juries considering the insanity defense must be told that a verdict of not guilty by reason of mental disease or defect will result in further proceedings on the issue of whether the defendant should be committed. This instruction is given to insure that the jury properly considers the defense untainted by concern that a dangerous defendant would be released.

The Department therefore suggests to the Committee that the jury be similarly instructed of the availability of the "guilty but mentally ill" disposition so that they will properly apply the law and reach a verdict of guilt or innocence uninfluenced by the concern that the defendant, though guilty under the law, may not receive proper treatment if sentenced to prison. A new subsection to AS 11.81.635 is therefore proposed. See the response to question no. 12 infra.

Inform the jury!

11. Would a section in the law requiring a special verdict form contribute to or detract from the administration of this new approach to the insanity defense? Why?

Proposed section 11.81.635(c) does provide for a special verdict on the insanity defense. This special verdict is imperative since its issuance triggers the provisions of AS 12.45.090. These provisions, which are much stricter than civil commitment procedures, find part of their constitutional justification in the special verdict issued. A verdict of not guilty by reason of mental disease or defect necessarily means that the state has proven beyond a reasonable doubt that the defendant perpetrated the act charged. His acquittal results only from an infirmity that caused him to be unaware of the nature and quality of his acts. This distinguishes this defendant from one acquitted for the reason that there is a doubt about whether he in fact is the perpetrator or whether he acted with legal justification such as self-defense. The special verdict is therefore essential.

12. Some courts, including the Michigan Supreme Court, have considered the issue of whether the trial court should

instruct the jury on the disposition of a defendant found not guilty by reason of insanity. (People v. Cole, 172 N.W. 2d 354 [Mich. 1969]) Do you believe that requiring such an instruction under Alaska law would contribute to the administration of justice. If no, why not?

It is the Department of Law's view that the law presently requires such an instruction in Alaska. Kinsman v. State, 512 P2d 901, 904 (Alaska 1973). The instruction set forth in Kinsman, however, does not accurately state the law since Kinsman seemed to assume that post-insanity commitment was automatic. Kinsman was decided before State v. Alto, 580 P2d 402 (Alaska 1979) -- the case in which the Supreme Court for the first time directly addressed the issue of commitment following an insanity acquittal. There is no reason why the Kinsman instruction should not be given under present law, although it should be modified to accurately [illegible] the new post-verdict procedures. There is also no reason why the jury should not be informed of the new "guilty but mentally ill" disposition.

misleading

A proposed new subsection to AS 11.81.635 follows:

> (d) Whenever the jury is instructed as to a defense or an affirmative defense raised under this section, the jury shall also be accurately instructed on the dispositions available under AS 12.45.082 and 12.45.090.

13. Has any other state adopted an approach like that proposed by the Department of Law?

Although no state has exactly the same insanity statutes, the approach we have recommended borrows concepts from other states which have recently amended their insanity statutes. This approach adopts the "guilty but mentally ill" determination from three states (Georgia, Illinois, and Indiana) and moves it from the trial to the sentencing phase. This is similar to the approach taken by the state of Montana, where the sentencing judge can find a convicted defendant to be mentally ill, which means treatment is mandatory. Like several other states (Illinois, Michigan, and Montana), Alaska by statute would require mental health treatment for those who are convicted, but are mentally ill. These states also provided the concept proposed here to allow

the type, length, and place of treatment (hospital versus prison) to be left to the discretion of the Commissioner of Health and Social Services.

Alaska would become unique in one important feature. We would be the only state to keep the insanity defense but narrow it, restricting its application to the first half of the M'Naghten Rule - the inability to understand the nature and quality of one's act.

14. What should be the role of a jury in a determination of sanity or mental illness?

The role of the jury in Alaska has traditionally been limited to issues relating to guilt or innocence. Sentencing has always been the sole responsibility of the court. The bill retains this division of responsibility between court and jury.

The jury is responsible for determining whether the state's case (and any affirmative defense) has been proved. The bill repeals AS 12.45.083, which permitted the defendant to waive jury even though the state desired a jury trial. This provision in AS 12.45.083 is unique. No other statute exists that purports to deprive the state of its right to a jury trial in criminal cases. The bill repeals this provision so that the state may also insist on a jury. There is no good reason to exempt the insanity defense from the general rule that the state may insist on a jury trial.

An additional reason exists for not allowing the defendant to unilaterally waive jury trial. The jury system is fundamental to our system of justice. Decision-making by a group of private citizens increases public confidence in our criminal justice system and furthers the interests of democracy. Juries protect important public safety interests just as they protect individual rights. The insanity defense will be better understood and accepted if the community is as involved in the jury process in insanity issues as it is in other aspects of the criminal law.

An important philosophical premise in the bill is the decision to change the focus in cases involving mentally ill offenders from guilt or innocence to disposition. The "guilty but mentally ill" finding is a dispositional finding made preliminary to or part of the sentencing

process. The court therefore makes this determination without a jury.

15. What should be the role of a jury in a commitment or release hearing?

Arguments can be made both ways on the issue of jury involvement in the post-insanity acquittal commitment determination. The present bill provides that this determination is to be made by the court sitting without a jury. The main reason for this change is that current law has proved to be cumbersome and expensive when a jury hears the issue of commitment and release. Often the most probative facts available on the issue of dangerousness are the facts surrounding the commission of the criminal acts charged. The prosecution is faced with presenting and re-presenting these facts at yearly release hearings. The prosecution may do this through transcripts of the trial or through the presentation of witnesses from the criminal trial. In the case of transcripts, much of the probative force of the testimony is lost when it is presented in transcript form. However, the repeated presentation of live testimony can be cruel to the witnesses involved, who might well be asked on an annual basis to relive the horror of the violence they may have suffered personally, or seen inflicted on loved ones.

Is this actually occurring often in any cases.

It is for these reasons that the bill provides that the commitment and release issue be determined by the court. In most instances, the trial judge presides over the commitment process and hears subsequent petitions for release. The court's familiarity with the facts from the original trial will facilitate a more informed decision than could be obtained by using a new trier of fact for each hearing. A jury hearing of this issue would of course require the selection of a new jury for each annual release hearing.

Should a change of judge be necessary as a result of the passage of time, transcripts are available to bring the judge's familiarity with the case up to speed. Judges, because of their experience, are better equipped to make factual determinations based exclusively upon transcripts. It is for these reasons that the bill puts factual findings under AS 12.45.090 in the hands of the court sitting without a jury.

I hope that this has fully responded to the questions you asked us to address on Saturday. If your committee has further questions or concerns, please let me know.

Very truly yours,

WILSON L. CONDON
ATTORNEY GENERAL

By: _____
Daniel W. Hickey
Chief Prosecutor

DWH/ln

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Rep. Buchholdt

House of Representatives

Committee on Judiciary

MEMORANDUM

TO: Rep. Ramona L. Barnes
Chairman, House Judiciary Committee

FROM: William D. Cook, Legal Counsel
House Judiciary Committee

DATE: May 3, 1982

RE: Comments on HCSCSHB535

I suppose that you can consider these to be my final comments on this bill, which you know is a combination of a Department of Law revision on certain criminal laws, along with Judiciary Committee provisions which were approved by you and by Governor Hammond.

IF THE LOG JAM IS BROKEN, AND

IF THE SENATE JUDICIARY COMMITTEE AND THE SENATE BEGIN TO PASS OUT HOUSE BILLS DEALING WITH CRIME (AS IT APPEARS THEY MAY NOW BE BEGINNING TO DO), AND

IF HCSCSHB535 PASSES ON THE FLOOR OF THE HOUSE OF REPRESENTATIVES AND CONSEQUENTLY GOES TO FREE CONFERENCE COMMITTEE,

These would be my suggestions for dealing with the anticipated attack on the bill from the angle of the high fiscal note:

1. I recommend that you "hang tough" on sections 1-4, the "multiple deaths" sections, which would provide a more just sentence for multiple killers, especially D.W.I. cases. The fiscal note calls for only about 8 additional beds over a considerable time period, and is not as consequential as the other sections.

2. I likewise recommend that you stick with the elevation of second offense joyriding to a C felony. The fiscal note does not request additional beds to deal with this

matter but makes what I consider to be a very erroneous judgment that the second offense joyriding will receive an additional 162 days. There is no estimate of what the misdemeanor joyriders are receiving at the present time. Also, this 162 days is directly in conflict with the guidelines for sentencing First Offense C felons, as you can see from the attached copy of the guidelines we received from the Judicial Counsel.

Specifically, the guidelines for sentencing for criminal mischief II, AS 11.46.482, is "probation to 60 (60 days)." Joyriding is presently criminal mischief III, AS 11.46.484, an A misdemeanor, and it is reasonable to conclude that a person sentenced to the A Felony for second joyriding under that offense would be given a similar sentence to the person sentenced for criminal mischief II.

I believe that the usual person sentenced in District Court for joyriding would receive 3 to 10 days in jail. If the Superior Court followed the guidelines, there would actually be no "additional days", but the judge would in fact give between 0 and 60 days. The guidelines suggest that this not be aggravated to a greater period unless there is a "history of misdemeanor convictions involving fraud, theft or violence." Since joyriding is not theft, I believe that it can be rationally concluded that a Superior Court Judge would not normally give a second offense joyrider an actual sentence to serve (taking into consideration probation and "good time" which would require the Division of Corrections to keep that person on hand greater than 60 days.

Naturally I don't think this should be put in any sort of position paper or commentary that would go along with the statute so as to discourage a Superior Court Judge from giving an appropriate sentence. I just point this out to you as a viable argument in the Free Conference Committee against deleting this section. You will recall that many persons, including Rep. Halford and Governor Hammond feel that it would be appropriate to punish recidivous joyriders more strictly.

3. Section 13, which deals with the problem of concurrent sentencing by judges, is concluded by the Division of Corrections and a fiscal note to require "30 additional man years of accumulated jail service." This section and part of section 17, which are very similar, is designed to require consecutive sentences, particularly for violent crimes. The present wording would do that,

but it would also require consecutive sentencing for different property crimes. For an explanation of that, please refer to the Sectional Analysis of the bill, which is attached to this Memorandum. It is possible that these sections could be changed slightly to insure that a Superior Court Judge would be required to sentence consecutively for such violent crimes as murder, kidnapping, arson, rape, etc., but not require him to sentence consecutively for property crimes. When considering the violent crime situation as to sentencing, I know that you will remember the Juneby case as well as the Contreras case, but also please consider the recent sentencing of Mr. Chase in Fairbanks to 78 years in the torture murder of Dawn Klinhart. There, the Superior Court Judge sentenced Mr. Chase to 75 years for First Degree Murder. He also sentenced him completely concurrently to 15 years each for Arson I, Arson II, two Kidnappings, Sexual Assault in the First Degree and Assault in the First Degree. He also sentenced him to 7 years, completely concurrently to all the rest for Burglary. There is was apparently not so much a matter of the judge feeling that he was compelled to sentence concurrently because of the "single continuous criminal episode rule" (Although it was not clear to me what he was considering during the sentence), but the matter of using his discretion. Sections 13 and 17 as presently written, and also as they could be modified to be limited to violent crimes, would restrict that discretion to not allow this type of miscarriage of justice. The result in that case is that Mr. Chase will be eligible for parole in approximately 20 years, assuming that he accumulates all of his "good time." You will recall that the prosecutor in that case, a prudent individual, requested that these crimes be sentenced consecutively and that he receive 139 years. This is probably one of the most conspicuous torture murders of a young person in Anchorage in recent years, and points at the need for language similar to that in Sections 13 and 17.

Once again, the language could be modified -- and I will glad to assist on this -- to take care of violent crimes only and allow the judges free swing on property crimes, if this is what is desired. This would probably knock off a number of the 30 beds requested, but I'm not sure if tactically it would be wise to go into the free conference committee proposing this at first.

4. Section 15 accounts for the greatest number of additional requested beds, 63. You will recall that

Division of Corrections requested 48 additional beds because of the increase of the presumed sentence for the First A felony from 6 years to 8 years. This I believe could be cutback to the present 6 without any great injustice as long as manslaughter is included, as presently in the bill. It seems clear from the fiscal note that if this was done, there would be a maximum of 15 new beds, but this likely would be less than that because of the reduction from 8 years to 6 years. The need for covering manslaughter under A felonies exist because some Superior Court Judges are consistently giving very light sentences to drunk driver killers on the highway. I noticed that one of last Tuesday's papers had an editorial relating to the second degree murder conviction of Mr. Pears in Fairbanks for the killing of two people while drunk driving. The editorial proposed that the courts were really cracking down on drunk drivers. This is not true at all, and the A.P.O.A. and other groups, as well as your own newsclippings and the clipping service that we receive from the Court System which show that there are a number of recent cases where manslaughter, drunk driver killers have received either complete probation or a very light sentence.

If manslaughter is serious enough to be classified as an A felony, why is it not serious enough to receive the presumed correct sentence under sentencing law that the other A felonies receive? After all, it is the only A felony where death is an element. Also, remember that unless the language of "dangerous instrument" is used, instead of the Department of Laws requested language "deadly weapon", manslaughters with motor vehicles will not be covered anyway. So it is very important that that language be used, as well as leaving manslaughter in there. This modification of from 8 down to the present 6 years should cut off most of the 63 beds requested.

5. Section 16 is covered in the fiscal note and is probably the most subjective of the analysis by the Division of Corrections. If it comes to a question of compromise on this, I would propose that you agree to keep the present 7 year limit as to all crimes except unclassified felonies and A felonies. We should be able to make a good argument that this is a viable compromise, since the courts will not be able to consider those other felonies after 7 years, but the courts should always be able to consider that the defendant had previously committed murder, kidnapping, rape, arson I, robbery I, manslaughter, and the other most serious crime. It is patently illogical for a legislature to declare that these crimes are so serious

that a person may receive the serious penalties stated -- up to 99 years in the case of the unclassifies -- but that a Superior Court Judge may not even consider or know that those crimes had been committed, if a 7 year -- or any period for that matter -- had passed between final release in the commission of the latest felony.

Anyway, I believe that it would be possible to propose this compromise. In any event, the Division of Corrections only cites 7.7 additional beds "if we had one each of A, B, C felons" in that grouping. So this would leave only one each of A felons in that grouping, as they don't mention unclassifieds. It appears that this would reduce the additional beds to 4.8, but even all of this is over a considerable period of time.

I hope that all of this will be of assistance to you IF this ever does get to free conference committee. I know I don't have to tell you how important this bill is to the beginning of a reform of criminal justice in this state. I also know that this bill will never find its way to Free Conference Committee unless the contingencies that I cited first in this Memorandum occur. I believe that they will occur, I hope that they will occur, and I know that you will be ready to deal with any proposed "watering down" of HCSCSSB535. Certainly I will be glad to help you with this at any time.

Page 2 Dept of Law

COMMENTARY AND SECTIONAL ANALYSIS FOR THE 1982 AMENDMENTS TO ALASKA'S LAWS PERTAINING TO THE INSANITY DEFENSE

Introduction.

This legislation makes significant changes to Alaska's laws pertaining to the defense of insanity in criminal trials and is intended to accomplish two major changes from current law. First, the bill restricts the types of mental diseases or defects that will provide a complete defense to criminal liability. At the same time, the legislation requires mental health treatment within the criminal justice system for persons falling under the ALI test of insanity specified in former AS 12.45.083.

Sections 11.81.635(a) and (c) adopt a definition of insanity that limits the defense to persons suffering the most extreme forms of mental illness. Persons found not guilty by reason of insanity under this test are subject to criminal commitment under AS 12.45.090. This scheme provides substantial protection for the public by requiring a person criminally committed to bear the burden of demonstrating his lack of danger to others before he is released.

Under this new limited defense of insanity, many persons who would have been found not guilty by reason of insanity under former AS 12.45.083 will now be found guilty and sentenced under the criminal law like any other defendant. Section 12.45.082 recognizes, however, that rehabilitation and eventual reintegration of such persons into society must be premised on a program of mental health care. For these people, the new law provides for a judgment of "guilty but mentally ill." This judgment is entered by the court following a hearing specifically directed to the issue of whether the defendant, although not meeting the new definition of insanity, would meet the ALI test of the former law. Section 12.45.082 makes it mandatory for the Department of Health and Social Services to provide mental health treatment for a person adjudged "guilty but mentally ill."

Section 1, AS 11.81.635, Mental Disease or Defect Excluding Responsibility.

This section limits the scope of the insanity defense to persons suffering from the most serious forms of mental

diseases or defects. The defense is specified as an "affirmative defense", a term defined in AS 11.81.900(b)(1), to require the defendant to establish the elements of the defense by a preponderance of the evidence.

By limiting the defense to cases where the defendant is unable to appreciate the nature and quality of his conduct, this legislation enacts one branch of the M'Naghten test of insanity. That portion of the M'Naghten test which defines legal insanity as including situations where the defendant did not know the wrongfulness of his conduct is specifically rejected by this legislation and excluded from the revised definition of legal insanity. The fact that the defendant did not appreciate the wrongfulness of his conduct, nevertheless, may be relied upon after conviction to establish that the defendant was "guilty but mentally ill" under sec. 12.45.082. Evidence relevant to that issue would not, however, be admissible at trial since it is irrelevant to the issue of guilt or innocence whether or not the defendant knew what he was doing was wrong, provided he acted with the culpable mental state required by the crime.

An example of a person who could successfully establish the elements of the revised insanity defense is the defendant who, as a result of a mental disease or defect, is unable to realize that he is shooting someone with a gun when he pulls the trigger on what he believes to be a water pistol, or a murder defendant who believes he is attacking the ghost of his mother rather than a living human being. Conversely, this defense would not apply to a defendant who contends that he was instructed to kill by a hallucination, since the defendant could still realize the nature and quality of his act, even though he thought it might be justified by a supernatural being. Such a defendant could be determined guilty but mentally ill under AS 12.45.082.

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

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

their severity, would not qualify as a "mental disease or defect."

Section 2, AS 12.45.082, Guilty But Mentally Ill.

This section provides for the disposition of "guilty but mentally ill" for those defendants who meet the ALI insanity test of being unable to appreciate the wrongfulness of their conduct or to conform their conduct to the requirements of law, but who do not meet the stricter insanity test now specified in AS 11.81.635.

A defendant who suffers from a mental disease or defect short of legal insanity will be convicted like any other criminal defendant without regard to his mental disease or defect. By directing the judge to sentence these defendants "as provided by law", subsection (d) is intended to accomplish two goals. First, the maximum term of custody cannot exceed the term of imprisonment permitted by the law governing sentencing for the offense; this brings Alaska law into conformity with due process and equal protection decisions governing the maximum length of a criminal commitment. Second, the defendant's mental disease or defect may be considered by the judge in arriving at the sentence to be imposed, to the extent that the judge is permitted to exercise sentencing discretion. Note, however, that the required terms of imprisonment under the presumptive and mandatory sentencing scheme specified in AS 12.55 are not affected by a finding of guilty but mentally ill. For example, in the case of Murder in the First Degree, AS 12.55.125(a) specifies a mandatory minimum sentence of 20 years. At least that sentence must be imposed on the defendant, even though he may be guilty but mentally ill.

Subsection (b) permits either party or the court to initiate a hearing as to whether the defendant meets the definition of "guilty but mentally ill". The hearing is to be held in addition to or in conjunction with the normal sentencing proceeding, since a finding of guilty but mentally ill deals only with the type of disposition the defendant will receive, and not his guilt or innocence.

Subsection (c) recognizes that a defendant may enter a plea of guilty but mentally ill, and that the plea may be accepted by the court provided that the hearing and findings required by (b) of this section occur.

Subsection (e) requires the Department of Health and Social Services to provide mental health treatment to all persons adjudged guilty but mentally ill. The type of treat-

ment appropriate to a particular defendant is determined by the department. The provision also emphasizes that if treatment is successfully completed, the defendant is then required to serve the remainder of his sentence like any other criminal defendant.

The last sentence of subsection (e) is intended to provide that, notwithstanding any mental health treatment considerations, the custodial status of a defendant shall be controlled by the criminal judgment entered against him. This provision has two major implications. While the defendant is committed to the custody of the department, the department shall determine the place of custody, and whether treatment should take place in a hospital or prison setting. For defendants placed on probation or parole, the department will be required to furnish out-patient treatment.

Since mental health treatment is often an important part of the rehabilitation of defendants other than those covered by AS 11.81.635 and AS 12.45.082, subsection (f) is intended to clarify that mental health treatment remains available to these defendants. However, mental health treatment is mandatory for those defendants adjudged "guilty but mentally ill".

Secs. 3 and 4, AS 12.45.087(c), Psychiatric Examination.

Section 3 makes a conforming amendment to the subparagraph of 12.45.087(c) specifying the type of examination conducted of a person who intends to raise the affirmative defense of legal insanity while section 4 allows the examination to include an evaluation relevant to a determination of "guilty but mentally ill" under sec. 12.45.082.

Sec. 5, AS 12.45.090, Procedure After Raising Defense of Mental Disease or Defect.

The defense of insanity has been restricted by AS 11.81.635 to only apply to those defendants suffering from the most severe forms of mental illness. It is therefore the primary concern of this section that the public be protected from the severely mentally ill who have been shown beyond a reasonable doubt to have committed an act that would have been a crime but for their mental illness. In view of the finding by a preponderance of the evidence at the defendant's trial of the existence of a mental disease or defect at the time of the crime, society has a significant interest in insuring that

such persons are not released until an appropriate showing has been made that they no longer pose a significant danger to persons or property. Thus a high burden of proof is placed upon a defendant seeking release from commitment following an acquittal under AS 11.81.635.

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

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

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House of Representatives

Committee on Judiciary

written by Mark Johnson

Questions for Department of Law:

1. Why has the Department of Law recommended that part of the insanity defense be retained? Doesn't such an approach create the possibility that a new body of case law will be developed which will eventually bring the law back to the point where we are today?

2. What possible problems does the Department of Law see from the adoption of the language submitted by the Governor to the Senate?? What signs would evidence a serious problem with this approach to the insanity defense??

3. What is the history of the Department of Law's efforts to develop a new approach to the insanity defense??

4. Has the department submitted the proposed language on the insanity defense to prosecutors around the state for their comments?

5. Has the Department of Law considered adopting an approach similar to that used in the State of Idaho for the prosecution of mentally disturbed defendants? If you have, why was that approach rejected? If rejected on constitutional grounds, what grounds? Please cite relevant case law.

6. Has the Department of Law considered adopted an approach similar to that used in the States of Indiana and Michigan for the prosecution of mentally disturbed defendants? What defects exist in those laws?

7. Under the proposed law, what assurances do we, the legislature have, that trial judges will not permit all of the evidence that formerly was probative of a mental disease or defect to be admitted on the issue of specific intent?

8. Describe the effect of this legislation on the doctrine of diminished capacity. Johnson v. State, 511 P2d 118, 1973.

9. What safeguards exist in the language that is proposed here to prevent confusion by the jury between the affirmative defense of mental disease or defect excluding responsibility and the new "guilty but mentally ill" section???

10. The proposed AS 12.45.082 appears to make no mention of a special "guilty but mentally ill" verdict. How is a jury to know that if they find the defendant guilty he may still receive appropriate treatment for mental illness?

11. Would a section in the law requiring a special verdict form contribute to or detract from the administration of this new approach to the insanity defense? Why?

12. Some courts, including the Michigan Supreme Court have considered the issue of whether the trial court should instruct the jury on the disposition of a defendant found not guilty by reason of insanity. (People v. Cole, 172 N.W.2d 354, 1969) Do you believe that requiring such an instruction under Alaska law would contribute to the administration of justice. If not, why not?

13. Has any other state adopted an approach like that proposed by the Department of Law??

14. What should be the role of a jury in a determination of sanity or mental illness?

15. What should be the role of a jury in a committment or release hearing??

P 7

D R A F T

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the insanity defense. Last year I submitted SB 535 which shifts the burden of proof to the defendant to establish the elements of that defense. Passage of that bill by itself will likely result in a substantial decrease in the number of cases where the defense is successfully established. Nevertheless, the recent tragic killings in Anchorage have raised the issues of whether the defense can even be more restricted and possibly even eliminated.

While not abolishing the insanity defense, this bill significantly restricts its application by narrowly limiting the defense to persons who are unable to appreciate the nature and quality of their conduct. Under the new test, for example, a defendant who believes he is attacking a ghost instead of a human being could successfully raise the defense while a defendant who believed it was necessary to kill because he was instructed to do so by a hallucination could not. Similar to the approach in SB 535, the defendant will be required to establish the elements of the defense.

It is our best estimate that this redefinition of the insanity defense will restrict its application to approximately 10% of the cases in which the defense is raised today.

In addition to restricting the scope of the defense, the bill requires mental health treatment for persons who cannot successfully raise the defense, are found guilty, and are determined by the court to be suffering from a mental illness short of legal insanity. Under existing law, such a defendant is found not guilty by reason of insanity, treated, and released back into the community when treatment is successfully completed. Under this bill, such a defendant can be found guilty of the crime by the jury and determined to be mentally ill by the trial court. The defendant is then sentenced like any other criminal defendant and treated for his mental illness during his sentence. If the illness is cured before the expiration of the sentence the defendant is not returned to the community but instead is required to serve the remainder of his sentence.

In drafting this bill we gave substantial attention to proposals that would completely abolish the insanity

defense. We rejected that approach for two reasons. First, we have significant doubts about its constitutionality and second, we believe that the problem with existing law is not that an insanity defense exists but rather that it has been defined too generally by the legislature and applied too broadly by the courts. We are confident that our proposal will withstand constitutional attack and that it appropriately limits the defense.

A commentary and sectional analysis, explaining the bill in greater detail, is attached.

Sincerely,

Jay S. Hammond
Governor

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metro

Anchorage Daily News

Killer, rapist of teen gets 75-year sentence

By SHEILA TOOMEY
Daily News reporter

A Superior Court judge sentenced convicted killer Allan Chase Friday to 75 years in prison but held out a "light at the end of the tunnel" for the 19-year-old youth.

Judge Justin Ripley allowed Chase to become eligible for parole after serving 25 years by sentencing him to serve additional terms totaling 37 years at the same time as the 75-year murder sentence.

The sentence will keep Chase behind bars until he is at least 45 years old and under the supervision of the state for the full 75 years.

"I am compelled to the conclusion that unless and until you change, a massive sentence to keep you away from society is necessary," Ripley said.

"Even now I don't think you realize the dreadful seriousness of what you've done."

Ripley said Chase's youth left open the possibility he might "remake himself as a man" and be able to convince a parole board in the year 2007 that he should be freed. But "until you change," he told Chase, "society should not have to take a chance on having you outside.

"In a way there is some light at the end of the tunnel, but only if you make yourself walk toward it," Ripley said.

Chase was convicted Feb. 11 of beating, raping and murdering 16-year-old Dawn Klinkhart in April 1981 after attending a party at Klinkhart's Snowline Drive home.

Assistant District Attorney Steve Branchflower originally asked that the defendant be sentenced to 258 years in jail, but trimmed his request to 139 years at Friday's hearing.

Branchflower cited Chase's record as a juvenile, including charges of burglary, joyriding, receiving stolen goods, grand larceny and violation of probation. He said Chase began using drugs in the sixth grade and came to the attention of juvenile authorities by age 15.

"He has had ample opportunity to reform his criminal lifestyle," Branchflower said, calling Chase's chances for rehabilitation poor.

Defense attorney Joe Kalamarides asked that his client be given a single 30-y term, calling it long enou cure Chase's chronic ant cial behavior.

Chase spoke briefly on own behalf, saying drugs alcohol played a major ro his crime. He denied pros tion assertions that he c mitted the murder coldly then went home to bed.

"I sat home and tried figure out what did happ Chase said. "Did I really d or was it just a nightmare"

Possible Sentences under Crim. Code: Sentence:

0-99 — 1st° murder — 75

0-20 — 1st° Arson
0-10 — 2nd° Arson
5-99 each — Two Kidnappings
0-20 — 1st° Sexual Assault
} 15 years each, all concurrent

0-10 — Burglary — 7 years

} all concurrent

75 years, all concurrent

Parole eligibility after 1/3rd, plus 1/4 of period left for "good time" - eligible after approximately 20 years for Pers

PROTECT THE INNOCENT, INC.

451 S. INDIANA ST.
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831-1111/632-3321

March 12, 1982

Mr. William Cook
Alaskan House Judiciary Committee
Room 124
Capitol Bldg. Pouch V
Juneau, Alaska 99811

Dear Mr. Cook:

Enclosed are materials concerning the insanity plea. I am sorry that it has taken so long to get them to you, but, it took me awhile to come up with all the information. PTI is entirely staffed by volunteers, and most of us have regular jobs, so, sometimes we are not as speedy as we should be.

I have also enclosed a few general items about PTI.

Please keep me posted on the status of the insanity plea in Alaska. We are always interested in following issues we have been involved in.

If I can be of any help, please let me know. PTI has advised other states on the insanity plea, and we are currently working on insanity plea reform in two other states, and on the federal level. To date, we have been successful in our efforts.

Sincerely,

Dianne Holmes

Dianne Holmes
Director

PS: I have enclosed a card with my work address and phone number. Please feel free to contact me there anytime. You may also address correspondences to my work address.

DH:ln

AMERICAN PARENTS' ASSOCIATION, INC.

DIANNE L. HOLMES
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Diane Holmes
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called 3-1-82 —
will send material

December 15, 1981

Mr. Ross Stovall, Esq.
President,
Protect The Innocent, Inc.
451 South Indiana Street
Mooresville, Indiana 46108 (317) 831-1111

Dear Mr. Stovall:

Last month I viewed the NBC news segment regarding the tragedy of Mrs. Betty Spencer of Hollandburg, Indiana and the movement to make certain changes in criminal law, visavi insanity pleas in homocide cases. I wrote to Mrs. Spencer, but the letter was returned, as apparently no post office exists for Hollandsburg--we had thought that the correct name was Holland. Then I wrote to NBC news in New York for the correct details.

Today, Mr. Jim Polk of NBC news called and provided me with your name and address and explained that Mrs. Spencer's actual post office address is Waveland, Indiana--although he did not have her exact mailing address. He further explained the basic aim of your group, that you practiced law in Mooresville, and that you were previously Counsel for the Judiciary Committee of the U.S. House.

I would very much appreciate your providing me with any information or facts your group provides regarding this issue. I am personally acquainted with this problem; while an Assistant District Attorney in Anchorage I prosecuted a murder case where the defendent plead Not Guilty By Reason of Insanity, with the jury returning an N.G.I. verdict. The Alaska Supreme Court has interpreted the Alaska statutes to require the State to prove Beyond a Reasonable Doubt that the defendent was both able to appreciate the consequences of his act and conform his actions to the law at the time of the crime, if Insanity is plead and some evidence of mental disease or defect is put on in the Defense Case in Chief. Eight months later, the defendent was found "Sane" by a six person civil jury (5 to 1) and released from Alaska Psychiatric Institute, a free man with all attorney expenses paid for by the State of Alaska.

December 15, 1981

Mr. Ross Stovall, Esq.

I shall look forward to hearing from you on this subject, and believe that an inquiry will be made into applying these reforms to Alasksa criminal law and procedure. Chairman Barnes will be most interested in examining your information and proposals for legislative reforms in this area,

Yours very truly,

William D. Cook, Legal Counsel
House Judiciary Committee

WDC:jl

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(session only)

P.O. Box 3382
Anchorage, AK 99510
(907) 274-1434
(907) 274-1441
POUCH V
JUNEAU, ALASKA 99811

December 11, 1981

(212) 664-3997 Ask Operator.

Director, NBC Nightly News
National Broadcasting Corporation
30 Rockefeller Plaza
New York, New York 10020

Dear Sir:

On approximately November 11, 1981, your "Special Segment" of NBC Nightly News was covering the matter of Insanity pleas to murder cases in United States Courts. Specifically, the story of the murder of the four sons of Mrs. Betty Spencer, and the later insanity plea by one of the murderers, was carried, including an interview with her and one with a Michigan prison pschologist. I understood the name of Mrs. Spencer's hometown to be Hollandburg, Indiana, but was later unable to find such a city listed in the Zip Code Directory.

Our letter to her at Holland, Indiana has been returned, apparently because that is not the correct town. As I very much wish to contact Mrs. Spencer on behalf of this committee, I would appreciate your forwarding to me (from the NBC correspondent) her exact address. Thank you very much for your assistance in this matter.

Yours very truly,

William D. Cook, Counsel
House Judiciary

WDC:jl

P.S. Please respond to P O Box 3382, Anchorage, Alaska 99510
Thank you.

TO: REPRESENTATIVE RAMONA L. BARNES

FROM: WILLIAM D. COOK, LEGAL COUNSEL Bill
HOUSE JUDICIARY COMMITTEE

RE: POSSIBLE LEGISLATION ON INSANITY PLEAS TO MURDER CASES.

Mr. Jim Polk, NBC News correspondent called today to discuss this issue and your possible position in this reform of criminal law. I will report on the conversation at your convenience.

Alaska State Legislature

Official Business

Members

Rep. Barnes, Chairman
Rep. Anderson, Vice-Chairman
Rep. Phillips
Rep. O'Connell
Rep. Freeman
Rep. Meekins
Rep. Buchholdt

POUCH V
JUNEAU, ALASKA 99811

House of Representatives

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

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(907) 274-1441
POUCH V
JUNEAU, ALASKA 99811

November 20, 1981

Ms. Betty Spencer
Holland, Indiana 47541

Dear Mr Spencer:

A few days ago, I saw on NBC News the story of your tragedy and the movement you are now involved with to provide juries in such cases another choice besides "Guilty", "Not Guilty", or "Not Guilty By Reason Of Insanity." As I understand it, three states have adopted the "Guilty But Mentally Ill" verdict alternative. I will shortly be doing my legal research to garner those new statutes and, hopefully, other material pertinent.

I would very much appreciate your providing any material relating to this issue that your organization may have available, and your referring me to any other sources you feel would be helpful.

Thank you very much, Mrs. Spencer, for your assistance in this matter.

Yours very truly,

William D. Cook
Counsel for Alaska House Judiciary Committee

WDC:jl

NBC Nightly News
(212) 664-3997

House of Representatives

POUCH V JUNEAU, ALASKA 99811

OFFICIAL BUSINESS

RETURN TO:

P O BOX 3382
ANCHORAGE, AK 99510

This is The Senders address "Give 'N Guys"

RETURNED TO SENDER
ATTEMPTED--NOT KNOWN

JUNEAU, AK
DEC 1
PM
1981
99801

FREEDOM TO SPEAK OUT
USA 2c

Ms. Betty Spencer
Holland, Indiana 47541

Alaska State Legislature

Official Business

POUCH V
JUNEAU, ALASKA 99811

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November 20, 1981

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Yours very truly,

William D. Cook
Counsel for Alaska House Judiciary Committee

WDC:jl

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POUCH V
JUNEAU, ALASKA 99811

November 20, 1981

Dr. John Prelesnik
Prison Psychiatrist
Michigan Department of Corrections
Jackson, Michigan 49201

Dear Dr. Prelesnik:

A few days ago I watched the NBC News program relating to new statutes in Michigan and other states, allowing juries the option of returning a verdict of "Guilty But Mentally Ill", with your comments on same. Being a former prosecutor in a case where a murderer was, 1.) Found "N.G.I." by a criminal jury, and then six months later, 2.) Found "Presently Sane" by a civil jury and released, I appreciate the problem.

I would very much appreciate your forwarding to me any pertinent references or available information on this matter, in law or psychiatry. Also, please refer me to any authorities in Michigan or elsewhere who may have briefed the legality or medical efficacy of such law.

Thank you, Dr. Prelesnik, for any assistance you can provide for me in this matter.

Very truly yours,

William D. Cook
Counsel for Alaska House Judiciary Committee

WDC:jl

BACK-UP & MATERIAL-PRE-INSANITY ISSUE

3-26-82

'Dog' bill may hurt police legislation

by Bill White
Times Juneau Bureau

Juneau — It's being labeled a dog bill.

The measure would make it a crime carrying a jail term of up to a year for kicking or otherwise striking a police dog that is acting in the line of duty.

That short provision in the seven-page bill that makes dozens of major changes in the state's criminal code dominated conversations about the measure before the House Judiciary Committee took it up Thursday afternoon.

One wag asked, "Who would strike a police dog? That would be suicide."

Committee Chairwoman Ramona Barnes, R-Anchorage, said the dog provision was inserted at the urging of Anchorage police officers. They apparently say their dogs are often victims of unprovoked attacks.

The rest of the bill has become part of a law-and-order package going through the Legislature. At the Law Depatment's request, it would toughen dozens of areas of the criminal code, written in 1978, and it makes other changes suggested by the committee staff. The measure carries the resounding endorsement of the state Department of Law — except for the police dog section — and is backed by the governor.

But Rep. Chuck Anderson, former chief of the Anchorage police department, has reservations about the proposal. The Anchorage Republican questioned if the bill is too sweeping in scope. Some lawmakers will object to some provisions of the bill, and that could be enough to kill it, good provisions and all, he said.

A former police chief in Anchorage and one of the strongest tough-on-crime lawmakers, Anderson called the proposal a "Christmas tree" bill that has a lot of unrelated changes hung on it.

Barry Stern, an assistant attorney general, said the Senate had before it a similar bill. But that measure was stripped to half its original size in part to make it more appealing to the full Senate. The senior chamber should take up its bill today.

Stern said the measure stems from the Law Department's biannual review of the code.

Besides the dog section, the department considers as unneeded a provision that makes it a special crime carrying a jail term of up to 10 years to injure a police officer, Stern said. Peace officers already are covered under assault laws, he said.

But Anderson expressed dismay at this position.

"I'm really kind of surprised the Department of Law, the highest law enforcement agency in the state, would oppose this provision," he said.

Stern answered that the section would be acceptable if it stated the officer was seriously injured.

He also noted that at least one provision of the bill carries with it a multimillion dollar cost to the state. That section would raise the standard sentence for class A felonies — attempted kidnapping or murder, manslaughter and some sexual assaults — to eight years from six years.

Other sections of the proposal include:

— Making sentences consecutive if the defendant is convicted on separate offenses or if he commits different crimes in the same criminal episode.

— Letting a judge lower a sentence only within 60 days the first sentencing. The present law lets a judge reduce a sentence any time.

— Letting judges consider before sentencing past crimes by a defendant if those cases were closed in the previous 10 years. Present law says seven years.

— Letting judges consider juvenile records when passing sentences.

— Making a defendant who pleads insanity prove his case, not the prosecutor disprove it.

MOTH

Melting snow appears as minat
iers hanging from an ice-coveri
bell Creek near Stuckagain Heigh
sure sign that spring is on its w

Session limit ballot plan stalled again

Associated Press

Juneau — A resolution calling for a statewide ballot on whether the length of legislative sessions should be constitutionally limited was back in the Senate Transporation Committee Thursday and apparently with the House on other legislation.

Transportation Committee Chairman Bill Ray, D-Juneau, asked that the bill be returned to his committee to revise a substitute to a House-passed resolution approved the day before much to the House's senate

Boat fisher