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IN

News Saturday, March 20, 1982

Rapist slapped with long sentence

By SHEILA TOOMEY
Daily News reporter

An Anchorage Superior Court judge Friday sentenced rapist Joseph Contreras to three consecutive jail terms that will keep the 33-year-old escape artist behind bars until he is well past 50 years of age.

In a courtroom bristling with extra security, Judge Douglas Serdahely sentenced Contreras to 15 years for robbing, assaulting and terrorizing an Anchorage couple in August, 1980. Contreras also drew terms of six years each for two short-lived escape attempts. The convict also is known as David Ziegler.

In a court appearance last year, Contreras leaped over the defense table and dashed through the judge's exit door, leading troopers on a two-block chase until he was recaptured.

Ketchikan District Attorney Mary Ann Henry, who handled the prosecution, appeared for the state and asked for a 48-year sentence. "He taunted the victims and he put them through an extended period of terror," Henry said as both victims listened from the rear of the courtroom.

According to testimony at his July trial, Contreras broke into the couple's apartment and waited until they returned from a night of dancing. He met them at the door, his face hidden behind a ski mask and a pistol in his hands. Contreras sexually assaulted the woman and threatened to kill the man, holding the gun to his head and telling him, "You're about three-eighths inches from death. You have two seconds to live."

The man eventually wrested the gun from Contreras, sustaining a minor gunshot wound in the process.

Contreras lived to be tried only because the gun he used that night failed to fire when his victim tried to shoot him in the head with it.

Contreras was convicted on nine different counts connected with the incident. Henry said that a parade jail terms be imposed on most of the counts, to be served one after the other.

But Public Defender Grant McGee argued successfully that all the counts were part of a single criminal transaction. Although Serdahely imposed a total of 63 years, he ruled that all the lesser terms could be served concurrently with the longest single sentence given, which was 15 years.

Serdahely then took advantage of the two

See Page C-3, Column 1

Anchorage Daily News Paul Brown

An Alaska state trooper escorts convicted rapist Joseph Contreras from court Friday.

Rapist gets 33-year term

Continued from Page C-1

escape convictions to almost double Contreras' jail time by imposing the maximum six-year sentence for each of the two counts.

Under the state's presumptive sentencing for felons with prior convictions, Contreras will have to serve three-quarters of his sentence, or nearly 21 years, behind bars before becoming eligible for parole. "It is clear that Mr. Contreras is going to be a middle aged man before he sees daylight again," McGee said.

Everyone who entered the fourth-floor courtroom for Friday's sentence hearing was met at the door by two security guards who ran metal detectors over each person's body and searched pocketbooks and briefcases.

Inside the courtroom, one uniformed and three plainclothes Alaska State Troopers watched the slight, shackled defendant throughout the proceeding.

Contreras, who has three felony convictions in other states, still faces trial for kidnapping, rape and assault of another Anchorage couple. That trial has been held up pending the outcome of a legal dispute over the admissibility of evidence from previously hypnotized witnesses.

* Sec. 2. AS 12.30.022 is amended by adding

ANALYSIS OF THE DECISION IN
JUNEBY V. STATE, Opinion No. 72
(Alaska Court of Appeals, March 11, 1982)

In this sentence appeal case, Juneby had plead no contest to burglary in the First Degree, a class B felony and Sexual Assault in the First Degree [HEREAFTER REFERRED TO AS RAPE], a class A felony. The maximum penalties provided by statutes were 10 years for Burglary and 20 years for Rape. However, the presumptive sentence for the Rape was 10 years, since this was considered a "second felony conviction" on Juneby. He had been convicted earlier of Grand Larceny.

The Superior Court Judge sentenced Juneby to 8 years for the Burglary and 20 years for Rape. The two sentences were made concurrent, leaving Juneby with one 20 year sentence, which would interpret to 15 year under the "good time" statutes.

The pertinent factors for the actual sentencing were:

1. Even though Juneby was convicted of both burglary and rape, the two crimes were considered to have arisen "out of a single continuous criminal episode during which there was no substantial change in the nature of the criminal objective..." AS 12.55.145(a)(3). Accordingly, the conviction for the burglary could not be considered as a second felony, subjecting Juneby to treatment as a third felony for the rape. The Court of Appeals at footnote 3, page 3 indicates that the judge could have sentenced consecutively for the burglary and rape, under provisions of AS 12.55.025(a). However, this is subject to question, upon a careful reading of both 025 and 125. In any event, the trial judge having already made those sentences concurrent, can not go back and change that upon the reman from the Court of Appeals.

2. The Superior Court Judge increased the rape sentence from the 10 year presumptive to the 20 year maximum on the basis of "aggravating factors" presented by the District Attorney. These were under attack in the sentence appeal by the defense, and ultimately the Court of Appeals reversed on the basis of the findings as to some of the aggravating factors.

Page 21 of the Opinion give the statement of the victim as to the details of the rape:

> V.W. [THE VICTIM]'s statements indicated that Juneby had knocked at her door and asked about a former girlfriend of his who lived next door. When V.W. told him that she had seen a moving van there recently, Juneby asked to use V.W.'s phone; V.W. allowed him to enter. After an unsuccessful attempt to call a moving company, Juneby abruptly attacked V.W. He beat her repeatedly about the fact and ribs with his fist, then he twisted her arm and dragged he down a corridor into a bathroom. There, Juneby forced V.W. into submission by choking her. He forcibly pressed her throat against a clothes dryer, causing V.W. to loose her breath for a short time. At this point, V.W. did not know why Juneby was attacking her. She thought that he was trying to kill her. Suddenly, Juneby ceased choking his victim; he commanded her to undress and then proceeded to rape her. The photographs of V.W. show that her face was bruised and swollen following this incident. In addition, V.W. stated that her ribs were badly bruised. These injuries were treated by a physician after the incident, but V.W. was not hospitalized. Although V.W. experience considerable pain and discomfort for several weeks, she suffered no permanent disfigurement of physical impairment.
>
> Juneby does not contest the fact that V.W. sustained physical injury within the definition of AS 12.55.155(c)(1); he does, however, question the amount of weight that should properly be assigned to this aggravating factor in adjusting the presumptive sentence of 10 years called for by AS 12.55.125(c)(2).

Following that summary of the facts of the rape, the Court of Appeals stated that increases of presumptive terms should not be an "automatic consequence" when the aggravating factor is proved. The court points out, at page 22, that subsections (c)(d) of 125 state that the aggravating mitigating

factors "shall be considered by the sentencing court and may aggravate [or mitigate] the presumptive terms" established by law. [Emphasis added in the opinion].

On the next several pages the court discusses the fact that injury is a common element of rape, and that less weight should be given to relatively minor injuries. Specifically, the court stated at page 24 that

> We would be blinding ourselves to reality if we did not recognize that, in most cases involving rape, or sexual assault in the First Degree under AS 11.41.410(a)(1) actual or threatend and violence will be involved and the victim will suffer at least some level of physical injury or discomfort. The use of force in the affliction of at least some physical injury to the victim are, realistically, characteristic of the crime of rape. Indeed, it is the prevailing view that rape is primarily a crime of violence, as distinguished from a sexual offense...as with all other presumptive sentences, the 10-year presumptive term for first degree sexual assault was meant by the legislature to be appropriate in the majority of cases -- those cases involving conduct that is characteristic of the offense of rape and it falls into the middle-ground between the most serious and least serious extremes for the offense. It must therefore be recognized that this presumptive term takes into account the high potential for the use of violence and the likelihood of some physical injury and first degree sexual assaults falling within the definition of AS 11.41.410(a)(1).
>
> Where, as here, violence and injury are characteristic of the defense defined by statute, the mere fact that of some physical injury to the victim as a result of defendant's conduct, though technically an aggravating factor under AS 12.55.155(c)(1), will not justify a significant increase in the presumptive term. Thus, when a charge of sexual assault in the first degree is based upon

> the theory of rape under sub-section (a)(1) of AS 11.41.410, in order to justify a substantial increase to presumptive terms, the prosecution must bear the burden making it clear convincing showing the injuries where unusual and uncharacteristically severe.

On page 25, the Court of Appeals notes that it does not believe that the physical injuries inflicted by Juneby could approach the definition of "serious physical injury at AS 11.81.900(49)." Also they state that "Nor do we think that these injuries -- though perhaps more severe than those in many cases -- are highly uncharacteristic of injuries all too frequently suffered by rape victims. Accordingly, we do not believe that these injuries, standing alone, would justify a substantial increase in Juneby's presumptive term."

On page 27 the Court of Appeals considers the aggravating factor of "manifested deliberate cruelty" that was considered by the Superior Court Judge. Specifically, the court stated that "deliberate cruelty," as used in AS 12.55.155(c)(2) "...must be restricted to instances in which pain -- whether physical, psychological or emotional -- is inflicted gratuitously or as an end in itself." ...When this definition is applied to the present case, we believe that it is questionable whether the evidence considered by the sentencing judge would properly lead to the conclusion that the injuries suffered by V.W. resulted from deliberate cruelty on Juneby's part." On that matter, they remanded the case to the sentencing judge for a decision as to whether deliberate cruelty had been shown, although he had apparently found it was there in the original sentencing.

At page 28, the court considers the question as to whether this particular rape was "among the most serious conduct involved in the definition of rape." If this were the case, this would fall in aggravating factor (10) under 12.55.155(c). The court concluded that the evidence showed that this rape was not among the most serious for rape. The Superior Court Judge had concluded that, since this was rape under (a)(1) of AS 11.41.410, that this was the most serious of the four types listed under 410. The others are basically (1) attempted sexual penetration with serious resulting injury, (2) statutory rape, and (3) a form of incest. The Court of Appeals found that

> ...the grouping of these four separate acts of conduct together under the same criminal heading [Sexual Assault in the First Degree], with identical classifications as class A felonies is a forceful indication of the legislature's conclusion that all four sub-paragraphs were meant to be viewed as involving equally serious conduct." [emphasis added].

The Court of Appeals noted that the Superior Court Judge said that he would still find this rape to be within the most serious if his interpretation of the statute was incorrect. He had emphasized that there was no prior contact with the victim, the rape was committee in V.W.'s own home; that he found deliberate cruelty in the injuries inflicted upon V.W.; Juneby did not terminate his rape of V.W. voluntarily, but fled when he heard another person knock on the door. In response to this, the Court of Appeals said that

> We believe that the various factors articulated by Judge Van Hoomissen are not sufficient to support a finding, by clear and convincing evidence, that Juneby's conduct was among the most serious included in the definition of the offense with which he was charged." [Emphasis added].

On pages 31 and 33 the Court of Appeals whisks away the Superior Court's emphasis on the fact that the rape was committed in V.W.'s own home by noting that Juneby was separately charged with and convicted of burglary, and that the court imposed a separate sentence for the burglary. Oddly enough, the Court of Appeals ignored the fact that that sentence was made concurrent by the Superior Court Judge, (possibly because of his concern over the "single, continuous criminal episode" factor). In fact, the Court of Appeals even went so far as to state:

> Juneby had thus been separately punished for his act of violating V.W.'s privacy by entering her home. [Emphasis added]. Page 32.

Thus, the Court of Appeals considers that this rapist was "punished" by being separately convicted for burglary, although even a sixth grader could tell by the words concurrent sentencing' that there was no additional punishment for the burglary.

On page 35, he court stated:

> On balance, consideration of the totality of the circumstances of this offense leaves us with the a firm impression that, but for the injuries inflicted upon

> Juneby's victim, this crime may reasonably be considered to fall far closer to the middle ground, or norm, of conduct for the offense charged than to either the most serious or least serious extreme [setting the stage for the 10 year presumptive sentence].

Considering the factors briefly summarized here, and others stated more specifically in the opinion, the sentence was vacated and the case remanded to the Superior Court for resentencing. In addition to the factors noted above, The Court of Appeals on page 39 comments on the "mitigating factor" in the sentencing that Juneby's prior felony conviction was for "an offense [grand larceny] of a less serious class than his present offense," per AS 12.55.155(d)(8). In reference to that factor, as well as others covered, the Court made it clear that upon the remand, Judge Van Hoomission should make findings on the factors and aggravation in mitigation "with specificity." This may mean that, indeed, it would be a factor to mitigate, or reduce the presumptive term for Juneby that his prior felony was for a less serious crime. Some persons have referred to this factor of mitigation as a "reward for moving up from one level of felony to another."

PRE-INSANITY ISSUE W/ SECTION ANALYSIS & ISSUES

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

4/14/82

Representative Ramona L. Barnes
Chairman, House Judiciary Committee

This note is to reaffirm my opinion as conveyed previously to Bill Cook that House CS For CS SB 535 (Jud) violates the single subject requirement of Art. II, Sec. 13, Constitution of Alaska.

I would be available to elaborate for the benefit of the committee if you so desired.

Sincerely,

James M. Lear

LAA 15

INSANITY ISSUE MATERIAL, S.B. 4 ALL VERSIONS HB

The Anchorage Times

pages | 68th year | FRIDAY EVENING, MAY 7, 1982 | 25

API found confessed killer 'cured'

laureen Blewett
Mary Pat Murphy
Writers

laska Psychiatric Institute of-ls said six months ago that rles Louman Meach III, ged with killing four teen-s Monday, was mentally pre-d to return to society. They mmended his discharge.

uperior Court Judge Ralph dy refused to go that far. Pat May, in the absence of opposi-from the state district attor-he had agreed to gradually in-se Meach's involvement in the munity.

Meach was on a 10-hour work-ase pass from the institute at time of the killings.

e had been in state custody e 1973, when he was found not y by reason of insanity for kill-Robert Alexander Johnson at thquake Park in Anchorage.

district attorney characterized that crime as "a brutal and unprovoked attack."

The API recommendation for discharge came after staff at the Institute found Meach "to be cured of his mental defect and an appropriate candidate for administrative discharge," said documents filed in support of the Dec. 11, 1981, motion.

API superintendent Harold Conrad said today Meach showed no signs of psychosis during evaluations by at least four psychiatrists in the past year.

"This institute is small enough that any recurrence of psychosis would have been observed," Conrad said.

"You don't have to be psychotic to engage in criminal activity."

Meach's integration into the community began last spring, following recommendations from API and lacking opposition from the state District Attorney. On May 4, 1981, Moody had granted Meach "unescorted ground privileges" on the API campus.

Three months later, on July 31, Moody — again at the request of API — granted permission for Meach to participate in a work-release program. The district attorney did not oppose that request either. A psychiatrist for the state also had recommended restricted freedom.

Meach, 34, has spent the nine years since the murder of Johnson in state custody.

He was found not guilty by reason of insanity in October 1973 by Superior Court Judge C. J. Occhipinti, now retired, and sent to Atascadero State Hospital in Atascadero, Calif. All Alaskans judged criminally insane were housed at the facility at that time.

In February 1975, Atascadero officials said Meach was in a sexual reorientation program and was "gaining more from group therapy because he is becoming more specific and less vague . . . Mr. Meach has recently become involved in a re-motivation project. His attitude towards treatment remains positive."

Meach was under medication, the report said.

He was returned to Alaska in September 1980, at the recommendation of California state psychiatrists. They said he was ready for reintegration into the community.

On March 24, 1981, Conrad requested "unescorted ground passes" and "unescorted passes into the community."

Moody allowed the ground passes but ordered another hearing before granting the community passes. At that second hearing, Moody granted gradually increasing community passes, up to 10 hours, "at the discretion of API

(See API, page A-4)

Inside . . .

Mental patient says he shot 4 teens

e sketch of Charles Meach drawn this week from eyewitness reports

by Patti Epler
Times Writer

A mental patient arrested Thursday night for the murders of four young people at Russian Jack Springs Park has confessed to the killings.

Court documents filed this morning say that 34-year-old Charles Louman Meach III told police he went to the tent of the victims Monday night intending to steal some cassette tapes, then committed the murders after he was surprised by one of the victims.

Killed at the campsite scene were Rebecca D. Phillips and Sabrina Imlach, both 16-year-old West Anchorage High School students; 19-year-old Vern Sylvester of Kenai, and Joseph "Dean" Kimler, also 19.

Meach, the son of an affluent dentist in a small Michigan town, has spent most of the last decade in mental institutions. In 1973, Meach was found not guilty of another killing by reason of insanity and was committed to a California institution for the criminally insane.

He has been charged with four counts of first-degree murder and is currently in custody at Alaska Psychiatric Institute under $100,000 bail.

At the time of Monday night's killings, Meach was a patient at API where he was on an unsupervised work release program and was free to leave the institute without an escort.

Last year the medical staff at API unanimously determined that Meach was mentally fit for the work release program. API director Dr. Adrian Conrad said today Meach showed no signs of psychosis during evaluations by at least four psychiatrists in the past year.

A document charging Meach with the killings was filed this morning in Anchorage Superior Court. According to that document, Meach told police investigators that he went to the park, where Sylvester and Kimler had been living in a tent, with the intention of stealing some cassette tapes he had previously noticed there.

The four young people had gathered at the campsite Monday to start an evening of celebration for Imlach's birthday. She would have been 17 years old on Tuesday.

Police believe that Kimler returned to the tent to pick up something and that the four had planned to leave the campsite as

(See MURDERS, page A-4)

Tearful mother recalls son's 1973 death

by Mary Pat Murphy
Times Writer

The mother of a young man kicked to death by Charles L. Meach nine years ago wondered today "why he was allowed to do it again."

Meach, found innocent by reason of insanity in the 1973 murder of 22-year-old Robert A. Johnson Jr., was charged with four counts of first-degree murder in the deaths of four teenagers at Russian Jack Springs Park on Monday night.

"It's just like it's all over again," Johnson's mother, Hilda Holmquist, said today. "Maybe they'll do something with him this time."

A friend had called earlier today to tell her Meach had once again been arrested for murder. Her tears evident over the telephone, Holmquist recalled her agony after her son's body was found in the snow near Earthquake Park.

"They just kept it all hushed up," she said. "They wouldn't even tell me when he (Meach) went to trial."

First, she said, she was told that her son had been shot. Then she was told he hadn't been shot. It ini-

(See MOTHER, page A-3)

Private gun sales aren't regulated under state law

by Dave Carpenter
Times Writer

Alaska has no laws regulating the sale of handguns between individuals, state officials said today.

"If I'm selling somebody a gun, I don't even have to so much as give him a receipt," said Alaska State Trooper John Johnston.

"Basically, there's no control of private sales between individuals because there's no state gun registration and there's virtually no way to control it."

Only four states — Hawaii, Michigan, Mississippi and New York — plus the District of Columbia have gun registration laws, according to the National Rifle Association.

Charles L. Meach III, the man charged late Thursday with murdering four teen-agers three nights earlier, bought the .38-caliber pistol used in the shootings from an unidentified person about a week ago, according to police.

Anchorage Police Chief Brian Porter said Meach bought the gun from a private party because the suspect apparently knew that with his background he wouldn't be allowed to possess a gun and that the gun could be traced back to him if he had bought it from a reputable dealer.

"He didn't have any immediate use for it" when he bought the gun a few weeks ago, Porter said, adding that Meach apparently kept the gun and ammunition stashed in the woods near the Alaska Psychiatric Institute where he resided.

Johnston said his home state of Massachusetts has a mandatory one-year imprisonment for violation of its strict gun laws, "and from what I know it hasn't done any good." He said it is virtually impossible to police gun transactions between individuals.

When buying a gun in a store in Alaska, a person must comply with federal laws, Johnston said. The would-be purchaser must fill out a federal form asking if he is a convicted felon, an alcoholic or a drug addict, among other questions.

The licensed dealer is legally prohibited from selling a gun to anyone who responds with even a single "yes" answer or fails to produce proof of identity.

Assistant Attorney General Michael Stark of the Department of Law's criminal division said from Juneau that a convicted felon cannot possess a concealable firearm within five years of his unconditional discharge for the felony.

However, even the presence of gun registration legislation would not force felons to comply. The U.S. Supreme Court ruled in 1968 that a convicted felon or other person prohibited from possessing a gun cannot be prosecuted for failing to register it, since to do so would be an admission of guilt, violating the Fifth Amendment.

Tougher 'insanity' plea law proposed

Times Staff and Associated Press

Juneau — Reacting to news that a mental patient has been charged with murdering four teen-agers in Anchorage, Rep. Russ Meekins vowed today to try to rewrite state law to require criminals who are judged insane to serve jail time before being freed.

Meekins, D-Anchorage, said he met with Gov. Jay Hammond's top aide this morning to enlist support for a bill he has asked legislative

even if he or she is insane. If convicted, the person would receive a sentence, but would be placed in a mental hospital, rather than jail.

However, if the person eventually were judged sane, he then would be required to go to jail to complete whatever time remained of his sentence.

Meekins said Idaho recently became the first state to pass such a law.

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Meekins, D-Anchorage, said he met with Gov. Jay Hammond's top aide this morning to enlist support for a bill he has asked legislative attorneys and the attorney general to draft.

Meekins said the proposed bill essentially would abolish the current defense of "not guilty by reason of insanity."

"This insanity plea has been really abused," Meekins said. "The worst crimes are committed by the people who are insane and those are the people who are getting the lightest sentences.'

"Right now, if you co[illegible] a crime and are judged insane, you go to API (Alaska Psychiatric Institute) and they (hospital officials) decide when you are sane and when you get released," Meekins said.

He proposes to change state law to require that a person stand trial even if he or she is insane. If convicted, the person would receive a sentence, but would be placed in a mental hospital, rather than jail.

However, if the person eventually were judged sane, he then would be required to go to jail to complete whatever time remained of his sentence.

Meekins said Idaho recently became the first state to pass such a law.

The new Idaho law, which allows the question of insanity in criminal cases to be raised only at the time of sentencing, was referred to on ABC's "20/20" Thursday night. The program focused on the insanity defense of would-be presidential assassin John Hinkley.

ABC said a major weakness of this defense is that a defendant found innocent by reason of insanity and placed in a mental institution can be released at any time he is declared to be sane.

The network cited two examples of convicted murderers who, like Charles Meach — the man charged with murdering the four Anchorage teen-agers — were found innocent by reason of insanity, later walked out of mental institutions, and killed again.

Mother

(Continued from page A-1)

tially appeared Johnson had been shot in the face, police reports said, but autopsy results showed no shot had been fired.

Holmquist was told Meach would probably get off because he "had a rich father," she said.

"He (her son) was a native person and they don't seem to care if a native person is killed," she said. "You read about it all the time and they don't seem to do anything about it [illegible]e they don't care."

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"You get more for killing a moose than you do for killing a person," she said.

Meach was transferred to a mental institution in California and was brought back to API in 1981. He was an outpatient enrolled in a work-release program when he was arrested Thursday.

Holmquist's ordeal didn't end with Meach's commitment to API.

"I went through a lot," she said. "I didn't have the money for the burial. The funeral home kept his age from Bristol Bay in 1959.

On the Saturday night he was killed, Johnson had left work and visited a few night clubs. Police investigation showed he did not spend much money or drink much. It was believed he met someone at one of the nightclubs and left with that person.

His body was found the next morning after an officer of the Fish and Wildlife Protection Division of the Department of Public Safety received a call from a man reporting that someone had apparently shot a moose west of Earthquake Park.

A Wildlife Protection officer found a trail of blood leading fro[illegible] the road into the woods and found Johnson's body in the snow.

Meach was arrested a few days later.

The complaint against him alleged Meach hit and kicked Johnson so hard that he had a "torn liver, numerous broken ribs and a crushed face."

The complaint quoted Johnson's mother as saying he was retarded and had one arm that was shorter than the other. It said Meach admitted killing Johnson after a fight, but admitted that Johnson hadn't hit h[illegible] back.

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"He (her son) was a native person and they don't seem to care if a native person is killed," she said. "You read about it all the time and they don't seem to do anything about it. I guess they don't care."

Finally she was told he'd been sent to the Alaska Psychiatric Institute. Her friends speculated that he'd be out in a few months.

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"I went through a lot," she said. "I didn't have the money for the burial. The funeral home kept his body for six months."

Finally, she said, she sold the Naknek home she used as a summer fishing base to pay the funeral home. The state had urged her to sue, she said, but "no amount of money I get is going to make anything better."

"He did a quick job on these last kids," Holmquist said. "Mine he made suffer."

By all accounts, Robert Johnson was a dependable, well-mannered young man who had worked as a box boy at Carr's Aurora Village Food Center for four years before his death, providing a major source of income for his mother and younger brother, who is now 19.

The family moved to Anchorage from Bristol Bay in 1959.

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The complaint quoted Johnson's mother as saying he was retarded and had one arm that was shorter than the other. It said Meach admitted killing Johnson after a fight, but admitted that Johnson hadn't hit him back.

"He wouldn't hurt anybody or do anything to anybody," Johnson's mother recalled today. "He never got into a fight in his whole life."

Corrections and clarifications

The Anchorage Times reserves this space each day to correct errors of fact or interpretation. Readers who notice mistakes are asked to call the newspaper at 279-5622.

Pictured on page B-10 in Tuesday's paper was Fire Chief Robert Howell and Linda Goodrich. Not pictured was John F. Fullenwider.

Murders

(Continued from page A-1)

soon as Kimler came back from the tent.

But Kimler never returned to his friends. He was found shot to death a few feet outside the small tent nestled in the heavily wooded area.

Meach was in the tent when Kimler arrived and after "a few words were said," Meach pulled out a .38 caliber revolver "and immediately shot the man once in the head," the court documents said.

Police believe Sylvester and the girls heard the shot and began running down the dirt path toward the tent to see what was happening to their friend.

Meach told police that he left the tent to go back toward his bicycle which had been parked at the entrance to the camping area — near where Imlach had parked her orange Gremlin. He saw Sylvester coming toward him down the path, the document said.

Meach said he passed the second youth on the trail, then turned and shot him once in the back of the head.

Meach then came upon the two girls and shot each of them once in the head, the document said.

An autopsy report revealed that each of the girls was shot at close range and that Sylvester and Kimler were shot at a range beyond four to five feet.

Meach also told the police that just after the shootings he saw several other people coming down the path and yelled to them to "get out of here."

According to the document, witnesses walking together past Imlach's car heard gunshots, walked farther into the park where they saw a man who turned his back to them, "appeared to pull up his pants, turn back toward them and angrily shouted . . . The witnesses fled."

police station for further questioning, the two witnesses who had seen the blue bike and the man in the woods Monday night were asked to come down to the station to see if they could identify him.

They picked him out of a lineup, Porter said, where he was standing with other men of about Meach's size and description.

Meach is about 6-foot 6-inches tall, 220 pounds and has brown hair with a slightly receding hairline.

Meach was committed to Atascadero, a California institution for the criminally insane after his 1973 trial. He spent five years in that institution and was returned to API in 1980.

The judge, former Superior Court C.J. Occhipinti, in committing him to the mental institution in 1973, ordered that Meach not be returned to Alaska until another court hearing could be held to determine his mental condition.

But overcrowded conditions at Atascadero combined with psychiatrists evaluations that indicated an improvement in Meach's condition resulted in his return to Anchorage.

Last year Meach was given work release privileges after API's medical staff unanimously agreed he was fit for the program. The killings occurred while Meach was on a 10-hour work pass. He returned to the hospital without incident at 9 p.m., about one hour after the shootings, records show.

Although Alaska law requires that a court hearing be held before releasing a psychiatric patient into the community, Porter said no one notified police that Meach had been granted a work release.

David Predeger of The Times

Pallbearers leave Holy Family Cathedral with the casket of Sabrina Imlach after services Thursday afternoon

API

(Continued from page A-1)

staff."

The judge approved the work release passes, also 10 hours, in July at the request of a state public defender. Meach had been off medication "for some time," according to a source.

Meach checked out of API under a work release pass Monday. He returned to API without incident at 9 p.m., about an hour after the killings. He confessed to the crimes Thursday.

"The people at API are terribly saddened by this," Conrad said. "No one here would ever knowingly allow a person into the community where all of our spouses and children are if we had any evidence that something like this would happen."

Conrad said the state constitution requires authorities to reintegrate mentally ill offenders into society as soon as it is safe.

Dr. Joseph Bloom, formerly a psychiatrist at the Langdon Clinic and now assistant chairman of the department of instructional psychiatry at Oregon Health Sciences University in Portland, testified during Meach's hearing in 1973 that he suffered from schizophrenia, paranoid sub type.

Bloom explained in his findings that while Meach would be competent to aid in his own defense in a trial, under terms of the American Law Institute test, Meach's illness was such that "he could not conform his actions to the needs of society."

Conrad said API "would never release a patient on a pass who was showing active signs of psychosis, who had assaulted anyone, or who had broken the terms of his pass. We would never release a patient if we had any observational evidence he would hurt anyone."

Contrasts mark Meach's personality

by A.J. McClanahan
and Dave Carpenter
Times Writers

Charles "Charlie" Lawrence [illegible] which he was acquitted by reason of insanity, a California health official said Meach expressed no guilt [illegible] They noted, however, that he was arrested and charged with being drunk and disorderly on Jan. 22 [illegible] years, but said he was aware that Charlie had recently returned to Alaska.

ccording to the document, wit-
ses walking together past Im-
n's car heard gunshots, walked
her into the park where they
a man who turned his back to
m, "appeared to pull up his
ts, turn back toward them and
rily shouted . . . The witnesses
."

Three days later, another wit-
s gave police a brown paper
with the word "Meach" writ-
on it that had been found under
ridge near the homicide scene,
court document said.

Meach had been employed
ce March 5 as a part-time sales
rk in the suit section of Sear's
n's department. He last showed
for work on Saturday.

His pass also allowed him to at-
d Anchorage Community Col-
e.

"He was a typical sales clerk,
y polite with customers," man-
er Bill Sblendorio said this
rning.

Sblendorio said he didn't know
at Meach was on work release
m API or that he had any con-
ction with API whatsoever. No
ference to API was made on the
nployement application, he said.

The break in the case came
en two witnesses reported see-
g a new, blue Schwinn Travelers
cycle leaning up against a tree
ar where Imlach's car had been
rked.

Police Chief Brian Porter said
e witnesses told police that they
me back through the area a
ort time later and the bike was
ne.

They also said they had seen a
an in the bushes when they came
ck "and presumed he must have
en the one with the bike," Porter
id.

Those two witnesses came for-
rd after they heard police were
oking for a brown van that had
en parked in the area. Those wi-
sses were in a brown van coinci-
ntally, Porter said, although
eir van was not the one being
ught by police. That van and its
iver, who another witness said
me out of the woods and climbed
o the van shortly after the shoot-
s, has yet to be found.

Contrasts mark Meach's personality

by A.J. McClanahan
and Dave Carpenter
Times Writers

Charles "Charlie" Louman Meach III was described today as "very intelligent," a "very polite" clerk who sold suits at a local store. That same Charles has a history of mental illness, a loner who had troubles getting along with others.

To an uncle from Traverse City, Mich., Meach was different from others in his family, "the only rotten apple in the bunch."

Anchorage Sears store manager Bill Sblendorio called him "a typical sales clerk, very polite with customers."

Psychiatrists who treated him said he was a troubled man interested in his treatment.

Alaska Psychiatric Institute Director Dr. Adrian Conrad said Meach showed no signs of psychosis during evaluations by at least four psychiatrists in the past year.

"This institute is small enough that any recurrence of psychosis would have been observed," Conrad said.

"You don't have to be psychotic to engage in criminal activity."

Meach's uncle, Fred Meach of Traverse City, Mich., said Charlie grew up in Traverse City, and had problems getting along with other kids before he entered high school. He was disliked, Meach said, because he "picked on little kids" or because he sometimes tried too hard.

Meach's mother spent the remainder of her life after Meach's birth hospitalized for mental problems, according to testimony at a 1973 psychiatric hearing, following Meach's involvement in the beating death of Robert Johnson of Anchorage.

At that hearing, it was disclosed that Meach had been diagnosed as schizophrenic. He was described which he was acquitted by reason of insanity, a California health official said Meach expressed no guilt for the killing.

"Mr. Meach has discussed his offense openly, but he seems to feel that he had sufficient reason to commit it — he expresses no guilt or remorse," the medical director of the Atascadero (Calif.) State Hospital, Dr. Alfred Rucci, said in a March 1974 letter to the Alaska Division of Mental Health.

"He is quite grandiose and seems to have no trouble giving himself permission to do whatever he pleases . . .

"Despite this patient's many and complex problems, he verbalizes an interest in treatment and we hope that he will benefit from what we have to offer here."

Rucci also said Meach has some "serious sexual concerns, particularly regarding his homosexual impulses."

"He suffers from mood swings, he is overly dependent on others and he is hypersensitive to criticism," he said.

His uncle Fred Meach described Charlie as "very intelligent," and said he could have been a good student had he worked at it. His serious problems in getting along with others did not start until Charlie began using drugs in his last year of high school Meach said.

Former high school classmate Jeremy Conoway of Traverse City described Meach as "clearly destined to go to an Ivy League school" because as the son of a dentist, Charlie was among the more affluent children in the resort town of about 18,000.

Police in Flint, Mich., said the only information they could release was that a Charles Meach, whose birth date was Oct. 1, 1947, was convicted for being drunk in a public place on Oct. 5, 1968. They noted, however, that he was arrested and charged with being drunk and disorderly on Jan. 22, 1972.

Fred Meach said Charlie was the youngest of three children.

He described him as a child who "had more problems than most," but added that news of Charlie being charged with four murders "is kind of a shock to me."

Charlie's father, Charles [illegible] was recovering from hip surgery in Traverse City this week and could not be reached for comment. Fred Meach said he does not think Charles has been told of the murder charges against Charlie.

Meach said he had had little contact with Charlie in recent years, but said he was aware that Charlie had recently returned to Alaska.

"I thought he had been making progress in his recovery, but evidently not," Meach said.

He said Charlie attended several different college, mostly on the West Coast, but completed none of them.

Meach also said he was not surprised to learn that Charlie had been picked up on charges of public drunkenness. He said a local hotel would not allow him in because of his behavior when he drank.

"His sisters are beautiful girls, nice family. Charlie is the only rotten apple in the whole bunch," he said.

Meach called 'lost', 'loner'

Psychiatrists who examined Charles L. Meach III during court proceedings nine years ago described him as "totally lost," a "loner" who was unable to conform his actions to society's standards.

Meach was charged with first-degree murder in the beating death of 22-year-old Robert Johnson, but was found not guilty by reason of insanity and transferred to a California institution for treatment.

Here are excerpts from fragmentary in-court notes taken by a court reporter during the proceedings. The notes paraphrase psychiatrists' evaluations of Meach.

A psychiatrist, not named in the transcript, testified that he:

"saw dft (defendant) 3 hours on 3 different occasions — he was aware he'd committed crime resulting in a person's death and knew wrongfulness of his act

"invited him to tell me about himself

"displayed poor judgment

"concrete things

"gave (illegible) history as sick for long duration

"could remember his conception

"spent remainder of her life in hospital

"no warm feelings for mother

"sadistic qualities

"suspiciousness

"lots of fights in recent years.

"why no serious trouble before now

"psychotic the last 3 or 4 years

"failure in relationships in school and people

"concern about his capacity as a man

"claims he does not remember

"knew he'd committed a crime

"done in thoughtless, senseless, irrational way

"opinion he is psychotic and was at time of trial

"[illegible] was competent to stand

take care of anyone who didn't understand he was sick and needed hospital instead of prison.

Another psychiatrist, Dr. Jerry Bloom at Oregon Health Sciences University in Portland, testified that Meach:

"understands nature of consequences and can aid in his defense

"unable to conform his actions at the time.

"suffering from this type of problem for many years

"thought disorder

"smiling when he's describing something that isn't funny.

"hurt, and gradual isolation, loner type pattern

"generally leads to diagnosis of schizophrenia

"fraught with a lot of danger

"turned it around into an aggressive person

"very frightened man

"basis of the letters, various schools

"detailed the pain in his life

"totally lost

"results of the testing

"most effective treatment

"depends upon several factors

"paranoid stance

"proper location, very strongly

was showing active signs of psychosis, who had assaulted anyone, or who had broken the terms of his pass. We would never release a patient if we had any observational evidence he would hurt anyone."

The hospital finds itself playing the role between the needs of society and the needs of rehabilitation of the patient, Conrad said. "It is a difficult role."

The law, written in territorial days and recodified as Title 12 of state statute, requires authorities to rehabilitate patients who have committed crimes and been acquitted because they were judged legally insane.

Bloom during the 1973 court proceedings said he believed Meach could respond to treatment and following a period of hospitalization and medication, it might be possible to release Meach as a functioning member of society.

sought by police, that van and its driver, who another witness said came out of the woods and climbed into the van shortly after the shootings, has yet to be found.

Detectives ran a check on every new blue Schwinn Travelers bike they could find in Anchorage and came up with Meach's name as having recently purchased just such a bike, Porter said.

At the bike shop, Meach had left his address as 2900 Providence Drive, the Alaska Psychiatric Institute.

"At that point, it was one of a hundred leads we were looking at," Porter said.

But detectives were able to locate Meach at API and first talked to him late Thursday afternoon, Porter said.

They interviewed him and left, returning after hospital officials called police with Meach's confession.

Meach led police to the gun, a .38 caliber revolver, that is believed to have been used in the murders. The gun was located in the bushes just off the bike path near Lake Otis Parkway and 20th Avenue.

Porter said Meach apparently kept the gun and ammunition stashed in that location near API.

The gun has been sent to the FBI firearms testing laboratory in Virginia for ballistics tests to determine if bullets taken from the bodies were indeed fired from that gun.

Porter said Meach apparently purchased the gun a few weeks ago from a private party, not from a store where he would have had to fill out registration forms.

After Meach was taken to the

ing death of Robert Johnson of Anchorage.

At that hearing, it was disclosed that Meach had been diagnosed as schizophrenic. He was described as "a loner type," "a very frightened man," "totally lost" and "suffering from a major mental illness."

Following the 1973 murder for

Police in Flint, Mich., said the only information they could release was that a Charles Meach, whose birth date was Oct. 1, 1947, was convicted for being drunk in a public place on Oct. 5, 1968.

He was given a suspended sentence.

Traverse City police said they had little information on Meach.

aware he'd committed crime resulting in a person's death and knew wrongfulness of his act

"invited him to tell me about himself

"he was not altogether cooperative — would act negatively to close questioning

"was loose in his associations

"was very restless — spasms

"he threatened me — would

opinion he is psychotic and was at time of trial

"he was competent to stand trial

Dr. Joseph Bloom, formerly of Langdon Clinic in Anchorage and now assistant head of the department of instructional psychology

"paranoid stance

"proper location, very strongly feel he should not be in correctional institution — would continue to be a loner

"needs to be in a hos

David Predeger of The Times

psychiatry at Oregon Health Sciences University in Portland, testified during Meach's hearing in 19 that he suffered from schizophrenia, paranoid sub type.

Bloom explained in his findin that while Meach would be comp tent to aid in his own defense ir trial, under terms of the Americ Law Institute test, Meach's illne was such that "he could not c form his actions to the needs of ciety."

Kimler were shot at a range beyond four to five feet.

Meach also told the police that

Although Alaska law requires that a court hearing be held before releasing a psychiatric patient into the community, Porter said no one

Present Law (1982)

Sec. 12.45.083. Mental disease or defect excluding responsibility. (a) A person is not responsible for criminal conduct if at the time of the conduct, as a result of mental disease or defect, he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.

(b) Reliance on mental disease or defect as excluding responsibility is an affirmative defense. The burden of proof beyond a reasonable doubt does not require the prosecution to disprove an affirmative defense unless and until there is evidence supporting the defense. The requirement of evidence supporting the affirmative defense is not satisfied solely by evidence of an abnormality which is manifested only by repeated criminal or otherwise antisocial conduct.

(c) If the defendant is acquitted on the ground of mental disease or defect excluding responsibility, the verdict and the judgment shall so state.

(d) When a person offers a defense based on mental disease or defect excluding responsibility for his criminal conduct, he may waive a jury trial without the consent of the state. (§ 1 ch 119 SLA 1972)

Sec. 12.45.085. Evidence of mental disease or defect. Evidence that the defendant suffered from a mental disease or defect is admissible whenever it is relevant to prove that the defendant did or did not have a state of mind which is an element of the offense. However, evidence of mental disease or defect excluding responsibility is not admissible unless the defendant, at the time of entering his plea of not guilty or within 10 days thereafter or at such later time as the court may for good cause permit, files a written notice of his intent to rely on that defense. (§ 1 ch 119 SLA 1972)

Sec. 12.45.087. Psychiatric examination. (a) If a defendant has filed a notice of intention to rely on the defense of mental disease or defect excluding responsibility, or there is reason to doubt his fitness to proceed, or there is reason to believe that mental disease or defect of the defendant will otherwise become an issue in the cause, the court shall appoint at least one qualified psychiatrist, or a forensic psychologist certified by the American Board of Forensic Psychology, or shall request the superintendent of the Alaska Psychiatric Institute to designate at least one qualified psychiatrist, which designation may be or include himself, to examine and report upon the mental condition of the defendant. If the defendant has filed notice under AS 12.45.090(a) the report shall consider whether the defendant can still be committed under AS 12.45.090. The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for not more than 60 days or such longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist retained by the defendant be permitted to witness and participate in the examination.

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

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

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

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

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

(4) if a notice of intention to rely on the defense of irresponsibility has been filed, an opinion as to the extent, if any, to which the capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was impaired at the time of the criminal conduct charged; and

(5) if directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged.

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

(e) The report of the examination under (a) of this section shall be filed with the clerk of the court, who shall cause copies to be delivered to the district attorney and to counsel for the defendant. (§ 1 ch 119 SLA 1972; am § 2 ch 84 SLA 1981)

Effect of amendments. — The 1981 amendment, effective October 1, 1981, added "or a forensic psychologist certified by the American Board of Forensic Psychology" following "one qualified psychiatrist" in the first sentence and added the second sentence of subsection (a).

Sec. 12.47.060. Procedure after raising defense of mental disease or defect. (a) At the time the defendant files notice to raise the affirmative defense of mental disease or defect as excluding responsibility he shall also file notice as to whether if found not guilty by reason of mental disease or defect as excluding responsibility he will assert that he is not presently suffering from a mental disease or defect that causes him to be dangerous to the public peace or safety.

(b) If the defendant is found not guilty by reason of mental disease or defect as excluding responsibility and he has not filed the notice required under (a) of this section, the court shall immediately commit him to the custody of the commissioner of health and social services.

(c) If the defendant is found not guilty by reason of mental disease or defect as excluding responsibility, and he has filed the notice required under (a) of this section, a hearing shall be held immediately after the verdict is returned to determine the necessity of further commitment. The hearing shall be held before the same trier of fact as the underlying charge, but if a jury was the trier of fact, the hearing shall be held before a jury of six drawn from the original jury in accordance with rules adopted by the supreme court. At the hearing, the defendant has the burden of proving by a preponderance of the evidence that he is not presently suffering from a mental disease or defect that causes him to be dangerous to the public. If the court or jury determines that the defendant has failed to meet his burden of proof, the court shall order the defendant committed to the custody of the commissioner of health and social services.

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

(e) A defendant committed under (b) or (c) of this section may have the need for his continued hospitalization determined or redetermined under a petition filed in the superior court at intervals beginning no sooner than six months from his initial commitment and yearly thereafter. The burden and standard of proof at a hearing under this subsection is the same as at a hearing under (c) of this section except that the defendant is not entitled to a jury unless he files a motion for a jury no later than 15 days before the date set for the hearing. A copy of all petitions for release shall be served on the attorney general at Juneau, Alaska. A copy shall also be served upon the attorney of record, if he is not the attorney general, who represented the state or a municipality at the time the defendant was first committed.

(f) Continued commitment following expiration of the maximum term of imprisonment for the crime for which the defendant was acquitted under AS 12.45.083 is governed by the standards pertaining to civil commitments as set out in AS 47.30.735.

(g) A person committed under this section may not be released during the term of commitment except upon court order following a hearing in accordance with (c) of this section. On the grounds that the defendant has been cured of the mental disease or defect and is no longer dangerous to public peace or safety the state may at any time request the court to hold a hearing to decide if the defendant should be released.

(h) The commissioner of health and social services or his authorized representative shall submit periodic written reports to the court on the mental condition of a person committed under this section. (§ 6.10 ch 34 SLA 1962; am § 6 ch 104 SLA 1971; am § 2 ch 11 SLA 1972; am § 3 ch 84 SLA 1981)

Effect of amendments. — The 1981 amendment, effective October 1, 1981, rewrote this section.

Revisor's notes. — In the first sentence of subsection (e), the word "section" was substituted for "position" by the revisor of statutes pursuant to AS 01.05.031(b).

Sec. 12.45.100. Determination of mental disease or defect during trial or probation. (a) No person who as a result of mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense may be tried, convicted or sentenced for the commission of an offense so long as the incapacity endures.

(b) When, after arrest and before the imposition of sentence or before the expiration of any period of probation, the attorney general, the district attorney, or the attorney for the accused has reasonable cause to believe that a person charged with an offense may be presently suffering mental disease or defect or is otherwise so mentally incompetent that he is unable to understand the proceedings against him or properly to assist in his own defense, he may file a motion for a judicial determination of the mental competency of the accused. Upon that motion or upon a similar motion in behalf of the accused, or upon its own motion, the court shall have the accused, whether or not previously admitted to bail, examined as to his mental condition by at least one qualified psychiatrist, who shall report to the court. For the purpose of the examination the court may order the accused committed for a reasonable period as the court may determine to a suitable

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hospital or other facility to be designated by the court. If the report of the psychiatrist indicates a state of present mental disease or defect or of other mental incompetency in the accused, the court shall hold a hearing, upon due notice, at which evidence as to the mental condition of the accused may be submitted, including that of the reporting psychiatrist, and make a finding with respect to his mental condition. No statement made by the accused in the course of an examination into his mental competency provided for by this section, whether the examination is with or without the consent of the accused, may be admitted in evidence against the accused on the issue of guilt in a criminal proceeding. A finding by the judge that the accused is mentally competent to stand trial in no way prejudices the accused in a defense based on mental disease or defect excluding responsibility; the finding may not be introduced in evidence on that issue or otherwise be brought to the notice of the jury. (§ 6.11 ch 34 SLA 1962; am § 3 ch 119 SLA 1972)

Sec. 12.45.110. Commitment on finding of incompetency. (a) When the trial court determines by a preponderance of the evidence, in accordance with AS 12.45.100, that a defendant is so mentally incompetent that he is unable to understand the proceedings against him or properly to assist in his own defense, the court shall order the proceedings against him stayed, except as provided in (d) of this section, and may commit the defendant to the custody of the commissioner of health and social services or his authorized representative for further evaluation and treatment until the defendant is mentally competent to stand trial, or until the pending charges against him are disposed of according to law, but in no event longer than 90 days.

(b) On or before the expiration of the initial 90-day period of commitment the court shall conduct a hearing to determine whether or not the defendant remains incompetent. If the court finds by a preponderance of the evidence that the defendant remains incompetent, the court may recommit the defendant for a second period of 90 days. The court shall determine at the expiration of the second 90-day period whether the defendant has become competent. If at the expiration of the second 90-day period the court determines that the defendant continues to be incompetent to stand trial, the charges against him shall be dismissed without prejudice and continued commitment of the defendant shall be governed by the provisions relating to civil commitments under AS 47.30.700 — 47.30.915 unless the defendant is charged with a crime involving force against a person and the court finds that the defendant presents a substantial danger of physical injury to other persons and that there is a substantial probability that the defendant will regain competency within a reasonable period of time, in which case the court may extend the period of commitment for an additional six months. If the defendant remains incompetent at the expiration of the additional six-month period, the charges shall be dismissed without prejudice and either civil commitment proceedings shall be instituted or the court shall order the release of the defendant. If the defendant remains incompetent for five years after the charges have been dismissed under this subsection, the defendant may not be charged again for an offense arising out of the facts alleged in the original charges, except if the original charge is murder.

(c) The defendant is not responsible for the expenses of hospitalization or transportation incurred as a result of his commitment under this section. Liability for payment under AS 47.30.910 does not apply to commitments under this section.

(d) A defendant receiving medication for either a physical or a mental condition may not be prohibited from standing trial, if the medication either enables him to understand the proceedings against him and to properly assist in his own defense or does not disable him from understanding the proceedings and assisting in his own defense. (§ 6.12 ch 34 SLA 1962; am § 1 ch 43 SLA 1966; am § 6 ch 104 SLA 1971; am § 4 ch 84 SLA 1981)

Effect of amendments. — The 1981 amendment, effective October 1, 1981, rewrote the section.

Sec. 12.49.115. Determination of sanity after commitment. (a) When, in the medical judgment of the custodian of an accused person committed under AS 12.45.110, the accused is considered to be mentally competent to stand trial, the committing court shall hold a hearing, after due notice, as soon as conveniently possible. At the hearing, evidence as to the mental condition of the accused may be submitted including reports by the custodian to whom the accused was committed for care.

(b) If at the hearing the court determines that the accused is presently mentally competent to understand the nature of the proceedings against him and to assist in his own defense, appropriate criminal proceedings may be commenced against the accused.

(c) If at the hearing the court determines that the accused is still presently mentally incompetent, the court shall recommit the accused in accordance with AS 12.45.110.

(d) A finding by the court that the accused is mentally competent to stand trial in no way prejudices the accused in a defense based on mental disease or defect excluding responsibility. This finding may not be introduced in evidence on that issue or otherwise be brought to the notice of the jury. (§ 2 ch 43 SLA 1966; am §§ 4 — 6 ch 119 SLA 1972; am § 5 ch 84 SLA 1981)

Effect of amendments. — The 1981 amendment, effective October 1, 1981, in subsection (a), substituted "AS 12.45.110" for "AS 12.45.110(a)" and deleted "after release of the accused from custody" following "conveniently possible" in the first sentence. The amendment, in subsection (b), substituted "and" for "or" preceding "to assist" and substituted "may" for "shall" preceding "be commenced." In subsection (c), the amendment substituted "in accordance with AS 12.45.110" for "as provided in AS 12.45.110(a)."

House panel polishes insanity plea bill

by Bill White
Times Juneau Bureau

Juneau — A House committee has blended three separate plans to toughen use of the insanity plea by defendants but still is fine tuning the language of the 10-page draft bill.

Meeting for the fifth day in a row Wednesday, the Judiciary Committee brought out a new issue to be dealt with before they sign off on the bill. That issue involves what happens to a person found "guilty but mentally ill" who's still ill when his sentence ends.

Mark Johnson, a lawyer working on the issue for the panel, quickly wrote a third draft of the bill calling for a screening of such defendants to see if they should be committed after they've served their sentences.

The committee work is in marked contrast to that of the Senate. The senior chamber last Saturday passed a bill, introduced the day before by the Law Department, after a one-hour hearing and 30 minutes of floor debate.

The House committee is working with the Law Department's proposal and versions drafted by Johnson and Bill Cook, former counsel to the panel.

The committee has gone through so many rewrites of the proposal that new drafts are being coded by the hour at which they were composed to distinguish them from earlier drafts.

The insanity defense issue sprang up this month in the wake of the murders of four teen-agers in Russian Jack Springs Park in Anchorage on May 3.

Charles Meach III, the accused killer, was on a work-release program from the Alaska Psychiatric Institute. Meach was found not guilty by reason of insanity in 1973 on charges he murdered a man at Earthquake Park.

Under current law, a defendant can be found not guilty by reason of insanity if he didn't understand the wrongfulness of his crime. It's also up to the prosecution to prove the defendant is sane.

The features of the latest Judiciary Committee draft include:

- Insanity would be redefined to apply to those who didn't appreciate the nature or quality of their actions.
- The defendant would be forced to prove his insanity.
- Juries would be given a fourth verdict — guilty but mentally ill — to join guilty, not guilty and not guilty by reason of insanity as possible verdicts.
- Those found guilty but mentally ill would get treatment while confined until they no longer were dangerous. If they still had time to serve on their sentences, they would serve it in prison. If they're still mentally ill when their sentences end, they could remain in confinement under a civil commitment procedure.
- For a defendant found not guilty, the prosecutor would file within 24 hours for a screening to see if the acquitted person should be committed for treatment.
- A judge would appoint at least two neutral psychiatrists to examine defendants who indicate they plan to rely on the insanity defense.
- Defendants found not guilty by reason of insanity must prove they're suffering from no mental illnesses before they would be released. They must prove their cases by "clear and convincing" evidence, a tougher standard than the present "preponderance of the evidence."

Thursday, May 20, 1982

The Anchorage Times

HANDBOOK
ON
CRIMINAL LAW

By

WAYNE R. LaFAVE
Professor of Law and Associate Dean
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and

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HORNBOOK SERIES

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THE INSANITY DEFENSE: THEORY AND PURPOSE

36. The word "insanity" has many meanings in law, depending upon the context within which it is used. In the field of criminal law, it must be defined for the purpose of identifying the scope of a special kind of defense to a criminal charge, and also for various procedural purposes.

The insanity defense is quite different from other defenses in that the result, if it is successfully interposed, is not acquittal and outright release of the accused but rather a special form of verdict or finding ("not guilty by reason of insanity") which is usually followed by commitment of the defendant to a mental institution. Thus, its purpose is usually said to be that of separating from the criminal justice system those who should only be subjected to a medical-custodial disposition.

Such a purpose is consistent with all the generally accepted theories of punishment. However, whether the insanity defense should be abolished is still a matter of considerable debate.

THE TRADITIONAL TESTS: "RIGHT-WRONG" AND "IRRESISTIBLE IMPULSE"

37. In the overwhelming majority of jurisdictions in this country, what is most often referred to as the M'Naghten rule has long been accepted as the test to be applied for the defense of insanity. Under M'Naghten, an accused is not criminally responsible if, at the time of committing the act, he was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it that he did not know he was doing what was wrong.

Somewhat less than half of the jurisdictions which follow M'Naghten have supplemented it with another test which is unfortunately labeled the "irresistible impulse" rule. Those two words suggest limitations upon the rule which are not strictly adhered to in practice, so that the "irresistible impulse" rule may more accurately be described as a test whereby the accused is not criminally responsible if he had a mental disease which kept him from controlling his conduct.

THE MODERN TESTS: "PRODUCT" AND "SUBSTANTIAL CAPACITY"

38. Under what is usually referred to as the Durham rule, adopted by the Court of Appeals for the District of Columbia, an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect. The rule, as originally formulated, was criticized because of the ambiguity in the words "product" and "mental disease or defect." Subsequent cases have held that an act is a "product" of mental disease or defect if the defendant would not have committed the act but for the disease or defect, and that the term "mental disease or defect" means "any abnormal condition of the mind which substantially affects mental or emotional processes and impairs behavior controls."

Under the American Law Institute Model Penal Code insanity test, a person is not responsible for criminal conduct if, as a result of mental disease or defect (not defined but expressly stated not to include an abnormality manifested only by repeated criminal or otherwise antisocial conduct), he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of law.

INCOMPETENCY AT TIME OF CRIMINAL PROCEEDINGS

39. If a defendant is suffering from a mental disease or defect which renders him unable to understand the proceedings against him or to assist in his defense, he may not be tried, convicted, or sentenced so long as that condition persists. Rather, he is ordinarily committed to a mental institution until such time as he recovers. In practice, these commitments often appear to be used for punitive purposes, and they have in large measure displaced the process of trial, acquittal on grounds of insanity, and commitment following acquittal.

If a defendant sentenced to death is suffering from a mental disease or defect which renders him unable to understand the nature and purpose of the punishment about to be imposed, he may not be executed until such time as he has recovered from that condition.

PROCEDURES FOR PRESENTING THE INSANITY DEFENSE

40. It is the defendant who usually raises the insanity defense, although it is not uncommon for the defendant deliberately not to do so for the reason that the consequences of conviction are preferred over commitment following a verdict of not guilty by reason of insanity. There is some questionable authority that in such an instance the court or prosecutor may force the insanity issue into the case. In only a minority of the states need the defendant give advance warning by plea or notice of his intention to rely upon the insanity defense.

It is to the advantage of both the prosecution and defense to have the defendant examined by a psychiatrist whose orientation and examination procedures are such as will probably support their side of the case. In most states the prosecutor can obtain this advantage by a court-ordered examination which is usually conducted by a psychiatrist in the employ of the state. The indigent defendant is most hampered in this regard, as the prevailing view is that he is not entitled to the services of a psychiatrist.

There is a general presumption of sanity, and thus the initial burden (called the burden of going forward) is on the defendant to introduce evidence creating a reasonable doubt of his sanity. As to the burden of convincing the jury (called the burden of persuasion), some states require the defendant to prove insanity by a preponderance of the evidence, while others require the prosecution to prove sanity beyond a reasonable doubt. Expert witnesses are usually used, and they are permitted to testify in the language of the applicable insanity test.

At the close of all the evidence, the jury is instructed on the insanity test and is given three verdict alternatives: guilty; not guilty; and not guilty by reason of insanity. Under the prevailing view the jury may not be told of the significance of the latter verdict—that it must or is likely to be followed by commitment of the defendant.

PROCEDURES FOLLOWING FINDING OF NOT GUILTY BY REASON OF INSANITY

41. After a finding that the defendant is not guilty by reason of insanity, he is usually committed to a mental institution for treatment. In some jurisdictions commitment is mandatory following such an acquittal, but the majority view is that commitment is to be ordered only if it is found (usually, by the trial judge) that the defendant's insanity continues or that he is dangerous. The constitutionality of mandatory commitment is subject to serious question on both due process and equal protection grounds.

Because of limited resources and the emphasis upon security, the individual committed may receive little or no treatment. Recently, a few courts have recognized a "right to treatment" and have indicated they might order the person released if he is not promptly treated, although several commentators have expressed doubts about the propriety and effectiveness of such judicial supervision.

In most jurisdictions the release decision is vested in the committing court or some other court, although the court will not have occasion to consider the matter unless the patient or the authorities having custody of him seek release. Four different standards for release are now in use: (1) sanity; (2) lack of dangerousness; (3) sanity and lack of dangerousness; (4) sanity or lack of dangerousness. Considerable uncertainty exists as to the meaning of each standard. The burden of proof is usually placed upon the patient, and often he must establish grounds for release beyond a reasonable doubt. Some existing limitations on release of the patient committed because of acquittal on insanity grounds may be challenged as a denial of equal protection in that they are more severe than the release procedures for patients civilly committed.

PARTIAL RESPONSIBILITY

42. Under the better view, evidence of an abnormal mental condition, even though not sufficient to constitute legal insanity, is admissible whenever it is relevant to prove that the defendant did or did not have a state of mind which is an element of the offense charged.

Such evidence has been most frequently received in cases requiring a determination whether the defendant acted with the premeditation and deliberation required for first degree murder. In at least some jurisdictions, however, this evidence has been held admissible on the issue of whether the defendant's crime is murder or manslaughter and the issue of whether the defendant had the requisite mental state for other lesser offenses.

Work Johnson's draft, marked up

*Section 1, AS 12.45 is amended by adding a new section to read:

See 12.45.082, ~~MENTAL DISEASE OR DEFECT~~ INSANITY EXCLUDING RESPONSIBILITY,

(a) In a prosecution for a crime it is an affirmative defense that when the defendant engaged in the criminal conduct he ~~lacked substantial capacity, as a~~ was unable as a result of a result of a mental disease or defect, ~~either to~~ to appreciate the ~~wrongfulness of his conduct or to conform his conduct to the requirements of law~~ nature and quality of his conduct.

(b) Evidence of a mental disease or defect that is manifested only by repeated criminal or other antisocial conduct is NOT sufficient to establish an affirmative defense under (A) of this section, as a result of a mental disease unable to appreciate the nature and quality of his conduct

(c) A defendant found to lack the capacity described in ~~Section (A) of this section~~ shall be considered insane ~~for the purposes of this title~~.

Section 2, AS 12.45.45 is amended by adding a new section to read.

See 12.45.082 (a) A defendant who, at the time of the commission of a criminal offense, was not insane but was suffering from a mental illness, is not relieved of criminal responsibility for his conduct and may be found "guilty but mentally ill". He may not be found "not guilty by reason of insanity".

(b) For purposes of this section, "mental illness" or "mentally ill " means a substantial disorder of thought, mood, or behavior which afflicted a person at the time of the commission of the offense and which impaired that person's judgment, but not to the extent that he ~~is unable to appreciate the wrongfulness of his behavior or is unable to conform his conduct to the requirements of law~~ was insane as defined in AS 12.45.081

*Section 2, AS 12.45.083, is repealed and reenacted to read:

AS 12.45.083, FORM OF VERDICT WHEN AFFIRMATIVE DEFENSE ~~OF MENTAL DISEASE OR DEFECT EXCLUDING RESPONSIBILITY~~ INSANITY IS OFFERED

(a) In all cases in which the defendant raises the affirmative defense of ~~mental disease or defect excluding responsibility~~ insanity, the jury shall find and the verdict shall state whether the defendant is:

(1) guilty;

(2) not guilty;

(3) not guilty by reason of insanity; or

(4) guilty but mentally ill,

(B) If the case is heard by the court sitting without a jury, the court shall make the finding established in (A) of this section,

*Section 3, AS 12.45, is amended by adding a new section to read:

Section 12.45.084, PROCEDURE UPON FINDING OF GUILTY BUT MENTALLY ILL

(A) if a defendant is found "guilty but mentally ill" under AS 12.45.083, the court shall

(1) enter the finding of "guilty but mentally ill" as part of the judgment; and

(2) sentence the defendant as provided by law

(B) The Department of Health and Social Services shall provide mental health treatment to a defendant found "guilty but mentally ill." The treatment must continue until the defendant no longer suffers from a mental disease or defect that causes him to be dangerous to the public peace or safety, or until his sentence is completed, whichever occurs first. The department shall determine the course of treatment. When treatment terminates under this subsection the defendant shall be required to serve the remainder of his sentence. This subsection does not authorize the department to hold a defendant in custody except as provided by the sentence imposed.

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

(D) For purposes of this section, "mental illness" or "mentally ill" means a substantial disorder of thought, mood, or behavior which afflicted a person at the time of the commission of the offense and which impaired that person's judgment, but not to the extent that he ~~is unable to appreciate the wrongfullness of his behavior or is unable to conform his conduct to the requirements of law~~ was insane under AS 12.45.081

*Section 5, AS 12.45.090 is amended to read:

Section 12.45.090. PROCEDURE AFTER RAISING DEFENSE OF MENTAL DISEASE OR DEFECT. (a) At the time the defendant files notice to

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raise the affirmative defense of ~~mental disease or defect (AS)~~ insanity under AS 12.45.081 ex-~~cluding responsibility~~, he shall also file notice as to whether, if found "not guilty by reason of ~~mental disease or defect (AS) excluding responsibility~~ insanity", he will assert that he is not presently suffering from any [A] mental illness [DISEASE OR DEFECT] that causes him to be dangerous to the public peace or safety.

(b) If the defendant is found not "guilty by reason of ~~mental disease or defect (AS) excluding responsibility~~ insanity" under AS 12.45.081 and he has not filed the notice required under (a) of this section, the court shall immediately commit him to the custody of the commissioner of Health and Social Services.

(c) If the defendant is found "not guilty by reason of ~~mental disease or defect (AS) excluding responsibility~~ insanity" under AS 12.45.081, and he has filed the notice required under (a) of this section, a hearing shall be held immediately after the verdict is returned to determine the necessity of further commitment. The hearing shall be held before the court sitting without a jury (THE SAME TRIER OF FACT AS THE UNDERLYING CHARGE, BUT IF A JURY WAS THE TRIER OF FACT, THE HEARING SHALL BE HELD BEFORE A JURY OF SIX DRAWN FROM THE ORIGINAL JURY IN ACCORDANCE WITH RULES ADOPTED BY THE SUPREME COURT). At the hearing, the defendant has the burden of proving by clear and convincing (A PREPONDERANCE OF THE) evidence that he is not presently suffering from any (A) mental ill-ness (DISEASE OR DEFECT) that causes him to be dangerous to the public. If the court (OR JURY) determines that the defendant has failed to meet his burden of proof, the court shall order the defendant committed to the custody of the commissioner of health and social services.

(d) A defendant committed under (b) or (c) of this section shall be held in custody for a period of time not to exceed the maximum term of imprisonment for the crime for which the defendant was acquitted under AS 12.45.083(A)(3) or until the mental illness (DISEASE) is cured or (THE DEFECT IS) corrected as determined at a hearing under (e) of this section.

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(e) A defendant committed under (b) or (c) of this section may have the need for his continued hospitalization determined or redetermined by the court sitting without a jury under a petition filed in the superior court at intervals beginning no sooner than a year (SIX MONTHS) from his initial commitment, and yearly thereafter. The burden and standard of proof at a hearing under this subsection is the same as at a hearing under (c) of this section. (EXCEPT THAT THE DEFENDANT IS NOT ENTITLED TO A JURY UNLESS HE FILES A MOTION FOR A JURY NO LATER THAN 15 DAYS BEFORE THE DATE SET FOR THE HEARING). A copy of all petitions for release shall be served on the attorney general at Juneau, Alaska. A copy shall also be served upon the attorney of record, if he is not the attorney general, who represented the state or a municipality at the time the defendant was first committed.

(f) Continued commitment following expiration of the maximum term of imprisonment for the crime for which the defendant was acquitted under AS 12.45.083(A)(3) is governed by the standards pertaining to civil commitments as set out in AS 47.30.735.

(g) A person committed under this section may not be released during the term of commitment except upon court order following a hearing in accordance with (c) of this section. On the grounds that the defendant has been cured of any (THE) mental illness (DISEASE OR DEFECT) that would cause him to be (AND IS NO LONGER) dangerous to the public peace or safety, the state may at any time request the court to hold a hearing to decide if the defendant should be released.

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

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

(j) In this section,

(1) "mental illness" means any mental condition that increases the propensity of the defendant to be dangerous to the public or safety, however, it is not required that the mental illness

be sufficient to exclude criminal responsibility under AS ~~11.81.635~~ 12.45.081, or that the mental illness presently suffered by the defendant be the same one he suffered at the time of the criminal conduct;

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

*Section 6. This Act takes effect immediately in accordance with AS 01.10.070(c).

Cook's 12.45.087 revision

Illinois Law

CRIMINAL PROCEDURE—INSANITY DEFENSE

PUBLIC ACT 82-553

SENATE BILL 867

AN ACT to revise the law in relation to the insanity defense and to establish a plea and verdict of guilty but mentally ill, and amending certain Acts herein named.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Sections 6-2 and 6-4 of the "Criminal Code of 1961", approved July 28, 1961, as amended, are amended to read as follows:

(Ch. 38, par. 6-2) [S.H.A. ch. 38, ¶ 6-2]

Sec. 6-2. Insanity. (a) A person is not criminally responsible for conduct if at the time of such conduct, as a result of mental disease or mental defect, he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.

(b) The terms "mental disease or mental defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

(c) A person who, at the time of the commission of a criminal offense, was not insane but was suffering from a mental illness is not relieved of criminal responsibility for his conduct and may be found guilty but mentally ill.

(d) For purposes of this Section, "mental illness" or "mentally ill" means a substantial disorder of thought, mood, or behavior which afflicted a person at the time of the commission of the offense and which impaired but does not negate his ability to appreciate the wrongfulness of his behavior or his ability to conform his conduct to the requirements of law.

(Ch. 38, par. 6-4) [S.H.A. ch. 38, ¶ 6-4]

Sec. 6-4. Affirmative Defense. A defense based upon any of the provisions of Article 6 is an affirmative defense except that mental illness is not an affirmative defense but an alternative plea or finding that may be accepted under appropriate evidence upon the affirmative defense of insanity is raised or the plea of guilty but mentally ill is made.

Section 2. Sections 113-4, 113-6, 115-1, 115-2, 115-3, 115-4 and 115-6 of the "Code of Criminal Procedure of 1963", approved August 14, 1963, as amended, are amended to read as follows:

(Ch. 38, par. 113-4) [S.H.A. ch. 38, ¶ 113-4]

Sec. 113-4. Plea. (a) When called upon to plead at arraignment the defendant shall be furnished with a copy of the charge and shall plead guilty, guilty but mentally ill, or not guilty.

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(b) If the defendant stands mute a plea of not guilty shall be entered for him and the trial shall proceed on such plea.

(c) If the defendant pleads guilty such plea shall not be accepted until the court shall have fully explained to the defendant the consequences of such plea and the maximum penalty provided by law for the offense which may be imposed by the court. After such explanation if the defendant understandingly persists in his plea it shall be accepted by the court and recorded.

(d) If the defendant pleads guilty but mentally ill, the court shall not accept such a plea until the defendant has undergone examination by a clinical psychologist or psychiatrist and the judge has examined the psychiatric or psychological report or reports, held a hearing on the issue of the defendant's mental condition and is satisfied that there is a factual basis that the defendant was mentally ill at the time of the offense to which the plea is entered.

(e) If a defendant pleads not guilty, the court shall advise him at that time or at any later court date on which he is present that if he escapes from custody or is released on bond and fails to appear in court when required by the court that his failure to appear would constitute a waiver of his right to confront the witnesses against him and trial could proceed in his absence.

(Ch. 38, par. 113-5) [S.H.A. ch. 38, ¶ 113-5]

Sec. 113-5. Plea and Waiver of Jury by Person under 18. No person under the age of 18 years shall be permitted to plead guilty, guilty but mentally ill or waive trial by jury in any case except where the penalty is by fine only unless he is represented by counsel in open court.

(Ch. 38, par. 115-1) [S.H.A. ch. 38, ¶ 115-1]

Sec. 115-1. Method of Trial. All prosecutions except on a plea of guilty or guilty but mentally ill shall be tried by the court and a jury or the court when a jury is waived by the defendant in open court.

(Ch. 38, par. 115-2) [S.H.A. ch. 38, ¶ 115-2]

Sec. 115-2. Pleas of Guilty and guilty but mentally ill. (a) Before or during trial a plea of guilty may be accepted when:

(1) The defendant enters a plea of guilty in open court;

(2) The court has informed the defendant of the consequences of his plea and of the maximum penalty provided by law which may be imposed upon acceptance of such plea.

(b) Upon acceptance of a plea of guilty the court shall determine the factual basis for the plea may hear evidence of the charge.

(c) Before or during trial a plea of guilty but mentally ill may be accepted by the court when:

(1) The defendant has requested to enter a plea of guilty but mentally ill and has undergone examination by a clinical psychologist or psychiatrist and has waived his right to trial by jury;

(2) The judge has received the psychiatric or psychological report or reports; and

(3) The judge has held a hearing at which either party may present evidence on the issue of the defendant's mental health and of the conclusion of such hearing is satisfied

that there is a factual basis that the defendant was mentally ill at the time of the offense to which the plea is entered.

(Ch. 38, par. 115-3) [S.H.A. ch. 38, ¶ 115-3]

Sec. 115-3. Trial by the Court. (a) A trial shall be conducted in the presence of the defendant unless he waives the right to be present.

(b) Upon conclusion of the trial the court shall enter a general finding, except that, when the affirmative defense of insanity has been presented during the trial and acquittal is based solely upon the defense of insanity, the court shall enter a finding of not guilty by reason of insanity. In the event of a finding of not guilty by reason of insanity, a hearing shall be held pursuant to the Mental Health and Developmental Disabilities Code[1] to determine whether the defendant is subject to involuntary admission.

(c) When the defendant has asserted a defense of insanity, the court may find the defendant guilty but mentally ill, if, after hearing all of the evidence, the court finds beyond a reasonable doubt that the defendant:

(1) is guilty of the offense charged, and

(2) was mentally ill at the time of the commission of the offense, and

(3) was not legally insane at the time of the commission of the offense.

[1] Chapter 91½, ¶ 1-100 et seq.

(Ch. 38, par. 115-4) [S.H.A. ch. 38, ¶ 115-4]

Sec. 115-4. Trial by Court and Jury.) (a) Questions of law shall be decided by the court and questions of fact by the jury.

(b) The jury shall consist of 12 members.

(c) Upon request the parties shall be furnished with a list of prospective jurors with their addresses if known.

(d) Each party may challenge jurors for cause.

(e) A defendant tried alone shall be allowed 20 peremptory challenges in a capital case, 10 in a case in which the punishment may be imprisonment in the penitentiary, and 5 in all other cases; except that, in a single trial of more than one defendant, each defendant shall be allowed 12 peremptory challenges in a capital case, 6 in a case in which the punishment may be imprisonment in the penitentiary, and 3 in all other cases. If several charges against a defendant or defendants are consolidated for trial, each defendant shall be allowed peremptory challenges upon one charge only, which single charge shall be the charge against that defendant authorizing the greatest maximum penalty. The State shall be allowed the same number of peremptory challenges as all of the defendants.

(f) After examination by the court the jurors may be examined, passed upon, accepted and tendered by opposing counsel as provided by Supreme Court rules.

(g) After the jury is impaneled and sworn the court may direct the selection of 2 alternate jurors who shall take the same oath as the regular jurors. Each party shall have one additional peremptory challenge for each alternate juror. If before the final submission of a cause a member of the jury dies or is discharged he shall be replaced by an alternate juror in the order of selection.

(h) A trial by the court and jury shall be conducted in the presence of the defendant unless he waives the right to be present.

(i) After arguments of counsel the court shall instruct the jury as to the law.

(j) Unless the affirmative defense of insanity has been presented during the trial, the jury shall return a general verdict as to each offense charged. When the affirmative defense of insanity has been presented during the trial, the court shall provide the jury not only with general verdict forms but also with a special verdict form of not guilty by reason of insanity, as to each offense charged, and in such event the court shall separately instruct the jury that a special verdict of not guilty by reason of insanity may be returned instead of a general verdict but such special verdict requires a finding by the jury that the defendant committed the acts charged but at the time of the commission of those acts the defendant was insane. In the event of a verdict of not guilty by reason of insanity, a hearing shall be held pursuant to the Mental Health and Developmental Disabilities Code[1] to determine whether the defendant is subject to involuntary admission. When the affirmative defense of insanity has been presented during the trial, the court, where warranted by the evidence, shall also provide the jury with a special verdict form of guilty but mentally ill as to each offense charged and shall separately instruct the jury that a special verdict of guilty but mentally ill may be returned instead of a general verdict but that such special verdict requires a finding by the jury beyond a reasonable doubt that the defendant committed the acts charged and that the defendant was not legally insane at the time of the commission of those acts but that he was mentally ill at such time.

(k) When, at the close of the State's evidence or at the close of all of the evidence, the evidence is insufficient to support a finding or verdict of guilty the court may and on motion of the defendant shall make a finding or direct the jury to return a verdict of not guilty, enter a judgment of acquittal and discharge the defendant.

(l) When the jury retires to consider its verdict an officer of the court shall be appointed to keep them together and to prevent conversation between the jurors and others. Upon agreement between the State and defendant or his counsel the jury may seal and deliver its verdict to the clerk of the court, separate, and then return such verdict in open court at its next session.

(m) In the trial of a capital or other offense, any juror who is a member of a panel or jury which has been empaneled and sworn as a panel or as a jury shall be permitted to separate from other such jurors during every period of adjournment to a later day, until final submission of the cause to the jury for determination, except that no such separation shall be permitted in any trial after the court, upon motion by the defendant or the State or upon its own motion, finds a probability that prejudice to the defendant or to the State will result from such separation.

[1] Chapter 91½, ¶ 1-100 et seq.

(Ch. 38, par. 115-6) [S.H.A. ch. 38, ¶ 115-6]

Sec. 115-6. Appointment of Psychiatrist or Clinical Psychologist. If the defendant has given notice that he may rely upon the defense of insanity as defined in Section 6-2 of the Criminal Code of 1961[1] or the defendant indicates that he intends to plead guilty but mentally ill or the defense of intoxicated or drugged condition as defined in Section 6-3 of the Criminal Code of 1961[2] or if the facts and circumstances of the case justify a reasonable belief that the aforesaid defenses may be raised, the Court shall, on motion of the State, order the defendant to submit to examination by at least one clinical psychologist or psychiatrist, to be named by the prosecuting attorney. The Court shall also order the defendant to submit to an examination by one neurologist, one clinical psychologist and one electroencephalographer to be named by the prosecuting attorney if the State asks for one or more of such additional examinations. The Court may order additional examinations if the Court finds that additional examinations by additional experts will be of substantial value in the determination of issues of insanity or drugged conditions. The reports of such experts shall be made available to the defense. Any statements made by defendant to such experts shall not be admissible against the defendant unless he raises the defense of insanity or the defense of drugged condition, in which case they shall be admissible only on the issue of whether he was insane or drugged. The refusal of the defendant to cooperate in such examinations shall not automatically preclude the raising of the aforesaid defenses but shall preclude the defendant from offering expert evidence or testimony tending to support such defenses if the expert evidence or testimony is based upon the expert's examination of the defendant. If the Court, after a hearing, determines to its satisfaction that the defendant's refusal to cooperate was unreasonable it may, in its sound discretion, bar any or all expert evidence upon the defense asserted.

[1] Paragraph 6-2 of this chapter.

[2] Paragraph 6-3 of this chapter.

Section 3. Section 5-2-5 of the "Unified Code of Corrections", approved July 26, 1972, as amended, is amended and Section 5-2-6 is added thereto, the amended and added Sections to read as follows:

(Ch. 38, par. 1005-2-5) [S.H.A. ch. 38, ¶ 1005-2-5]

Sec. 5-2-5. In any issue of determination of fitness of a defendant to plead, to stand trial, to be sentenced or to be executed, or in any issue related to insanity or to mental illness, a clinical psychologist as defined in paragraph (a) of Section 102-21 of the Code of Criminal Procedure of 1963 shall be deemed qualified to testify as an expert witness in the form of his opinion about the issue of fitness or insanity or mental illness and shall not be restricted to testifying with regard to test results only.

(Ch. 38, new par. 1005-2-6) [S.H.A. ch. 38, ¶ 1005-2-6]

Sec. 5-2-6. Sentencing and Treatment of Defendant Found Guilty but Mentally Ill. (a) After a plea or verdict of guilty but mentally ill under Section 115-2, 115-3 or 115-4 of the Code of Criminal Procedure of 1963, the Court shall

order a presentence investigation and report pursuant to Sections 5-3-1 and 5-3-2 of this Act[1] and shall set a date for a sentencing hearing. The court may impose any sentence upon the defendant which could be imposed pursuant to law upon a defendant who had been convicted of the same offense without a finding of mental illness.

(b) If the court imposes a sentence of imprisonment upon a defendant who has been found guilty but mentally ill, the defendant shall be committed to the Department of Corrections, which shall cause periodic inquiry and examination to be made concerning the nature, extent, continuance, and treatment of the defendant's mental illness. The Department of Corrections shall provide such psychiatric, psychological, or other counseling and treatment for the defendant as it determines necessary.

(c) The Department of Corrections may transfer the defendant's custody to the Department of Mental Health and Developmental Disabilities in accordance with the provisions of Section 3-8-5 of this Act.[2]

(d) (1) The Department of Mental Health and Developmental Disabilities shall return to the Department of Corrections any person committed to it pursuant to this Section whose sentence has not expired and when the Department of Mental Health and Developmental Disabilities determines no longer requires hospitalization for mental treatment, mental retardation, or addiction.

(2) The Department of Corrections shall notify the Director of Mental Health and Developmental Disabilities of the expiration of the sentence of any person transferred to the Department of Mental Health and Developmental Disabilities under this Section. If the Department of Mental Health and Developmental Disabilities determines that any such person requires further hospitalization, it shall file an appropriate petition for involuntary commitment pursuant to the Mental Health and Developmental Disabilities Code.[3]

(e) (1) All persons found guilty but mentally ill, whether by plea or by verdict, who are placed on probation or sentenced to a term of periodic imprisonment or a period of conditional discharge shall be required to submit to a course of mental treatment prescribed by the sentencing court.

(2) The course of treatment prescribed by the court shall reasonably assure the defendant's satisfactory progress in treatment or habilitation and for the safety of the defendant and others. The court shall consider terms, conditions and supervision which may include, but need not be limited to, notification and discharge of the person to the custody of his family, community adjustment programs, periodic checks with legal authorities and outpatient care and utilization of local mental health or developmental disabilities facilities.

(3) Failure to continue treatment, except by agreement with the treating person or agency, and the court, shall be a basis for the institution of probation revocation proceedings.

(f) The period of probation shall be in accordance with Section 5-6-2 of this Act[1] and shall not be shortened without

receipt and consideration of such psychiatric or psychological report or reports as the court may require.

[1] Paragraphs 1005-3-1 and 1005-3-2 of this chapter.
[2] Paragraph 1003-8-5 of this chapter.
[3] Chapter 91½, ¶ 1-100 et seq.
[4] Paragraph 1005-6-2 of this chapter.

Section 4. This Act takes effect upon becoming a law. [S.H.A. ch. 38, ¶ 6-2 note]

APPROVED: September 17, 1981 EFFECTIVE: September 17, 1981

TOWNSHIPS—ASSESSMENTS AND ASSESSORS—TOWNSHIP OFFICERS

PUBLIC ACT 82-554

SENATE BILL 1104

AN ACT amending certain Acts in relation to assessments and assessors and other township officers.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Sections 1.3, 1.5, 1.6, 2, 2.2a, 2.2b, 7, 20g, 100, 106, 119, 146, 148a and 149 of the "Revenue Act of 1939", filed May 17, 1939, as amended, are amended, and Sections 2.2c and 131a are added thereto the amended and added Sections to read as follows:

(Ch. 120, par. 482.3) [S.H.A. ch. 120, ¶ 482.3]

Sec. 1.3. Role of Township and Multi-Township Boards of Trustees with Regard to Elected Assessors. After December 1, 1980, the several township boards of trustees of townships comprising a multi-township assessment district and the township board of trustees in townships which are not a part of a multi-township assessment jurisdiction shall, ex officio, constitute a multi-township or township board of trustees, as the case may be, for their respective assessment jurisdictions.

Each multi-township board of trustees shall organize and select one of its number as chairman, another as clerk and another as treasurer, and such officers shall serve a term of 2 years or until their successors are elected in like manner, except no person shall be a member of a multi-township board of trustees after the expiration of his term as a member of township board of trustees.

Such a multi-township board of trustees or township board of trustees shall have no power and duties with respect to property tax assessment administration matters except: (1) the power to allocate--the levy of taxes for 1981 and subsequent years necessary to provide the funds required by

Additions in text are indicated by underline; deletions by ~~strikeout~~

Barnes asks Walatka case audit

by Bill White
Beth Barrett
and Jeff Berliner
Times Writers

Jurors in the two Walatka murder trials are supporting a state representative's call for an investigation of the Anchorage district attorney's office.

In a letter Thursday to the legislative Budget and Audit Committee, Rep. Ramona Barnes, R-Anchorage, asked for the special audit to determine "if that agency (the district attorney's office) properly discharged the duties delegated to it in the prosecution of Timothy Hopkins, Dale Willhite and Scott Walker" for the murders last year of Mildred Walatka and her son, Herbert Oakley.

Willhite was given immunity by the prosecution for his testimony against the other two. Both defendents were acquitted of murder and convicted of several lesser charges.

Sen. Arliss Sturgulewski, R-Anchorage and chairman of the Legislative Budget and Audit Committee, said Barnes' request for an investigation will be discussed by committee members Saturday.

Today, District Attorney Larry Weeks lashed back at the Legislature, particularly Barnes who is chairman of the House Judiciary Committee. More convictions might be returned if the Legislature passed better laws and if more sophisticated jurors were chosen to hear "complicated" cases, Weeks charged.

Defending his handling of the Walatka case, Weeks said he was limited by the state laws that kept Walker and Hopkins from testifying in each others trials. As a result, each jury panel had to rely on the evidence of Willhite and the story of a single defendant.

"If the Legislature could pass a law forcing defendants to testify in one another's trial — not using that testimony against them — it would solve problems like this," Weeks said.

Barnes said today that she was not aware of that problem in the legal system. However, she said the audit was intended to look at those kinds of "breakdowns" in the system.

"This investigation is not trying to point a finger at Larry Weeks," she said. "It is an attempt to look at the entire system."

Weeks said the jury selection process in Alaska makes it more

(See AUDIT, page A-6)

difficult to win major convictions.

"Most people who are busy doing things and making decision in the world cannot take three weeks off for a complicated murder case," he said.

"Also, because there is a good deal of publicity in these cases, people who read newspapers or who watch the news also are excused.

"As a result, the people who are left tend not to have as much interest or experience in heavy decision making," he said.

But the majority of jurors in the Walatka murder case agreed with Barnes that the prosecutor's office should be investigated. Jurors interviewed by The Times said the state gave too good a deal to Willhite, that Willhite was not believable, that deals such as those made with Willhite should be looked into, that the prosecution did not have the evidence for a murder conviction, and that they were upset no murder convictions could be returned.

Weeks, however, said his office had "no evidence" that Willhite perjured himself. He said jurors in neither case got a complete picture, because they did not hear the testimony of both defendants and Willhite.

Willhite's attorney Ron Drathman today said he thought the district attorney made a "reasonable" deal. He would not comment on the state's handling of the rest of the case.

In response to juror's charges that the state mismanaged the case, Weeks said "we gave them everything we had."

"Sometimes people think that the state can find everything out, that is is all powerful," he said. "we can't always do that."

Weeks said the state asked for the first-degree murder charge, rather than a second-degree verdict, because it seemed "a clear execution," kind of murder. Although a second-degree murder charge — five to 99 years — technically could have been requested, Weeks said it was not applicable in the Walatka case.

"In this case it was first degree or nothing," he said. "If, for example, the Walatkas had been kidnapped and then killed in a car wreck, that would be a felony (or second degree) case. But that was not the situation here."

Also, Weeks said the kidnapping charge — which jurors returned against both Walker and Hopkins — carried the same sentence as a second-degree murder verdict would have.

Nearly half of the jurors in the Walker and Hopkins cases were contacted.

"There should be an investigation into the kind of deals they give," said Michael Richardson, jury foreman in the Walker case. "I think they went too far. That should be investigated."

Richardson said he agreed with a defense statement that Willhite's immunity from prosecution represented "the best deal the state's ever given a criminal."

The Walker jurors not only objected to Willhite's immunity, but also found him difficult to believe and confronted Weeks with this.

Knowing that Willhite's grant of immunity did not extend to perjury, the jurors collectively and individually suggested Weeks prosecute Willhite for lying under oath.

Weeks reportedly told the jurors that would be difficult to do and that Willhite's testimony was needed in the Hopkins trial which was scheduled to start immediately after the Walker verdict was returned.

Jurors in the Walker case said that, following the verdict, Weeks approached the jurors and said: We don't have much evidence against Hopkins, our case is not as strong, and you can help us.

The district attorney then asked jurors about their misgivings in the Walker case to help strengthen the Hopkins case.

However, if there was one single issue that united the jurors after they returned their split verdict against Walker, it was that Willhite perjured himself and the prosecution simply did not have the evidence for a conviction.

Juror Joan Nelson said the Walker jury might have returned a guilty verdict for second-degree murder but did not have that option.

"The state is a little bit guilty in my opinion," said Nelson, "I'm kind of sour on the whole system because of this."

Nelson said she planned to send a telegram to Barnes supporting an investigation of the district attorney's office.

"We wanted him (Weeks) to get Willhite for perjury at least," said Nelson, "but he said they needed him to get a conviction for Hopkins."

That two people are dead and none of the three involved was convicted of murder is all "a little game," said Nelson.

Several jurors suggested the district attorney should have brought the lesser charges against Willhite.

"To me they could have gotten all three of them on kidnap, burglary and theft, the three lesser charges," said Gary Stevens, a juror in the Hopkins case.

"They shouldn't have given Willhite that kind of deal. They could have gotten him on lesser charges," said Pamela Cowdery, a juror in the Walker case.

Asked whether there should be an investigation of the district attorney's office, Cowdery replied, "I don't think it would hurt."

Jennifer Colvin called it "sickening and frightening" that no murder convictions could be returned. She served on the Hopkins jury.

"There wasn't enough evidence," said Colvin. "It was a hard case, and with what they (the district attorney) had, they did a good job. But they dealt with Willhite too quickly and gave him too much freedom and leeway."

Bill Cobb's draft

*Section 1, AS 12.45 is amended by adding a new section to read:

Sec. 12.45.082, INSANITY EXCLUDING RESPONSIBILITY,

(a) In a prosecution for a crime it is an affirmative defense that when the defendant engaged in the criminal conduct he was insane and consequently lacked substantial capacity to appreciate the nature and quality of his conduct.

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

(c) A defendant found by a preponderance of the evidence to be insane at the time of the offense shall be found "not guilty by reason of insanity". ~~if otherwise the verdict would have been guilty.~~

*Section 2, AS 12.45.083 is repealed and reenacted as follows:

Sec. 12.45.083, GUILTY BUT MENTALLY ILL,

A defendant who, at the time of the commission of a criminal offense, was not insane but was suffering from a mental illness, is not relieved of criminal responsibility for his conduct, cannot be found "not guilty by reason of insanity", and may be found "guilty but mentally ill", if otherwise the verdict would have been guilty. For purposes of this section, "mental illness" or "mentally ill" means a

disorder of thought, mood, or behavior which substantially afflicted a person at the time of the commission of the offense and which substantially impaired the person's judgment, but not to the extent that he was unable to appreciate the nature and quality of his conduct.

*Section 3, AS 12.45., is amended to add a new section as follows:

Sec. 12.45.084, FORM OF VERDICT WHEN AFFIRMATIVE DEFENSE OF INSANITY IS OFFERED

(a) In all cases in which the defendant raises the affirmative defense of insanity under AS 12.45.082 the jury shall find and the verdict shall state whether the defendant is:

(1) guilty;

(2) not guilty;

(3) not guilty by reason of insanity; or

(4) guilty but mentally ill,

(b) If the case is heard by the court sitting without a jury, the court shall make the finding established in (a) of this section,

*Section 4, AS 12.45.085 is amended to read as follows:

Sec. 12.45.085. EVIDENCE OF MENTAL DISEASE OR DEFECT. Evidence that the defendant suffered from a mental disease or defect is admissible whenever it is relevant to prove that the defendant <u>was or was not insane or mentally ill, or</u> did or did not have a state of mind which is an element of

the offense. However such evidence [OF MENTAL DISEASE OR DEFECT EXCLUDING RESPONSIBILITY] is not admissible unless the defendant, at the time of entering his plea of not guilty or within 30 [10] days thereafter [OR AT SUCH LATER TIME AS THE COURT MAY FOR GOOD CAUSE PERMIT] files a written notice of his intent to rely on that defense.

*Section 5, AS 12.45, is amended by adding a new section to read:

Section 12.45.086, PROCEDURE UPON VERDICT FINDING OF GUILTY BUT MENTALLY ILL

(a) If a defendant is found guilty but mentally ill under AS 12.45.084, the court shall

(1) enter the finding of guilty but mentally ill as part of the judgment

(2) sentence the defendant as provided by law

(b) The Department of Health and Social Services shall provide mental health treatment to a defendant found guilty but mentally ill. The treatment must continue until the defendant no longer suffers from a mental disease or defect that causes him to be dangerous to the public peace or safety, or until his sentence is completed, whichever occurs first. The department shall determine the course of treatment. When treatment terminates under this subsection the defendant shall be required to serve the remainder of

his sentence. This subsection does not authorize the department to hold a defendant in custody except as provided by the sentence imposed.

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

(d) For purposes of this section, "mental illness" or "mentally ill" means a disorder of thought, mood, or behavior which substantially afflicted a person at the time of the commission of the offense and which impaired that person's judgment, but not to the extent that he is unable to appreciate the nature and quality of his conduct.

*Section 6, AS 12.45.090 (a) (b) are repealed and reenacted to read:

Sec. 12.45.090. PROCEDURE AFTER RAISING DEFENSE OF INSANITY. (a) At the time the defendant files notice to raise the affirmative defense of insanity, under AS 12.45.081 he shall also file notice as to whether, if found not guilty by reason of insanity, he will assert that he is not presently suffering from any mental illness that causes him to be dangerous to the public peace or safety. That notice by the defendant shall be admissible evidence in the criminal trial, where evidence of the affirmative defense of insanity has been admitted at the request of the defense.

(b) If the defendant is found not guilty by reason of insanity and he has not filed the notice required under (a) of this section, the court shall immediately commit him to the custody of the commissioner of Health and Social Services.

*Section 7, 12.45.090 (c) - (h) are amended as follows:

(c) If the defendant is found not guilty by reason of insanity under AS 12.45.081 [MENTAL DISEASE OR DEFECT AS EXCLUDING RESPONSIBILITY] and he has filed the notice required under (a) of this section, a hearing shall be held immediately after a verdict of "not guilty by reason of insanity", to determine the necessity of further commitment. That hearing shall be held before the court sitting with[OUT] the same jury, unless the criminal trial was without a jury. [THE SAME TRIER OF FACT AS THE UNDERLYING CHARGE, BUT IF A JURY WAS THE TRIER OF FACT, THE HEARING SHALL BE HELD BEFORE A JURY OF SIX DRAWN FROM THE ORIGINAL JURY IN ACCORDANCE WITH RULES ADOPTED BY THE SUPREME COURT]. At the hearing, the defendant has the burden of proving by clear and convincing [A PREPONDERANCE OF THE] evidence that he is not presently suffering from any mental illness [DISEASE OR DEFECT] that causes him to be dangerous to the public. If the court or jury determines that the defendant has failed to meet his burden of proof, the court shall order the defendant committed to the custody of the commissioner of health and social services. The verdict must be unanimous.

(d) A defendant committed under (b) or (c) of this section shall be held in custody for a period of time not to exceed the maximum term of imprisonment for the crime for which the defendant was acquitted under AS 12.45.083(a)(3) or until the insanity [MENTAL DISEASE] is cured or [THE DEFECT IS] corrected as determined at a hearing under (e) of this section.

(e) A defendant committed under (b) or (c) of this section may have the need for his continued hospitalization determined or redetermined by the court sitting with[OUT] a jury of twelve under a petition filed in the superior court at intervals beginning no sooner than a year [SIX MONTHS] from his initial commitment, and yearly thereafter. The burden and standard of proof at a hearing under this subsection is the same as at a hearing under (c) of this section.] and the verdict shall be unanimous. [EXCEPT THAT THE DEFENDANT IS NOT ENTITLED TO A JURY UNLESS HE FILES A MOTION FOR A JURY NO LATER THAN 15 DAYS BEFORE THE DATE SET FOR THE HEARING]. A copy of all petitions for release shall be served on the attorney general at Juneau, Alaska. A copy shall also be served upon the attorney of record, if he is not the attorney general, who represented the state or a municipality at the time the defendant was first committed.

(f) Continued commitment following expiration of the maximum term of imprisonment for the crime for which the

defendant was acquitted under AS 12.45.083(A)(3) is governed by the standards pertaining to civil commitments as set out in AS 47.30.735.

(g) A person committed under this section may not be released during the term of commitment except upon court order following a hearing in accordance with (c) of this section. On the grounds that the defendant has been cured of any (THE) mental illness (DISEASE OR DEFECT) that would cause him to be (AND IS NO LONGER) dangerous to the public peace or safety, the state may at any time request the court to hold a hearing to decide if the defendant should be released.

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

*Section 8, AS 12.45.090 is amended to add new sections (i) and (j) as follows:

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

(j) In this section,

(1) "mental illness" means any mental condition that increases the propensity of the defendant to be dangerous to the public or safety, however, it is not

required that the mental illness be sufficient to exclude criminal responsibility under AS 11.81.635, or that the mental illness presently suffered by the defendant be the same one he suffered at the time of the criminal conduct;

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

*Section 4. AS 12.45.087 is amended to read as follows:

Sec. 12.45.087 PSYCHIATRIC EXAMINATION. (a) If a defendant has filed a notice of intention to rely on the defense of insanity [MENTAL DISEASE OR DEFECT EXCLUDING RESPONSIBILITY] or there is reason to doubt his fitness to proceed, or there is reason to believe that insanity or mental illness [MENTAL DISEASE OR DEFECT OF THE DEFENDANT] will otherwise become an issue in the cause, the court shall appoint at least [ONE] ~~three~~ two disinterested qualified psychiatrists [OR A FORENSIC PSYCHOLOGIST CERTIFIED BY THE AMERICAN BOARD OF FORENSIC PSYCHOLOGY,] OR SHALL REQUEST THE SUPERINTENDENT OF THE ALASKA PSYCHIATRIC INSTITUTE TO DESIGNATE AT LEAST ONE QUALIFIED PSYCHIATRIST, WHICH

DESIGNATION MAY BE OR INCLUDE HIMSELF,] to examine and report upon the mental condition of the defendant. The psychiatrists may be assisted by psychologists of their choosing. If the defendant has filed notice under AS 12.45.090(a) the report shall consider whether the defendant can still be committed under AS 12.45.090. The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for not more than 60 days or such longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist retained by the defendant be permitted to witness and participate in the examination.

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

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

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

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

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

(4) if a notice of intention to rely on the defense of insanity [IRRESPONSIBILITY] has been filed, an opinion as to

the extent, if any, to which the capacity of the defendant to appreciate the nature and quality [WRONGFULNESS] of his conduct [OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW] was impaired at the time of the criminal conduct charged; and

(5) if directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged.

~~(6) if directed by the court, an opinion as to the extent,~~ if any, to which the capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was impaired at the time of the criminal conduct charged.

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

(e) The report of the examination under (a) of this section shall be filed with the clerk of the court, who shall cause copies to be delivered to the district attorney and to counsel for the defendant.

~~*Section 10, AS 12.45.083(d) is repealed.~~

*Section 11. This act takes effect immediately in accordance with AS 01.10.070(c)

SECOND WORK DRAFT FOR
INSANITY DEFENSE AMENDMENTS TO
HCS CS SB 535 (Judiciary)

*Section 1, AS 12.45 is amended by adding a new section to read:

Sec. 12.45.081, INSANITY EXCLUDING RESPONSIBILITY,

(a) In a prosecution for a crime it is an affirmative defense that when the defendant engaged in the criminal conduct he was unable as a result of a mental disease or defect to appreciate the nature and quality of his conduct. The defendant has the burden of establishing the defense by a preponderance of the evidence.

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

(c) A defendant found unable as a result of a mental disease or defect to appreciate the nature and quality of his conduct shall be considered insane.

*Section 2, AS 12.45 is amended by adding a new section to read as follows:

Sec. 12.45.082, GUILTY BUT MENTALLY ILL,

(a) A defendant who, at the time of the commission of a criminal offense, was not insane but was suffering from a mental illness, is not relieved of criminal responsibility

for his conduct, and may be found "guilty but mentally ill." He may not be found "not guilty by reason of insanity."

(b) For purposes of this section, "mental illness" or "mentally ill" means a substantial disorder of thought, mood, or behavior which afflicted a person at the time of the commission of the offense and which impaired the person's judgment, but not to the extent that he was insane under AS 12.45.080.

*Section 3, AS 12.45. is amended to add a new section to read as follows:

Sec. 12.45.082, FORM OF VERDICT WHEN AFFIRMATIVE DEFENSE OF INSANITY IS OFFERED

(a) In all cases in which the defendant raises the affirmative defense of insanity under AS 12.45.082 the jury shall find and the verdict shall state whether the defendant is:

(1) guilty;

(2) not guilty;

(3) not guilty by reason of insanity,

(4) guilty but mentally ill; or

(5) not guilty but mentally ill,

(b) If the case is heard by the court sitting without a jury, the court shall make the finding established in (a) of this section,

*Section 4, AS 12.45.083 is repealed and reenacted to read:

Section 12.45.033, PROCEDURE UPON VERDICT FINDING OF GUILTY BUT MENTALLY ILL

(a) If a defendant is found "guilty but mentally ill" under AS 12.45.082, the court shall

(1) enter the finding of "guilty but mentally ill" as part of the judgment; and

(2) sentence the defendant as provided by law

(b) The Department of Health and Social Services shall provide mental health treatment to a defendant found "guilty but mentally ill." The treatment must continue until the defendant no longer suffers from a mental disease or defect that causes him to be dangerous to the public peace or safety. The department shall determine the course of treatment. If prior to the end of the sentence treatment terminates under this subsection, the defendant shall be required to serve the remainder of his sentence. This subsection does not authorize the department to hold a defendant in custody except as provided by the sentence imposed.

(c) Nothing in this section limits the discretion of the court to order, or of the Department of Health and Social Services to provide psychiatrically indicated treatment for a defendant who is not adjudged "guilty but mentally ill."

(d) For purposes of this section, "mental illness" or "mentally ill" means a disorder of thought, mood, or

behavior which substantially afflicted a person at the time of the commission of the offense and which impaired that person's judgment, but not to the extent that he was insane under AS 12.45.080.

*Section 5. AS 12.45 is amended by adding a new section to read:

Sec. 12.45.084 PROCEDURE UPON VERDICT OF NOT GUILTY BUT MENTALLY ILL. If a defendant is found "not guilty but mentally ill" under AS 12.45.082, the district attorney shall, within 24 hours, file a petition under AS 47.30.700 for a screening investigation of the defendant to determine the need for further treatment of the defendant under the civil commitment laws.

*Section 6. AS 12.45.087 is amended to read as follows:

Sec. 12.45.087 PSYCHIATRIC EXAMINATION. (a) If a defendant has filed a notice of intention to rely on the defense of insanity [MENTAL DISEASE OR DEFECT EXCLUDING RESPONSIBILITY] or there is reason to doubt his fitness to proceed, or there is reason to believe that insanity or mental illness [MENTAL DISEASE OR DEFECT OF THE DEFENDANT] will otherwise become an issue in the cause, the court shall appoint at least [ONE] two disinterested qualified psychiatrists or forensic psychologists certified by the american board of forensic psychology, [OR SHALL REQUEST THE SUPERINTENDENT OF THE ALASKA PSYCHIATRIC INSTITUTE TO DESIGNATE AT LEAST ONE QUALIFIED PSYCHIATRIST, WHICH

DESIGNATION MAY BE OR INCLUDE HIMSELF,] to examine and report upon the mental condition of the defendant. The psychiatrists may be assisted by psychologists of their choosing. If the defendant has filed notice under AS 12.45.090(a) the report shall consider whether the defendant can still be committed under AS 12.45.090. The court may order the defendant to be committed to a secure facility for the purpose of the examination for not more than 60 days or such longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist retained by the defendant be permitted to witness and participate in the examination.

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

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

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

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

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

(4) if a notice of intention to rely on the defense of insanity [IRRESPONSIBILITY] has been filed, an opinion as to

the extent, if any, to which the capacity of the defendant to appreciate the nature and quality [WRONGFULNESS] of his conduct [OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW] was impaired at the time of the criminal conduct charged; and

(5) if directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged.

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

(e) The report of the examination under (a) of this section shall be filed with the clerk of the court, who shall cause copies to be delivered to the district attorney and to counsel for the defendant.

*Section 7, AS 12.45.090 (a) (b) are repealed and reenacted to read:

Sec. 12.45.090. PROCEDURE AFTER RAISING DEFENSE OF INSANITY. (a) At the time the defendant files notice to raise the affirmative defense of insanity under AS 12.45.081, he shall also file notice as to whether, if found "not guilty by reason of insanity", he will assert that he is not presently suffering from any mental illness

that causes him to be dangerous to the public peace or safety.

(b) If the defendant is found not "guilty by reason of insanity" under AS 12.45.080, and he has not filed the notice required under (a) of this section, the court shall immediately commit him to the custody of the commissioner of Health and Social Services.

*Section 8, 12.45.090 (c) - (h) are amended as follows:

(c) If the defendant is found not guilty by reason of insanity under AS 12.45.080 [MENTAL DISEASE OR DEFECT AS EXCLUDING RESPONSIBILITY] and he has filed the notice required under (a) of this section, a hearing shall be held immediately after a verdict of "not guilty by reason of insanity", to determine the necessity of further commitment. That hearing shall be held before the court sitting with[OUT] the same jury, unless the criminal trial was without a jury. [THE SAME TRIER OF FACT AS THE UNDERLYING CHARGE, BUT IF A JURY WAS THE TRIER OF FACT, THE HEARING SHALL BE HELD BEFORE A JURY OF SIX DRAWN FROM THE ORIGINAL JURY IN ACCORDANCE WITH RULES ADOPTED BY THE SUPREME COURT]. At the hearing, the defendant has the burden of proving by clear and convincing [A PREPONDERANCE OF THE] evidence that he is not presently suffering from any mental illness [DISEASE OR DEFECT] that causes him to be dangerous to the public. If the court or jury determines that the defendant has failed to meet his burden of proof, the court shall

order the defendant committed to the custody of the commissioner of health and social services. The verdict shall be unanimous.

(d) A defendant committed under (b) or (c) of this section shall be held in custody for a period of time not to exceed the maximum term of imprisonment for the crime for which the defendant was acquitted under AS 12.45.082(a)(3) or until the insanity [MENTAL DISEASE] is cured or [THE DEFECT IS] corrected as determined at a hearing under (e) of this section.

(e) A defendant committed under (b) or (c) of this section may have the need for his continued commitment under this section determined or redetermined by the court sitting with[OUT] a jury of twelve under a petition filed in the superior court at intervals beginning no sooner than a year [SIX MONTHS] from his initial commitment, and yearly thereafter. The burden and standard of proof at a hearing under this subsection is the same as at a hearing under (c) of this section and the verdict shall be unanimous. [EXCEPT THAT THE DEFENDANT IS NOT ENTITLED TO A JURY UNLESS HE FILES A MOTION FOR A JURY NO LATER THAN 15 DAYS BEFORE THE DATE SET FOR THE HEARING]. A copy of all petitions for release shall be served on the attorney general at Juneau, Alaska. A copy shall also be served upon the attorney of record, if

he is not the attorney general, who represented the state or a municipality at the time the defendant was first committed.

(f) Continued commitment following expiration of the maximum term of imprisonment for the crime for which the defendant was acquitted under AS 12.45.082(a)(3) is governed by the standards pertaining to civil commitments as set out in AS 47.30.735.

(g) A person committed under this section may not be released during the term of commitment except upon court order following a hearing in accordance with (c) of this section. On the grounds that the defendant has been cured of any (THE) mental illness (DISEASE OR DEFECT) that would cause him to be (AND IS NO LONGER) dangerous to the public peace or safety, the state may at any time request the court to hold a hearing to decide if the defendant should be released.

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

*Section 9, AS 12.45.090 is amended to add new sections (i) and (j) as follows:

(i) An order entered under (c) or (e) of this section may be reviewed by the court of appeals on appeal brought by

either the defendant or the state within 40 days from the entry of the order.

(j) In this section,

(1) "mental illness" means any mental condition that increases the propensity of the defendant to be dangerous to the public or safety, however, it is not required that the mental illness be sufficient to exclude criminal responsibility under AS 12.45.080, or that the mental illness presently suffered by the defendant be the same one he suffered at the time of the criminal conduct;

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

*Section 10. This act takes effect immediately in accordance with AS 01.10.070(c)

THIRD WORK DRAFT FOR
INSANITY DEFENSE AMENDMENTS TO
HCS CS SB 535 (Judiciary)

5-19-82
5:00 p.m.

*Section 1, AS 12.45 is amended by adding a new section to read:

Sec. 12.45.080, INSANITY EXCLUDING RESPONSIBILITY,

(a) In a prosecution for a crime it is an affirmative defense that when the defendant engaged in the criminal conduct he was unable as a result of a mental disease or defect to appreciate the nature and quality of his conduct. The defendant has the burden of establishing the defense by a preponderance of the evidence.

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

(c) A defendant found unable as a result of a mental disease or defect to appreciate the nature and quality of his conduct shall be considered insane.

*Section 2, AS 12.45. is amended by adding a new section to read as follows:

Sec. 12.45.081, GUILTY BUT MENTALLY ILL,

(a) A defendant who, at the time of the commission of a criminal offense, was not insane but was suffering from a mental illness, is not relieved of criminal responsibility

for his conduct, and may be found "guilty but mentally ill." He may not be found "not guilty by reason of insanity."

(b) For purposes of this section, "mental illness" or "mentally ill" means a substantial disorder of thought, mood, or behavior which afflicted a person at the time of the commission of the offense and which impaired the person's judgment, but not to the extent that he was insane under AS 12.45.080.

*Section 3, AS 12.45. is amended to add a new section to read as follows:

Sec. 12.45.082, FORM OF VERDICT WHEN AFFIRMATIVE DEFENSE OF INSANITY IS OFFERED

(a) In all cases in which the defendant raises the affirmative defense of insanity under AS 12.45.080 the jury shall find and the verdict shall state whether the defendant is:

(1) guilty;

(2) not guilty;

(3) not guilty by reason of insanity,

(4) guilty but mentally ill; or

(b) If the case is heard by the court sitting without a jury, the court shall make the finding established in (a) of this section,

*Section 4, AS 12.45.083 is repealed and reenacted to read:

Section 12.45.083, PROCEDURE UPON VERDICT FINDING OF GUILTY BUT MENTALLY ILL

(a) If a defendant is found "guilty but mentally ill" under AS 12.45.082, the court shall

(1) enter the finding of "guilty but mentally ill" as part of the judgment; and

(2) sentence the defendant as provided by law

(b) The Department of Health and Social Services shall provide mental health treatment to a defendant found "guilty but mentally ill." The treatment must continue until the defendant no longer suffers from a mental disease or defect that causes him to be dangerous to the public peace or safety. Subject to subsections (c) and (d), the department shall determine the course of treatment.

(c) If treatment terminates under subsection (b), the defendant shall be required to serve the remainder of his sentence.

(d) A defendant receiving treatment under subsection (b) shall not be released on furlough or parole.

(e) If, 30 days before the end of a defendant's sentence, the defendant is still receiving treatment under subsection (b), the Commissioner shall file a petition under AS 47.30.700 for a screening investigation to determine the need for further treatment of the defendant under the civil commitment laws upon the completion of his sentence.

(f) Nothing in this section limits the discretion of the court to order, or of the Department of Health and Social Services to provide psychiatrically indicated treatment for a defendant who is not adjudged "guilty but mentally ill."

(g) For purposes of this section, "mental illness" or "mentally ill" means a disorder of thought, mood, or behavior which substantially afflicted a person at the time of the commission of the offense and which impaired that person's judgment, but not to the extent that he was insane under AS 12.45.080.

*Section 5. AS 12.45 is amended by adding a new section to read:

Sec. 12.45.084 PROCEDURE UPON VERDICT OF NOT GUILTY. If a defendant is found "not guilty" under AS 12.45.082, the district attorney shall, within 24 hours, file a petition under AS 47.30.700 for a screening investigation of the defendant to determine the need for further treatment of the defendant under the civil commitment laws.

*Section 6. AS 12.45.087 is amended to read as follows:

Sec. 12.45.087 PSYCHIATRIC EXAMINATION. (a) If a defendant has filed a notice of intention to rely on the defense of <u>insanity</u> [MENTAL DISEASE OR DEFECT EXCLUDING RESPONSIBILITY] or there is reason to doubt his fitness to proceed, or there is reason to believe that <u>insanity or mental illness</u> [MENTAL DISEASE OR DEFECT OF THE DEFENDANT]

will otherwise become an issue in the cause, the court shall appoint at least [ONE] two disinterested qualified psychiatrists or forensic psychologists certified by the american board of forensic psychology, [OR SHALL REQUEST THE SUPERINTENDENT OF THE ALASKA PSYCHIATRIC INSTITUTE TO DESIGNATE AT LEAST ONE QUALIFIED PSYCHIATRIST, WHICH DESIGNATION MAY BE OR INCLUDE HIMSELF,] to examine and report upon the mental condition of the defendant. The psychiatrists may be assisted by psychologists of their choosing. If the defendant has filed notice under AS 12.45.090(a) the report shall consider whether the defendant can still be committed under AS 12.45.090. The court may order the defendant to be committed to a [HOSPITAL OR OTHER SUITABLE] secure facility for the purpose of the examination for not more than 60 days or such longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist retained by the defendant be permitted to witness and participate in the examination.

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

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

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

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

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

(4) if a notice of intention to rely on the defense of insanity [IRRESPONSIBILITY] has been filed, an opinion as to the extent, if any, to which the capacity of the defendant to appreciate the nature and quality [WRONGFULNESS] of his conduct [OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW] was impaired at the time of the criminal conduct charged; and

(5) if directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged.

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

(e) The report of the examination under (a) of this section shall be filed with the clerk of the court, who shall cause copies to be delivered to the district attorney and to counsel for the defendant.

*Section 7, AS 12.45.090 (a) (b) are repealed and reenacted to read:

Sec. 12.45.090. PROCEDURE AFTER RAISING DEFENSE OF INSANITY. (a) At the time the defendant files notice to raise the affirmative defense of insanity under AS 12.45.081, he shall also file notice as to whether, if found "not guilty by reason of insanity", he will assert that he is not presently suffering from any mental illness that causes him to be dangerous to the public peace or safety.

(b) If the defendant is found not "guilty by reasc of insanity" under AS 12.45.080, and he has not filed the notice required under (a) of this section, the court shall immediately commit him to the custody of the commissioner of Health and Social Services.

*Section 8, 12.45.090 (c) - (h) are amended as follows:

(c) If the defendant is found not guilty by reason of <u>insanity under AS 12.45.080</u> [MENTAL DISEASE OR DEFECT AS EXCLUDING RESPONSIBILITY] and he has filed the notice required under (a) of this section, a hearing shall be held immediately after a verdict [IS RETURNED] <u>of "not guilty by reason of insanity"</u>, to determine the necessity of further commitment. That hearing shall be held before the court sitting with[OUT] <u>the same</u> jury, <u>unless the criminal trial was without a jury.</u> [THE SAME TRIER OF FACT AS THE UNDERLYING CHARGE, BUT IF A JURY WAS THE TRIER OF FACT, THE HEARING

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SHALL BE HELD BEFORE A JURY OF SIX DRAWN FROM THE ORIGINAL JURY IN ACCORDANCE WITH RULES ADOPTED BY THE SUPREME COURT]. At the hearing, the defendant has the burden of proving by clear and convincing [A PREPONDERANCE OF THE] evidence that he is not presently suffering from any mental illness [DISEASE OR DEFECT] that causes him to be dangerous to the public. If the court or jury determines that the defendant has failed to meet his burden of proof, the court shall order the defendant committed to the custody of the commissioner of health and social services. The verdict shall be unanimous.

(d) A defendant committed under (b) or (c) of this section shall be held in custody for a period of time not to exceed the maximum term of imprisonment for the crime for which the defendant was acquitted under AS [12.45.083] 12.45.082(a)(3) or until the insanity [MENTAL DISEASE] is cured or [THE DEFECT IS] corrected as determined at a hearing under (e) of this section.

(e) A defendant committed under (b) or (c) of this section may have the need for his continued [HOSPITALIZATION] commitment under this section determined or redetermined by the court sitting with[OUT] a jury of twelve under a petition filed in the superior court at intervals beginning no sooner than a year [SIX MONTHS] from his initial commitment, and yearly thereafter. The burden and standard of proof at a hearing under this subsection is the same as at a hearing under (c)

of this section and the verdict shall be unanimous. [EXCEPT THAT THE DEFENDANT IS NOT ENTITLED TO A JURY UNLESS HE FILES A MOTION FOR A JURY NO LATER THAN 15 DAYS BEFORE THE DATE SET FOR THE HEARING]. A copy of all petitions for release shall be served on the attorney general at Juneau, Alaska. A copy shall also be served upon the attorney of record, if he is not the attorney general, who represented the state or a municipality at the time the defendant was first committed.

(f) Continued commitment following expiration of the maximum term of imprisonment for the crime for which the defendant was acquitted under AS [12.45.083] 12.45.082(a)(3) is governed by the standards pertaining to civil commitments as set out in AS 47.30.735.

(g) A person committed under this section may not be released during the term of commitment except upon court order following a hearing in accordance with (c) of this section. On the grounds that the defendant has been cured of any (THE) mental illness (DISEASE OR DEFECT) that would cause him to be (AND IS NO LONGER) dangerous to the public peace or safety, the state may at any time request the court to hold a hearing to decide if the defendant should be released.

(h) The commissioner of health and social services or his authorized representative shall submit periodic

written reports to the court on the mental condition of a person committed under this section.

*Section 9, AS 12.45.090 is amended to add new sections (i) and (j) as follows:

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

(j) In this section,

(1) "mental illness" means any mental condition that increases the propensity of the defendant to be dangerous to the public or safety, however, it is not required that the mental illness be sufficient to exclude criminal responsibility under AS 12.45.080, or that the mental illness presently suffered by the defendant be the same one he suffered at the time of the criminal conduct;

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

*Section 10. This act takes effect immediately in accordance with AS 01.10.070(c)

Phillips

FOURTH WORK DRAFT FOR
INSANITY DEFENSE AMENDMENTS TO
HCS CS SB 535 (Judiciary)

5-20-82
5:00 p.m.

*Section 1, AS 12.45 is amended by adding a new section to read:

Sec. 12.45.080, INSANITY EXCLUDING RESPONSIBILITY,

(a) In a prosecution for a crime it is an affirmative defense that when the defendant engaged in the criminal conduct he was unable as a result of a mental disease or defect to appreciate the nature and quality of his conduct. The defendant has the burden of establishing the defense by a preponderance of the evidence.

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

(c) A defendant found unable as a result of a mental disease or defect to appreciate the nature and quality of his conduct shall be considered insane.

*Section 2, AS 12.45. is amended by adding a new section to read as follows:

Sec. 12.45.081, GUILTY BUT MENTALLY ILL,

(a) A defendant who, at the time of the commission of a criminal offense, was not insane but was suffering from a mental illness, is not relieved of criminal responsibility

for his conduct, and may be found "guilty but mentally ill." He may not be found "not guilty by reason of insanity."

(b) For purposes of this section, "mental illness" or "mentally ill" means a substantial disorder of thought, mood, or behavior which afflicted a person at the time of the commission of the offense and which impaired the person's judgment, but not to the extent that he was insane under AS 12.45.080.

*Section 3, AS 12.45. is amended to add a new section to read as follows:

Sec. 12.45.082, FORM OF VERDICT WHEN AFFIRMATIVE DEFENSE OF INSANITY IS OFFERED

(a) In all cases in which the defendant raises the affirmative defense of insanity under AS 12.45.080 the jury shall find and the verdict shall state whether the defendant is:

(1) guilty;

(2) not guilty;

(3) not guilty by reason of insanity,

(4) guilty but mentally ill; or

(b) If the case is heard by the court sitting without a jury, the court shall make the finding established in (a) of this section,

*Section 4, AS 12.45.083 is repealed and reenacted to read:

Section 12.45.083, PROCEDURE UPON VERDICT FINDING OF GUILTY BUT MENTALLY ILL

(a) If a defendant is found "guilty but mentally ill" under AS 12.45.082, the court shall

(1) enter the finding of "guilty but mentally ill" as part of the judgment; and

(2) sentence the defendant as provided by law

(b) The Department of Health and Social Services shall provide mental health treatment to a defendant found "guilty but mentally ill." The treatment must continue until the defendant no longer suffers from a mental disease or defect that causes him to be dangerous to the public peace or safety. Subject to subsections (c) and (d), the department shall determine the course of treatment.

(c) If treatment terminates under subsection (b), the defendant shall be required to serve the remainder of his sentence.

(d) A defendant receiving treatment under subsection (b) shall not be released on furlough or parole.

(e) If, 30 days before the end of a defendant's sentence, the defendant is still receiving treatment under subsection (b), the Commissioner of Health and Social Services shall file a petition under AS 47.30.700 for a screening investigation to determine the need for further treatment of the defendant under the civil commitment laws upon the completion of his sentence.

(f) Nothing in this section limits the discretion of the court to order, or of the Department of Health and Social Services to provide psychiatrically indicated treatment for a defendant who is not adjudged "guilty but mentally ill."

(g) For purposes of this section, "mental illness" or "mentally ill" means a disorder of thought, mood, or behavior which substantially afflicted a person at the time of the commission of the offense and which impaired that person's judgment, but not to the extent that he was insane under AS 12.45.080.

*Section 5. AS 12.45 is amended by adding a new section to read:

Sec. 12.45.084 PROCEDURE UPON VERDICT OF NOT GUILTY. If a defendant is found "not guilty" under AS 12.45.082, the district attorney shall, within 24 hours, file a petition under AS 47.30.700 for a screening investigation of the defendant to determine the need for further treatment of the defendant under the civil commitment laws.

*Section 6. AS 12.45.087 is amended to read as follows:

Sec. 12.45.087 PSYCHIATRIC EXAMINATION. (a) If a defendant has filed a notice of intention to rely on the defense of <u>insanity</u> <u>under AS 12.45.080</u> [MENTAL DISEASE OR DEFECT EXCLUDING RESPONSIBILITY] or there is reason to doubt his fitness to proceed, or there is reason to believe that <u>insanity or mental illness</u> [MENTAL DISEASE OR DEFECT OF THE

DEFENDANT] will otherwise become an issue in the cause, the court shall appoint at least [ONE] two ~~disinterested~~ qualified psychiatrists or forensic psychologists certified by the american board of forensic psychology, [OR SHALL REQUEST THE SUPERINTENDENT OF THE ALASKA PSYCHIATRIC INSTITUTE TO DESIGNATE AT LEAST ONE QUALIFIED PSYCHIATRIST, WHICH DESIGNATION MAY BE OR INCLUDE HIMSELF,] to examine and report upon the mental condition of the defendant. The psychiatrists may be assisted by psychologists of their choosing. If the defendant has filed notice under AS 12.45.090(a) the report shall consider whether the defendant can still be committed under AS 12.45.090. The court may order the defendant to be committed to a [HOSPITAL OR OTHER SUITABLE] secure facility for the purpose of the examination for not more than 60 days or such longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist retained by the defendant be permitted to witness and participate in the examination.

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

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

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

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

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

(4) if a notice of intention to rely on the defense of insanity [IRRESPONSIBILITY] has been filed, an opinion as to the extent, if any, to which the capacity of the defendant to appreciate the nature and quality [WRONGFULNESS] of his conduct [OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW] was impaired at the time of the criminal conduct charged; and

(5) if directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged.

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

(e) The report of the examination under (a) of this section shall be filed with the clerk of the court, who shall cause copies to be delivered to the district attorney and to counsel for the defendant.

(f) For purposes of this section, "mental illness" or "mentally ill" means a substantial disorder of thought,

mood, or behavior which afflicted a person at the time of the commission of the offense and which imparied the person's judgment, but not to the extent that he was insane under AS 12.45.080.

*Section 7, AS 12.45.090 (a) (b) are repealed and reenacted to read:

Sec. 12.45.090. PROCEDURE AFTER RAISING DEFENSE OF INSANITY. (a) At the time the defendant files notice to raise the affirmative defense of insanity under AS 12.45.080, he shall also file notice as to whether, if found "not guilty by reason of insanity", he will assert that he is not presently suffering from any mental illness that causes him to be dangerous to the public peace or safety.

(b) If the defendant is found not "guilty by reason of insanity" under AS 12.45.080, and he has not filed the notice required under (a) of this section, the court shall immediately commit him to the custody of the commissioner of Health and Social Services.

*Section 8, 12.45.090 (c) - (h) are amended as follows:

(c) If the defendant is found not guilty by reason of insanity under AS 12.45.080 [MENTAL DISEASE OR DEFECT AS EXCLUDING RESPONSIBILITY] and he has filed the notice required under (a) of this section, a hearing shall be held immediately after a verdict [IS RETURNED] of "not guilty by reason of insanity", to determine the necessity of further

commitment. That hearing shall be held before the court sitting with[OUT] the same jury, unless the criminal trial was without a jury. [THE SAME TRIER OF FACT AS THE UNDERLYING CHARGE, BUT IF A JURY WAS THE TRIER OF FACT, THE HEARING SHALL BE HELD BEFORE A JURY OF SIX DRAWN FROM THE ORIGINAL JURY IN ACCORDANCE WITH RULES ADOPTED BY THE SUPREME COURT]. At the hearing, the defendant has the burden of proving by clear and convincing [A PREPONDERANCE OF THE] evidence that he is not presently suffering from any mental illness [DISEASE OR DEFECT] that causes him to be dangerous to the public. If the court or jury determines that the defendant has failed to meet his burden of proof, the court shall order the defendant committed to the custody of the commissioner of health and social services. The verdict shall be unanimous.

(d) A defendant committed under (b) or (c) of this section shall be held in custody for a period of time not to exceed the maximum term of imprisonment for the crime for which the defendant was acquitted under AS [12.45.083] 12.45.082(a)(3) or until the insanity [MENTAL DISEASE] is cured or [THE DEFECT IS] corrected as determined at a hearing under (e) of this section.

(e) A defendant committed under (b) or (c) of this section may have the need for his continued [HOSPITALIZATION] commitment under this section determined

or redetermined by the court sitting with[OUT] a jury of twelve under a petition filed in the superior court at intervals beginning no sooner than a year [SIX MONTHS] from his initial commitment, and yearly thereafter. The burden and standard of proof at a hearing under this subsection is the same as at a hearing under (c) of this section and the verdict shall be unanimous. [EXCEPT THAT THE DEFENDANT IS NOT ENTITLED TO A JURY UNLESS HE FILES A MOTION FOR A JURY NO LATER THAN 15 DAYS BEFORE THE DATE SET FOR THE HEARING]. A copy of all petitions for release shall be served on the attorney general at Juneau, Alaska. A copy shall also be served upon the attorney of record, if he is not the attorney general, who represented the state or a municipality at the time the defendant was first committed.

(f) Continued commitment following expiration of the maximum term of imprisonment for the crime for which the defendant was acquitted under AS [12.45.083] 12.45.082(a)(3) is governed by the standards pertaining to civil commitments as set out in AS 47.30.735.

(g) A person committed under this section may not be released during the term of commitment except upon court order following a hearing in accordance with (c) of this section. On the grounds that the defendant has been cured of any (THE) mental illness (DISEASE OR DEFECT) that would cause him to be (AND IS NO LONGER) dangerous to the public