

ALASKA LEGISLATIVE COMMITTEES

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HJ

SB 535

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)

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

5-22-82
1:00 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) 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 if:

(1) less than 30 days remain before the end of the defendant's sentence;

*Public Safety
Dangerous to
Society. Need
Section - here.*

(2) the defendant is still receiving treatment under subsection (b); and

(3) the Commissioner has good cause to believe that the defendant is suffering from a mental illness and as a result is gravely disabled or likely to cause serious harm to himself or others.

(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, except for subsection (e), "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.

(h) For the purposes of subsection (e), "mental illness" has the meaning ascribed to it in AS 47.30.915 (12).

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

Sec. 12.45.084 PROCEDURE UPON VERDICT OF NOT GUILTY.

(a) The District Attorney shall, within 24 hours, file a petition under AS 47.30.700 for a screening investigation of a defendant to determine the need for treatment of that

individual under the civil commitment laws if:

(1) the defendant:

(i) has been found "not guilty" under AS 12.45.082; and

(ii) the verdict has not been based upon a finding that the defendant did not have a culpable mental state under AS 12.45.085;

and;

(2) the District Attorney has good cause to believe that the defendant is suffering from a mental illness and as a result is gravely disabled or likely to cause serious harm to himself or others

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

*Section 6. AS 12.45.085 is amended to read:

Sec. 12.45.085 MENTAL ILLNESS NEGATING CULPABLE MENTAL STATE. (a) Evidence that the defendant suffered from a mental illness is admissible whenever it is relevant to prove that the defendant did or did not have a culpable mental state which is an element of the crime. However, evidence of mental illness which tends to negate a culpable mental state is not admissible unless the defendant, within 10 days of entering his plea, 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.

(b) When the trier of fact finds that all other elements of the crime have been proved but, as a result of a mental illness, there is a reasonable doubt as to the existence of a culpable mental state which is an element of the crime, it shall enter a verdict so specifying. A defendant acquitted under this subsection, and not found guilty of a lesser included offense, shall automatically be considered as if he had been acquitted under AS 12.45.080. The defendant is then subject to the provisions of AS 12.45.090.

(c) If a verdict of not guilty is reached under (b) of this section, the trier of fact shall also consider whether the defendant is guilty of any lesser included offense. If the defendant is convicted of a lesser included offense, the defendant shall be sentenced for that offense and shall automatically be considered guilty but mentally ill under AS 12.45.081. Upon completion of a sentence for a lesser included offense, a hearing shall be held under AS 12.45.090(c) to determine the necessity of further commitment of the defendant, based on the acquittal for the greater charge under (b) of this section. If the defendant is committed under AS 12.45.090(c), he is subject to the provisions of AS 12.45.090(d)(j).

(d) As used in this section, "mental illness" has the meaning ascribed to it in AS 12.45.081.

*Section 7. 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 under AS 12.45.080 [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 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 impaired the person's judgment, but not to the extent that he was insane under AS 12.45.080.

*Section 8, 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 9, 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 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 10, 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 11. This act takes effect immediately in accordance with AS 01.10.070(c)

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

5-25-82
11:00 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 affirmative defense defined in this subsection cannot be raised unless the defendant files a written notice of his intent to rely on the defense within 10 days of entering his plea, or at such later time as the court may for good cause permit. 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.

(d) The affirmative defense established in subsection (a) shall be known as "insanity."

(e) In this section, "mental disease or defect" means a disorder of thought or mood which substantially impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life. "Mental disease or defect" also includes mental retardation, which means a significantly below average general intellectual functioning which impairs a person's ability to adapt to or cope with the ordinary demands of life.

*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 lacked, as a result of a mental disease or defect the substantial capacity either to appreciate the wrongfulness of his conduct to the requirements of law shall be considered "mentally ill." A defendant found "mentally ill" shall not be 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) In this section, "mental disease or defect" means a disorder of thought or mood which substantially impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life. "Mental disease or defect" also includes mental retardation,

which means a significantly below average general intellectual functioning which impairs a person's ability to adapt to or cope with the ordinary demands of life.

*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, work release, or parole.

(e) 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 if:

- (1) less than 30 days remain before the end of the defendant's sentence;
- (2) the defendant is still receiving treatment under subsection (b); and
- (3) the Commissioner has good cause to believe that the defendant is suffering from a mental illness and as a result is gravely disabled or likely to cause serious harm to himself or others.

(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) In this section, "mental disease or defect" means a disorder of thought or mood which substantially impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life. "Mental disease or defect" also includes mental retardation, which means a significantly below average general intellectual functioning which impairs a person's ability to adapt to or cope with the ordinary demands of life.

(h) For the purposes of subsection (e), "mental illness" has the meaning ascribed to it in AS 47.30.915 (12).

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

Sec. 12.45.084 PROCEDURE UPON VERDICT OF NOT GUILTY.

(a) The District Attorney shall, within 24 hours, file a petition under AS 47.30.700 for a screening investigation of a defendant to determine the need for treatment of that individual under the civil commitment laws if:

(1) the defendant:

(i) has been found "not guilty" under AS 12.45.082; and

(ii) the verdict has not been based upon a finding that the defendant did not have a culpable mental state under AS 12.45.085;

and;

(2) the District Attorney has good cause to believe that the defendant is suffering from a mental illness and as a result is gravely disabled or likely to cause serious harm to himself or others

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

*Section 6. AS 12.45.085 is amended to read:

Sec. 12.45.085 MENTAL ILLNESS NEGATING CULPABLE MENTAL STATE. (a) 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 culpable mental state which is an element of the crime. However, evidence of mental disease or defect which tends to negate a culpable mental state is not admissible unless the defendant, within 10 days of entering his plea, 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.

(b) When the trier of fact finds that all other elements of the crime have been proved but, as a result of a mental disease or defect, there is a reasonable doubt as to the existence of a culpable mental state which is an element of the crime, it shall enter a verdict so specifying. A

defendant acquitted under this subsection, and not found guilty of a lesser included offense, shall automatically be considered as if he had been acquitted under AS 12.45.080. The defendant is then subject to the provisions of AS 12.45.090.

(c) If a verdict of not guilty is reached under (b) of this section, the trier of fact shall also consider whether the defendant is guilty of any lesser included offense. If the defendant is convicted of a lesser included offense, the defendant shall be sentenced for that offense and shall automatically be considered guilty but mentally ill under AS 12.45.081. Upon completion of a sentence for a lesser included offense, a hearing shall be held under AS 12.45.090(c) to determine the necessity of further commitment of the defendant, based on the acquittal for the greater charge under (b) of this section. If the defendant is committed under AS 12.45.090(c), he is subject to the provisions of AS 12.45.090(d)(j).

*Section 7. 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 under AS 12.45.080 [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] two 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 psvchiatrists 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 8, 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 9, 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 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 10, 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 11 This act takes effect immediately in accordance with AS 01.10.070(c)

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

5-26-82
11:00 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 affirmative defense defined in this subsection cannot be raised unless the defendant files a written notice of his intent to rely on the defense within 10 days of entering his plea, or at such later time as the court may for good cause permit. 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.

(d) The affirmative defense established in subsection (a) shall be known as "insanity."

(e) In this section, "mental disease or defect" means a disorder of thought or mood which substantially impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life. "Mental disease or defect" also includes mental retardation, which means a significantly below average general intellectual functioning which impairs a person's ability to adapt to or cope with the ordinary demands of life.

*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) In all cases in which the defendant raises the affirmative defense of "insanity" under AS 12.45.080, the defendant may be found "guilty but mentally ill" if the mental disease or defect which afflicted him does not rise to the level of "insanity" under AS 12.45.080. A defendant who, at the time of the commission of a criminal offense was not insane but lacked, as a result of a mental disease or defect the substantial capacity either to appreciate the wrongfulness of his conduct to the requirements of law shall be considered "mentally ill." A defendant found "mentally ill" shall not be relieved of criminal responsibility for his conduct.

(b) In this section, "mental disease or defect" has the meaning ascribed to it in 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, work release, or parole.

(e) 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 if:

- (1) less than 30 days remain before the end of the defendant's sentence;
- (2) the defendant is still receiving treatment under subsection (b); and
- (3) the Commissioner has good cause to believe that the defendant is suffering from a mental illness and as a result is gravely disabled or likely to cause serious harm to himself or others.

(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) In this section, "mental disease or defect" has the meaning ascribed to it in AS 12.45.080.

(h) For the purposes of subsection (e), "mental illness" has the meaning ascribed to it in AS 47.30.915 (12).

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

Sec. 12.45.084 PROCEDURE UPON VERDICT OF NOT GUILTY.

(a) The District Attorney shall, within 24 hours, file a petition under AS 47.30.700 for a screening investigation of a defendant to determine the need for treatment of that individual under the civil commitment laws if:

(1) the defendant:

(i) has been found "not guilty" under AS 12.45.082; and

(ii) the verdict has not been based upon a finding that the defendant did not have a culpable mental state under AS 12.45.085;

and;

(2) the District Attorney has good cause to believe that the defendant is suffering from a mental illness and as a result is gravely disabled or likely to cause serious harm to himself or others

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

*Section 6. AS 12.45.085 is repealed and re-enacted to read:

Sec. 12.45.085 POST-CONVICTION DETERMINATION OF MENTAL ILLNESS.

(a) In cases in which the defendant does not raise the affirmative defense of insanity under AS 12.45.080 and is convicted of a crime, the defendant, the prosecuting attorney, or the court on its own motion may raise the issue of whether the defendant is guilty but mentally ill. A hearing must be held on this issue at or before the sentencing hearing. At the hearing the court shall determine whether the defendant has been shown to be guilty but mentally ill by a preponderance of the evidence presented at the hearing and any evidence relevant to the issue that was presented at trial.

(b) If a court finds that a defendant is guilty but mentally ill as part of the judgment. The court shall sentence the defendant as provided by law.

(c) A defendant determined to be guilty but mentally ill under this section is subject to the provisions of AS 12.45.083(b)-(h).

(d) A defendant convicted of a crime is guilty but mentally ill if, when he engaged in the criminal conduct, he lacked, as a result of a mental disease or defect the

substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.

(e) In this section "mental disease or defect" has the meaning ascribed to it in AS 12.45.080.

*Section 7. AS 12.45.085 is amended to read:

Sec. 12.45.085 MENTAL ILLNESS NEGATING CULPABLE MENTAL STATE. (a) 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 culpable mental state which is an element of the crime. However, evidence of mental disease or defect which tends to negate a culpable mental state is not admissible unless the defendant, within 10 days of entering his plea, 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.

(b) When the trier of fact finds that all other elements of the crime have been proved but, as a result of a mental disease or defect, there is a reasonable doubt as to the existence of a culpable mental state which is an element of the crime, it shall enter a verdict so specifying. A defendant acquitted under this subsection, and not found guilty of a lesser included offense, shall automatically be considered as if he had been acquitted under AS 12.45.080. The defendant is then subject to the provisions of AS 12.45.090.

(c) If a verdict of not guilty is reached under (b) of this section, the trier of fact shall also consider whether the defendant is guilty of any lesser included offense. If the defendant is convicted of a lesser included offense, the defendant shall be sentenced for that offense and shall automatically be considered guilty but mentally ill under AS 12.45.081. Upon completion of a sentence for a lesser included offense, a hearing shall be held under AS 12.45.090(c) to determine the necessity of further commitment of the defendant, based on the acquittal for the greater charge under (b) of this section. If the defendant is committed under AS 12.45.090(c), he is subject to the provisions of AS 12.45.090(d)(j).

*Section 8. 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 under AS 12.45.080 [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} two qualified psvchiatrists 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 9, 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 10, 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 MENTAL DISEASE IS CURED OR THE DEFECT CORRECTED] the defendant is not presently suffering from any mental illness that causes him to be dangerous to the public 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 11, 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 12. This act takes effect immediately in accordance with AS 01.10.070(c)

(20K) - combined
FINAL 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 12.45.081.

*Section 3, AS 12.45.083, is repealed and reenacted to read as follows:

Sec. 12.45.083, 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, is amended by adding a new section to read:

Section 12.45.084, PROCEDURE UPON VERDICT 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 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 12.45.081.

*Section 5. 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 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.

(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 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.

(b) If the defendant is found not "guilty by reason of 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.

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



Hinckley before Judge Barrington D. Parker, as psychiatrist John Hopwood

The Insanity Plea on Trial

John W. Hinckley Jr. is every family's nightmare come to life. He is the child who drifts off into private hells of depression, despair and finally irrevocable disaster, leaving his parents only the bitterness of "perhaps," the futility of "if only." He was raised in a home where success came naturally and opportunity lay ready for the asking. He lacked nothing that carried a price tag. But he had no friends. He imagined a lover, then wandered into fantasies about a movie star he could barely talk to, let alone impress. This was the picture that emerged last week as Hinckley's lawyers began the painful task of trying to convince a jury that he should not be held responsible for shooting the President of the United States.

The case against Hinckley is as clear an example of attempted murder as any jury will ever see on videotape. Bereft of any alibis, his lawyers have chosen to advance what has been called the defense of last resort: insanity. They face heavy odds, for they must lead the jury of five men and seven

women to suppress the evidence they can see and accept the evidence of Hinckley's invisible psyche. The lawyers don't dispute that Hinckley planned the attack, bought special bullets, tracked the President and fired from a shooter's crouch. But he couldn't help it, they insist, for he was responding only to the driving forces of a diseased mind.

Denounced: It is not a propitious time to be making their plea. For even as Hinckley sits stolidly in Room 19 of Washington's Federal District Court, the insanity defense itself is on trial across the nation. What once was routinely regarded as a standard part of any civilized legal system is now denounced in Congress and many state legislatures. One state, Idaho, has abolished the defense completely. Bills in two dozen other states would replace it with a new plea—guilty but mentally ill.

The surprise is that the insanity defense has withstood most of the withering attacks. The criticism of the last decade has been constant, pointed, but often contradictory.

Among the charges: that it spurs crime, frees criminals, relies too much on experts, holds psychiatrists up to ridicule, sends troublemakers to hospitals and defies definition. Some even charge that it hurts the defendants it spares. "The defense is comforting to our conscience but not to the accused," says University of Chicago law Prof. Norval Morris. The defendant ends up with a double stigma—he's bad and he's mad.

In fact, defendants seldom use the defense and rarely succeed. Some of the most publicized killers of our time have tried one form or another of the plea—Jack Ruby, Sirhan Sirhan, John Wayne Gacy (who murdered 33 young boys in Chicago)—but they all failed. "Son of Sam" David Berkowitz, Charles Manson, Mark David Chapman—all colloquially "certifiable"—never even raised it at trial. In all, according to a national study, only about 3,100 persons held in mental hospitals in 1978 had been acquitted of crimes on a plea of insanity.

The struggle is actually a profound con-



Hopper testifies about his former patient

University of Maryland psychiatrist, charted Hinckley's evolution from teen-age failure to "process schizophrenic." Dr. John J. Hopper, a private psychiatrist who treated the family, described the failure of his prescribed kick-in-the-pants program of therapy. And Hinckley's father, weeping openly, tried to explain how a national tragedy had sprung, in his view, from a family that turned its back on a troubled son.

The testimony focused on the six months leading up to the shooting. During this period, the defense contends, Hinckley appeared outwardly the ne'er-do-well son of a prosperous family, when in fact his personality was collapsing. The lawyers argue that Hinckley's illness had been hidden even from Hopper, the Evergreen, Colo., psychiatrist his parents insisted he see. Last week Hopper told the jury that he sized Hinckley up as a rather "typical" socially underdeveloped young man who exaggerated his "obsessions" and other mental problems.

During his seven hours on the witness stand, Hopper seemed to be under almost as much suspicion as his former patient. Not only did his diagnosis seem rather casual in retrospect, but also, the defense lawyers insisted, badly flawed, considering a three-page autobiography Hinckley wrote for the doctor in November 1980. In it he described the period from mid-September to mid-October as "a month of unparalleled emotional exhaustion. My mind was on the breaking point the whole time. A relationship I had dreamed about went absolutely nowhere. My disillusionment with EVERYTHING was complete." (Hinckley was referring to a fall trip to Yale University

where he approached actress Jodie Foster, then a freshman. She rebuffed his advances.) Elsewhere in his essay, Hinckley told the doctor, "I have remained so inactive and reclusive over the past 5 years I have managed to remove myself from the real world."

'Plan': Under questioning by defense lawyer Gregory B. Craig, Hopper conceded what is now obvious—that he did not show "as much concern [for John] as we all realize now that we should have." He persuaded the elder Hinckleys to deal with their son in a firm fashion. When they considered hospitalizing John in mid-December to cure his suspected dependence on Valium, Hopper talked them out of it. John, he said, would become a "mental cripple." Instead, Hopper and the Hinckleys formulated a "plan" to force the youth out of the house by March 30—as it happens, the day he shot Reagan.

Hinckley's parents, particularly his father, clung to Hopper's regimen. But it never seemed to work. When John quit a handyman's job after only a few days of work in February 1981, he simply disappeared. The next time his parents heard from him was in the early-morning hours of March 6. He called from New York, incoherent, broke and hungry, begging for a ticket home. Hopper advised them to let John stew a day in New York

first. They followed the doctor's advice.

Last week John Hinckley Sr. told the jury that forcing his son out of the house was the "greatest mistake" of his life. Testifying after the psychiatrist, he described his last scene with John when his son flew back to Denver from New York on March 7. "On the way to the airport, I prayed that we were doing the right thing," Hinckley began. "His mother couldn't go with me. She couldn't bring herself to do it." He found his son in bad shape. "He was dazed, wiped out. He could hardly walk from the plane." They talked in a waiting room. "I told him how disappointed I was in him, how he had let us down, how he had not followed the plan we had all agreed on, how he left us with no choice but not to take him back again." He handed his son a couple of hundred dollars and suggested he stop at a YMCA.

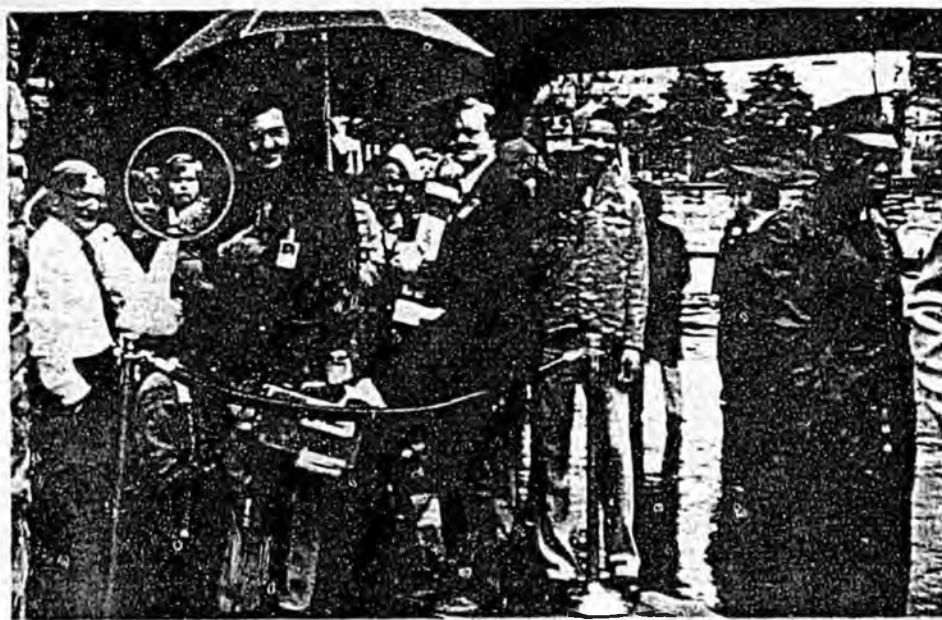
At that point the elder Hinckley, an erect, self-made man, had trouble speaking. "OK, you're on your own. Do whatever you want," were his final words to John. "In looking back on that I'm sure that was the greatest mistake of my life. I am the cause of John's tragedy. We forced him out at a time

*It has been controversial
for years, and now
the case of John
Hinckley Jr. may
fundamentally alter it.*

when he just couldn't cope. I wish to God that I could trade places with him right now." Hinckley began weeping quietly into his handkerchief. His wife was led out of the courtroom sobbing. John Jr. sat rigidly at the defense table and showed no emotion.

Despite the strong impact of Hinckley's testimony, it was fodder for the prosecution. On cross-examination he conceded that he had never heard his son complain about voices in his head or disorientation. If John was so disturbed the prosecution implicitly asked, why had no one close to him seen it? For an answer, the defense turned to its expert on schizophrenia, psychiatrist Carpenter. He told the jury that beneath Hinckley's demeanor of placid failure lay a cauldron of fantasies and obsessions that robbed him of his power to reason.

Carpenter, who has interviewed the defendant for 45 hours since the shooting, traced John's problems back to his adolescence. As a teen-ager, Carpenter said, John began an irreversible withdrawal. He had no friends. Music consumed his youth, yet he always played alone in his room. (His parents heard him perform for the first time last week when lawyers played a tape of a love song he recorded for Foster.) At college he invented a girlfriend as a ploy to get more money from home. Later, Carpenter said, "she became real to him." She was also an



© Al Fury—Outline

Stalking a President: Hinckley waits for Reagan outside the Washington Hilton

article of faith for the elder Hinckleys; they didn't learn she was a ruse until after their son's arrest.

By 1979, Carpenter said, Hinckley could barely separate reality from his own delusions. With no friends, a deteriorating relationship at home and no strong sense of identity, he latched on to the characters in the movie "Taxi Driver." He began collecting guns like the film's protagonist, Travis Bickle. And he became obsessed with Foster, who played the role of a 12-year-old prostitute Bickle rescued in a spasm of violence. He spent the summer of 1980 "despairing and depressed" until he hatched a plan to meet Foster. He told his parents he was enrolling in a writing course at Yale. They gave him \$3,600 and he headed for New Haven and his "magical and extraordinary union." What he found instead was a teen-age celebrity who politely brushed him off. In a tape recording of one phone conversation played for the jury last week, Foster tried to explain why they couldn't meet. "I can't carry on these conversations with people I don't know. It's dangerous, and it's just not done, and it's not fair, and it's rude."

Replied Hinckley: "Well, I'm not dangerous. I promise you that."

'Fantasy World': Getting nowhere with Foster, Hinckley reverted to the Bickle character. He bought more guns. He traveled the country and took target practice. He began stalking Jimmy Carter, and once he even flew to New York looking for young prostitutes who needed help. Hinckley, said Carpenter, spent only a few minutes of each day dealing with reality. The rest of the time he was "in his fantasy world . . . There wasn't an incoherence in his thinking, but there were the inner dictates from his inner world that were guiding him."

Hinckley periodically appeared in Colorado for sessions with therapist Hopper.

Carpenter said the two were "worlds apart." Hinckley did not level with Hopper because the psychiatrist was also treating his parents. At the same time, Hinckley was dropping tantalizing hints that Hopper failed to pursue.

The slide toward madness, Carpenter said, was now precipitous. When Mark David Chapman killed Hinckley's idol, John Lennon, Hinckley identified with both men. One verse he wrote at the time began: "Inside this mind of mine I commit first-page murder. I think of words that would alter history . . . This mind of mine doesn't mind much of anything unless it comes to mind that I'm out of my mind."

On New Year's Eve he recorded a "message to the world" that the jury heard last week. "It's gonna be insanity if I even make it through the first few days . . . Anything that I might do in 1981 would be solely for

Jodie Foster's sake. And I mean that sincerely. I wanna make some kind of statement or something on her behalf . . . All I want her to know is that I love her. I don't want to hurt her or anything. I can't hurt anybody, really. I'm such a coward, really."

When his parents cut him off in early March, Carpenter says, John lost his "last important links with the real world." He checked into a Denver motel as J. Travis. He entertained notions of a mass slaughter at Yale, or hijacking a plane and demanding Foster as the ransom. Then he took a bus to Washington, planning on laying over on his way to New Haven and death. Once in the capital, Carpenter says, Hinckley spotted a copy of Reagan's schedule for the next day and changed his plans. But first he wrote a final love letter to Foster. "I will admit to you that the reason I'm going ahead with this attempt now is because I just cannot wait any longer to impress you," he wrote. "I've got to do something now to make you understand . . ."

Outside the Hilton Hinckley found that it was easy to get close to the Presidential party. As Reagan walked into the hotel, he waved to the crowd; Carpenter said Hinckley took that as an omen. On the way out Reagan waved again. Then Hinckley began shooting.

Inner Drives: At the end of his two days of testimony, Carpenter offered his professional opinion that Hinckley suffers from a serious form of "process," or slowly developing, schizophrenia that got worse as he aged. The disease, Carpenter contended, rendered Hinckley criminal insane: while he knew that shooting Reagan was illegal, Hinckley did not "appreciate" what he was doing. "In his mental state," Carpenter said, "[the victims] were bit players . . . and were not, in and of themselves, important." Hinckley had lost the ability to control himself, and was responding only to his diseased inner drives.

The defense expects to call two more psychiatrists and a psychologist to bolster

Hinckley's father on his way to court, Foster in 'Taxi Driver': Every family's nightmare

Bruce Hoertel

Steve Schapiro—Transworld



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its case. Those experts will describe for the jury still more bizarre fantasies. Then the jury will hear from the prosecution's doctors; once the defense raises the issue of mental health, the government must prove beyond a reasonable doubt that the defendant was sane. The prosecutors plan to rely on several doctors who have testified in other prominent cases. The thrust of their argument will be that for all Hinckley's troubles, he can still be held responsible for his behavior.

The insanity defense has evolved over the centuries as a small but important concept in Western law. The basic idea has always remained constant: a civilized society should not punish a person mentally incapable of controlling his conduct. The modern standard developed in the 1840s after a British jury acquitted Daniel M'Naghten, a deranged man who killed Prime Minister Robert Peel's private secretary in an attempt on Peel's life. The M'Naghten rule, which most U.S. courts adopted, requires, in effect, that the defendant must not have understood right from wrong when he committed the act. Over the next century many states added "irresistible impulse" as a second reason for absolving a defendant from a crime.

Legal Morass: In the 1950s, however, as Harvard's Alan Stone wryly recalls, the great modern romance between law and psychiatry began. Nowhere was the fervor as ardent as in Washington, where U.S. Court of Appeals Judge David Bazelon created the *Durham* rule. This controversial doctrine greatly broadened the grounds for an insanity plea: it covered defendants who could prove that their crimes were a "product" of a mental disease or defect. Bazelon invited psychiatrists into the courts and optimistically predicted a new world of jurisprudence. Instead, the *Durham* rule produced a legal morass. Critics charged that psychiatrists dominated trials and that their evidence confused more than it clarified. Defendants were tempted to feign mental illness. One doctor practicing in Washington said that hospital wards soon filled up with "the sick and the slick." Ten years ago the appeals court overruled *Durham* and turned to the narrower test Hinckley's lawyers must satisfy, a modern fusion of the M'Naghten and impulse tests.

Because of the notoriety surrounding cases like Hinckley's, the public has an exaggerated notion both of who uses the insanity defense and who gets away with it. In California only 259 defendants out of 52,000

convicted felons successfully pleaded not guilty by reason of insanity in 1980. Last year Bridgewater State Hospital, Massachusetts' maximum-security institute for criminal insane males, examined about 500 men for their competency to stand trial. Many had been charged with minor offenses, such as refusing to pay a highway toll, and more than 100 had been admitted for vagrancy. "When the public hears 'insanity defense,' it tends to think of the chronically psychotic, the kooks of the world," says Dr. Robert A. Fein, director of Bridgewater's psychiatric-rehabilitation program. "But most of these individuals aren't psychotic. They just can't make it in society and the judge doesn't want to put them in jail."

In many cases insanity is a plea of last resort. "The stronger the evidence and the more severe the penalty, the greater the likelihood of an insanity defense," says District Attorney Cal Dunlap of Reno, Nev. In 1977 an Indianapolis man named Anthony

their house. He had a record of cruelty to animals. On the last day of the trial he wore lipstick and rouge to court. But the jury found him sane and convicted him; he was sentenced to 40 years in prison. In a more macabre case, Sacramento's "vampire killer," Richard Chase, murdered six people in the winter of 1977 and drank the blood of several of his victims. "He was as far out as you can get," says Ronald Markman, a forensic psychiatrist in Los Angeles. Nevertheless, a jury found Chase sane and sentenced him to death (he later committed suicide in San Quentin). "Juries do not tend to buy insanity in multiple-murder cases," says Markman. "They do in cases that do not involve social outrage. For killing a wife and kids, insanity may be okay. But not for killing a dozen neighbors." As John Gaffney, a Boston attorney, says: "A lot of truly insane people have been convicted. The juries see that these nuts have killed. They're afraid that they will get out and kill again."

Incompetent: Adding to those fears are the "deinstitutionalization" policies of the nation's mental hospitals. Twenty years ago, before the widespread use of psychotropic drugs, the criminal insane were usually incompetent to stand trial; they were locked up for life in mental institutions. But in 1972 the Supreme Court ruled that defendants found incompetent to stand trial because of mental illness could not be held interminably; the rule of thumb now is to try or release these patients within eighteen months. At the same time civil libertarians won court judgments that freed nondangerous patients who weren't receiving treatment. The difficulty, says Dr. Stanley Portnow, president of the American Academy of Psychiatry and the Law, is that "we don't have very good data on which to predict dangerousness."

In some states the combination of new law and new therapeutic practice set mental patients free too quickly for the public's taste. During the 1970s in Michigan, 124 of 223 criminal insane defendants were released after a 60-day hospital stay. Inevitably, the revolving door occasionally leads to tragedy. In Georgia a Savannah man was twice released from hospitals after two juries found him insane. After he was sprung the last time, he walked into a hotel lounge and killed his wife and two bystanders.

As a result of cases like that, New York now insists that a judge approve the release of all criminal insane patients from mental hospitals; and consequently, patients there spend about as much time in hospitals as comparable felons do in prison. Other states have gone much further, calling into



Nineteenth-century cartoon: *The slick join the sick*

Kiritsis strapped a shotgun to the head of the mortgage banker who planned to foreclose on Kiritsis's real-estate project. It was a scene flashed on television screens across the nation. Kiritsis was found not guilty of kidnapping by reason of insanity, and today he remains in the hospital ward of the Indiana State Reformatory at Pendleton. In an interview last week Kiritsis said he regards himself as a "political prisoner."

Even when a defendant seems certifiably insane, juries are often reluctant to acquit, particularly if the crime is a heinous one. A few years ago Houston police arrested 16-year-old Calvin Hopkins for killing a 92-year-old woman. Hopkins obviously had problems. His mother dressed him in her clothes and insisted that he kiss the walls of

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question the premise that only people who commit crimes with "blameworthy minds" can be punished. Michigan, Indiana, Illinois and Georgia, for instance, have come up with a new verdict: "guilty but mentally ill." Typically, a judge sentences a defendant found guilty but mentally ill exactly as he does a sane defendant found guilty of the same offense. The intent is for a convict to start out his term in a hospital and be transferred to a prison after treatment. In one Michigan study, however, more than 75 percent of convicts went straight to prison and received no treatment. Most of the others had only an occasional visit from a corrections-department psychiatrist. "Guilty but mentally ill is a fraud and a sham," says Bruce Ennis, former national legal director of the ACLU, and now a lawyer in private practice. "It has no

consequence other than straight guilty."

Idaho has taken the boldest step against the insanity defense, wiping it off the state's statutes, effective July 1. The new law does not ban all evidence of mental illness. A defendant can still argue he was so sick that he literally didn't know what he was doing—that he thought he was squeezing lemons while he was strangling someone. But this is a far more stringent test than "the capacity to appreciate," and Idaho has thus ruled out arcane psychiatric debates over what constitutes mental illness. Chicago's P. J. Morris supports Idaho's approach. "The insanity defense is witches and warlocks, ritual and liturgy," he says. Morris argues that the only proper issues in a case like Hinckley's are whether the defendant intended to shoot someone, and what kind of treatment he should get.

Even in California, traditionally one of the states most sympathetic to using psy-

chiatrists in court, the defense has run into trouble. Since the 1950s California has allowed a plea of "diminished capacity," a variation of the insanity defense that comes into play if the defendant lacks the ability to "meaningfully premeditate the crime." A defendant who makes his case does not go free, but he is convicted of a lesser offense—manslaughter instead of murder. Popular support for diminished capacity was suddenly dented in 1979 when it became known as "the Twinkie defense." At his trial, San Francisco Mayor George Dianne and city supervisor Harrison White argued that his mental faculties had been impaired by a steady diet of junk food. After the jury found him guilty of manslaughter, angry crowds damaged San Francisco's city hall. Last session the California State Legislature thought it had repealed the rule. But prosecutors say the poorly worded new statute has only

The Case for the Victim

As expert witnesses debate John Hinckley's sanity in a Washington courtroom, psychiatrist Willard Gaylin will follow the testimony from a safe distance in his Hastings, N.Y., office. Gaylin, who refuses to testify in criminal cases, has nothing but contempt for the current use of the insanity defense. "It has been degraded to a point of professional embarrassment," he writes in a book to be published next week.

Gaylin makes his case by telling the harrowing story of one crime and punishment. In the early morning hours of July 7, 1977, Richard Herrin killed his college girlfriend, Bonnie Joan Garland, while she was asleep at her parents' home in Scarsdale, N.Y. Richard and Bonnie were students at Yale; he had been recruited from the Los Angeles barrio; she was the product of a fashionable education at the Madeira School in Virginia. They were lovers for three years, but when Bonnie wanted more freedom, Richard bludgeoned her with a claw hammer until her head, he said, "broke open like a watermelon." Smearing Bonnie's blood, Herrin turned himself in to a priest and then to the police. The Roman Catholic community at Yale immediately rallied around him with financial and legal assistance. Herrin, who pleaded not guilty by reason of insanity, was convicted of manslaughter performed under extreme emotional duress. A judge sentenced him to prison for a minimum of eight years.

Gaylin's account is partly a story of how the criminal "usurps the compassion that is justly his victim's due." Except in the Garland family, he writes, "more tears have since been shed for the killer than for his victim." The book also explores the uneasy alliance between law and psychiatry. The trouble, Gaylin says, is that each discipline has its own peculiar—and conflicting—field of vision. The law rests on the notion of free choice and individu-

al responsibility. But modern psychiatry is the province of determinism. "All acts—healthy, sick or not-sure-which—share one property," writes Gaylin. "They are predetermined."

Gaylin has little use for most psychiatrists who serve as expert witnesses. "If you drew up a list of the 50, 100 or 10,000 most prominent psychiatrists in the country," he said in an interview, "the doctors that lawyers use would not be on the list." Too many of these witnesses become advocates, he says, and that means abandoning their proper roles. "To be a physician and advocate, to see ambiguity everywhere and feel committed to [express] certitude will inevitably undermine the integrity of [the witness] and confound the purposes of justice," he concludes. To make matters worse, lawyers vary widely in their abilities to use a psychiatrist skillfully. At Herrin's trial, Gaylin writes, the prosecutor was so concerned with rebutting the insanity plea that he overlooked testimony from one of his own witnesses that while Herrin was extremely disturbed at the time of the killing, he was not ill enough to be absolved of responsibility for it. The jury didn't miss the point; it used that diagnosis to find Herrin guilty of manslaughter.

Blame: Gaylin did not consider that verdict inappropriate, and he remains convinced of the need for an insanity defense to "excuse those truly not responsible." But he worries that, in Herrin's case, the perception of the verdict was unacceptable and dangerous. To much of the public, it was just another example of a criminal beating the system. Enough of those, Gaylin fears, and the system will collapse. The blame lies not just with wayward courts. Gaylin also attacks intellectuals who, he believes, have devalued punishment in their preoccupation with the rights of the individual. "Certain crimes demand public censure," he writes. "The state must tell the Garlands, their friends and those of us who are parents of daughters that it abhors that which was done." Sometimes, in short, righteousness demands punishment.



Tony Hollo—NEWSWEEK

Garland, Herrin: "Certain crimes demand public censure."

*"The Killing of Bonnie Garland: A Question of Justice." 366 pages. Simon and Schuster. \$16.50



John Blair

Gunman Kiritsis: A 'political prisoner'?

further confused the issue. Voters in California will have a chance to clarify the matter on June 8. One proposition on the primary ballot is a victim's bill of rights that would abolish the diminished-capacity defense.

The case of Maine's David Fleming illustrates the tangled nature of deciding who is sane and who isn't. In 1974 Fleming was judged not guilty by reason of insanity for shooting to death his girlfriend and their child. Fleming had no previous history of mental illness, but defense psychiatrists showed him to be a paranoid schizophrenic, and he was sent to the Bangor Mental Health Institute. Fleming escaped twice from the hospital; he was captured each time, and he has since been convicted for the escapes and sentenced to serve five years in prison when he gets out of the hospital, where he has been committed indefinitely. But if Fleming is insane, how can he be convicted of the escapes, since guilt implies sanity? The answer, says James Erwin, Maine's assistant attorney general, is that Fleming's criminal conduct—his two escapes—has nothing to do with his mental disease. Erwin uses another case to illustrate his point. "Say a man murders his wife, then, fleeing from the scene, murders a policeman. He can be found insane for the first killing, but sane for the second, for the second killing is not directly connected to his mental disease."

Boost: For all the criticism directed against the insanity defense, the great weight of scholarly opinion favors its retention. It recently received a boost from a preliminary report by an American Bar Association panel now reviewing the issue. The committee, which voted to retain the defense, rejected such new schemes as guilty but mentally ill. "The defense of mental disability has been a traditional one in every society for as long as we can remember," says Terence F. MacCarthy, chairman of the insanity-defense task force. "Tradition-



John Storey—San Francisco Chronicle

White in custody: The 'Twinkie' defense



David Harris—Newworld

Berkowitz: Juries don't like mass murderers

ally, crime involves some element of blameworthiness, and we're not going to hold people responsible for a crime if they don't have this blameworthiness."

Richard J. Bonnie, director of the Institute of Law, Psychiatry and Public Policy at the University of Virginia and a supporter of the insanity defense, nevertheless thinks minor modifications are in order. He would stop acquitting persons who claim to have been "compelled" toward crime. "The risks are greatest when the experts and the jury are asked to speculate whether the defendant had the capacity to 'control' himself," says Bonnie. "Many crimes are committed by persons who are not acting 'normally' . . . but that is not what the law means, or should mean by insanity."

Others want to limit the role of expert witnesses at trials. Some psychiatrists for the defense see insanity wherever they look, and juries tend to forget that psychiatry is as much an art as a science. "Psychiatric testimony is so unreliable and open for sale to the highest bidder that it's a national scandal," says Stanford University law Prof. John Kaplan. Jack Litman, the New York attorney who defended Richard Herrin in Bonnie Garland's case (box), says he is careful not to use expert witnesses who have become identified with either the prosecu-

tion or the defense. For Herrin's defense Litman used a Yale psychiatrist whose name was not well known to him. "The first questions I ask [the prosecution expert]," he says, "are 'How often have you testified? And for which side?' I can destroy a prosecution psychiatrist by bringing out that he testifies only for prosecutive cases."

The insanity defense is not without its ironies, as an acquittal of Hinckley would graphically demonstrate. If the jury found him not guilty by reason of insanity, he would most likely be committed to St. Elizabeth's Hospital in Washington. Once he was there, his attorneys could ask that he be released because he was no longer mentally ill or dangerous. As proof they could cite the testimony of the prosecution's experts at the trial. To keep Hinckley institutionalized, government lawyers would be in the anomalous position of having to disown their own witnesses and turn instead to the defense's experts who swore that Hinckley was mentally ill.

Compassion: In large degree, the future of the insanity defense may rest on the outcome of the Hinckley case. An acquittal would undoubtedly spur new efforts for change and abolition; many would find it unthinkable for a Presidential assailant to go unpunished. But if the public perceived that Hinckley was convicted despite overwhelming evidence of illness, the defense would be widely viewed as inadequate to protect the very people who need it. Either result would be a blow to the insanity-defense concept—a development that legal scholars would deplore. For, as New York forensic psychologist Thomas Litwack suggests, that legal tradition is one of the justice system's reminders that compassion and mercy are high values in American society.

ARIC PRESS with DIANE CAMPER in Washington, MARTIN KASINDORF in Los Angeles, PEGGY CLAUSEN in New York, SYLVESTER MONROE in Chicago, DANIEL SHAPIRO in Houston and JOHN TAYLOR in Boston



Insanity and Hinckley and the administration of justice

By Patrick J. Buchanan

Washington — The defense of John B. Hinckley Jr. — would-be assassin of Ronald Reagan — ended appropriately, with Judge Garrison D. Parker Jr. sending the jury off to the movies. The feature film was "Taxi Driver," about a violent character, infatuated with a 12-year-old hooker (played by Jodie Foster), who stalks a presidential candidate. The flick was the piece de resistance in the grand tour of the mind of John B. Hinckley Jr., as reconstructed for us at the time of the shooting by defense lawyers and psychiatrists on the payroll of John B. Hinckley Sr.

As the defense rested and the jury departed for the weekend, the judge admonished jurors against reading or reviewing reports on the trial, lest they be influenced by something other than the relevant and admissible testimony to which they had been witness.

"This is serious business and I have to have you in a serious frame of mind. This is an administration of justice."

PERHAPS THE JUDGE, known to take himself more seriously than others, believes the "administration of justice" is the correct phrase to describe the bur-

lesque of a criminal trial ongoing in his courtroom. Others are laughing cynically.

For a month now, the defense has been dishing up extracts of John B. Hinckley's collected works — poems and fragments of poems he has written, little mash notes to Jodie, letters, even tapes and transcripts of phone calls with John B. warbling out his love in song.

"Expert psychiatric witnesses" have been summoned and sworn to interpret for us, with all the gravity of Talmudic scholars, the meaning of this literary opus, to tell us of hours in deep conversation with young Hinckley, to repeat verbatim what he said.

BUT THERE IS one person for whom this jurisprudential travesty is supreme triumph: John B. Hinckley Jr.

For John B. Jr. was, and is, a wimp, the runt of the Hinckley litter, a gutless little failure at everything he attempted, outclassed and outperformed by his brother and sister, an embarrassment and a heartbreak to his parents, a free-loader, a nerd. Yet, look at him now — smirking in the courtroom.

Everywhere he goes, he is guarded by marshals and police. Television cameras trace his mo-

vements. A horde of reporters peers constantly to catch his every expression. Was that anger, rage, pleasure, puzzlement he showed there? His dumb little poems reach an audience that would be the envy of a Robert Frost.

His love for Jodie, the stuff of legend, will soon be the stuff of legend. She will never be able to escape him; they are linked forever. Mommy and Daddy, who got weary of carrying the shiftless little bum and finally booted his miserable fanny out of the house, look at them now! Weeping, publicly blaming themselves for John's situation, admitting they were wrong, doting over him like a couple of hens. James Brady may be crippled for life; who cares? It is the baby face of John B. Hinckley Jr. that looks out from the cover of Newsweek. The entire nation is learning how he did it; the world, it seems, wants to know what was in the mind of John B. Hinckley Jr. Prosecutors of the United States government are waging a landmark legal struggle to convict him, while attorneys from one of Washington's most prestigious firms and "expert psychiatric witnesses," who find him an interesting historic figure, are battling for his freedom.

Proposed revisions for CSSB 535(Jud) am:

amendments voted down in House Judiciary & Finance Committee

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

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

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

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

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

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

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

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

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

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

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

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

1 * Sec. ⁶ AS 12.45.085 is amended to read:

2 AS 12.45.085. MENTAL ILLNESS NEGATING CULPABLE MENTAL STATE. (a)
3 Evidence that the defendant suffered from a mental illness is admissible
4 whenever it is relevant to prove that the defendant did or did not have
5 a culpable mental state which is an element of the crime. However,
6 evidence of mental illness which tends to negate a culpable mental state
7 is not admissible unless the defendant, within 10 days of entering his
8 plea, or at such later time as the court may for good cause permit,
9 files a written notice of his intent to rely on that defense.

10 (b) When the trier of fact finds that all other elements of the
11 crime have been proved but, as a result of a mental illness, there is a
12 reasonable doubt as to the existence of a culpable mental state which is
13 an element of the crime, it shall enter a verdict so specifying. A
14 defendant acquitted under this subsection, and not found guilty of a
15 lesser included offense, shall automatically be considered as if he had
16 been acquitted under AS 12.45.080. The defendant is then subject to
17 the provisions of AS 12.45.090.

18 (c) If a verdict of not guilty is reached under (b) of this section,
19 the trier of fact shall also consider whether the defendant is guilty of
20 any lesser included offense. If the defendant is convicted of a lesser
21 included offense, the defendant shall be sentenced for that offense and
22 shall automatically be considered guilty but mentally ill under AS 12.-
23 45.080. Upon completion of a sentence for a lesser included offense, a
24 hearing shall be held under AS 12.45.090(c) to determine the necessity
25 of further commitment of the defendant, based on the acquittal for the
26 greater charge under (b) of this section. If the defendant is committed
27 under AS 12.45.090(c), he is subject to the provisions of AS 12.45.090(d)-
28 (j).

29 (d) As used in this section, "mental illness" has the meaning
ascribed to it in AS 12.45.081.

Law bars defendant's plea of mental illness

By QUANE KENYON
The Associated Press

4-3-82
News

BOISE, Idaho — Gov. John Evans signed into law Friday a bill eliminating the plea of mental illness as a defense in criminal cases.

The bill, which according to its sponsors is the first such legislation enacted in the nation since the 1930s, was passed by the Legislature last week.

Evans signed the bill without comment. The state Mental Health Association had been urging the governor to veto the legislation, claiming it didn't adequately protect the rights of the mentally ill.

"This bill should help sort out the frustrations people

have had about defendants using mental illness as a defense," said Attorney General David Leroy, who prepared the bill. "And I think it will better protect the rights of the mentally ill in criminal matters."

The law, which takes effect July 1, says mental illness or defect may not be used as a defense in criminal cases. Instead, a trial would be held on guilt or innocence.

If a defendant is found guilty, the judge would consider mental illness in sentencing. The law says a judge may order psychiatric examination to determine if a de-

See Back Page, IDAHO

Idaho bans use of mental illness plea

Continued from Page A-1

defendant is capable of understanding the trial and to aid in his defense.

Leroy said three states in the 1930s outlawed mental illness as a defense in criminal cases, but each law was overturned by the courts.

"Those were simplistic laws. I believe we have fully protected the basic principles of fairness, the right to confront an accuser and for a defendant to participate fully," Leroy said.

Both House and Senate in the Idaho Legislature passed the bill overwhelmingly. "It's our chance to do some pioneering in an area where everyone agrees we need some reform," said sponsor Rep. Gary Montgomery, R-Boise.

An opponent of the bill, Rep. Pam Bengson, said it should not also apply to men-

tally ill people who commit non-violent crimes. "I'm all for law and order, but I really question whether this might be going too far," said Bengson, R-Boise.

The bill says that if a

person convicted of a crime is ordered to undergo treatment for mental illness, he or she still would have to serve the rest of a prison term after treatment, but would get credit for the time in a mental health facility.

JAY S. HAMMOND, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES
OFFICE OF THE COMMISSIONER

POUCH H 01
JUNEAU, ALASKA 99811
PHONE: 465-3030

DOCUMENT NO. 142-82

April 13, 1982

The Honorable Ramona L. Barnes
Representative
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Barnes:

We wish to bring to your attention an inconsistency in the Alaska State Statutes which directly impacts the operation of our Department.

The Alaska State Legislature in 1978 passed a substantial revision of the criminal code in the Alaska Statutes. At that time, the penalties for fraud in public assistance problems were not specifically addressed since they were contained in Title 47 (Welfare, Social Services, and Institutions), rather than in Title 11 (Criminal Code).

The penalties for fraud in public assistance programs in Title 47 do not match those for fraud in similar financial transactions contained in Title 11. For example, fraud of \$500 of public assistance benefits in Title 47 has a misdemeanor penalty while similar behavior covered under Title 11 would be categorized as a felony. We believe this to be inequitable and have enclosed drafted language to correct that deficiency. The enclosed draft bill repeals the current penalties in Title 47 to permit these fraudulent acts in public assistance programs to be addressed under the Title 11 provisions.

We anticipate no additional cost to the department, including our Division of Adult Corrections, if this bill were passed into law. We would welcome the opportunity to discuss this further with you, if you have additional questions or comments.

We appreciate your interest in this matter.

Sincerely,



Helen D. Beirne
Commissioner

Enclosure

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Proposed Amendment to CSSB 535
Title An Act relating to fraud & collections in Public Asst. Programs
Requested by Commissioner's Office Date February 11, 1982

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

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	**	**	**	**	**	**

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

Statistical information furnished by the Fraud Investigation Section, Department of Health and Social Services shows an average of four cases per year over the last three years of welfare fraud referred to the District Attorney's Office for prosecution. These cases, for the most part, would fall into the Class C felony and Class A misdemeanor classifications. These cases are generally first offenses. Therefore, there would be little jail time served, based on historical data, and this could be absorbed by the Division of Adult Corrections.

** It cannot be predicted whether or not the more restrictive limits for felony offenses would result in a greater number of cases referred to the District Attorney for prosecution

IV. DATE February 11, 1982 PREPARED BY Roger C. Lange
AGENCY Division of Adult Corrections
Original: Legislative Finance PHONE 465-3376
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

Preliminary Results
of
Survey of 50 State
Fraud in Public Assistance
Programs Statutes

I. States Responding to Survey - 26

Alabama	New Hampshire
Arizona	New Mexico
Arkansas	North Carolina
Connecticut	North Dakota
Delaware	South Carolina
Georgia	South Dakota
Hawaii	Virginia
Idaho	West Virginia
Kansas	Wisconsin
Maryland	Wyoming
Massachusetts	
Michigan	
Minnesota	
Missouri	
Nebraska	
Nevada	

*Also, District of Columbia responded to the inquiry.

II. Dollar Threshold at Which Felony Penalties for Fraud in Public Assistance Programs are Established.

Over \$100 - 6 states (Arizona, Arkansas, Kansas, Nevada, New Hampshire, New Mexico)

Over \$150 - 3 states (Idaho, Missouri, Minnesota)

Over \$200 - 2 states (Hawaii, South Dakota)

Over \$300 - 1 state (Maryland)

Over \$500 - 5 states (Georgia, Michigan, West Virginia, Wisconsin, Nebraska)

Felony and amount listed - 2 states (Oregon - provider fraud, Virginia)

Summary

Total with Felony	= 19
Total with no Felony Penalties	= 3
No Information	= 4

III. Interesting Provisions in Statute.

- A. Alabama uses its state general misappropriations of public funds to prosecute fraud cases in public assistance. Some states have a fraud in public assistance statutes fraud program in lieu of specific fraud statutes for each assistance program. If states chose to highlight programs in its fraud statutes, Food Stamps and Medicaid are the programs most often highlighted. Specific Medicaid issues addressed included:
 - 1. Suspension of providers,
 - 2. Cancelling of provider agreements with individual or facility up to 5 years,
 - 3. Bribes and kickbacks,
 - 4. Failure to provide department with later received payments from third parties,
 - 5. Submitting false claims.
- B. Some states have stricter penalties for counterfeiting food coupons or ID material. Other states provide strict penalties to providers or public assistance workers convicted of fraud or misappropriation of public funds.
- C. Most state statutes provide for full restitution. Some additionally charge the individual penalties ranging from 2 to 3 times the amount of the monies misappropriated plus an interest charge ranging from 5% per year to 1 1/2% per month.
- D. Connecticut provides for a general state subrogation statute applying for claims paid by state, not just medical assistance ones. Hawaii's subrogate statute covers both medical and burial claims paid by the state.
- E. Nevada has in statute a rebuttal provision that if overpayment occurred due to client error on three or more occasions, fraud exists.
- F. Michigan and Wisconsin statutes address fraud in certification of facilities for Medicaid payment process to cover situations where the administrator gave material false statements in order to qualify for facility certification.

IV. Other Issues to Consider in Drafting a Fraud in Public Assistance Statute.

- A. Fraudulent conveyance of property to qualify for aid.
- B. Recovery of payments from responsible relatives or individual's estate.
- C. Access to records (especially confidential medical records) needed to prosecute fraud cases and how to handle cases if provider fails to keep adequate records. (In one state, this is a felony if provider tried to obstruct fraud investigation by destroying or not keeping adequate records.)

- D. Misappropriation of public assistance by staff is in some states a felony or minimum grounds for immediate dismissal of the employee. At least one state requires staff to report possible fraud incidents to supervisors and penalties (loss of job or prosecution) may result for the employee's failure to comply.
- E. Requirement for notification of change in status for public assistance programs is in some states a misdemeanor, in others it may be a felony depending on how much aid received as result.
- F. Procedures for administrative fraud hearings (similar to Fair Hearing) as a preliminary procedure to court action.

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 898

Title "An Act relating to the insanity defense"

Requested by House Judiciary

Date May 15, 1982

II. FISCAL DETAIL

Agency Affected Health and Social Services

Program Category Affected Offender Confinement, Reformation & Supervision

BRU, Program, Or Subprogram(s) Affected Adult Corrections

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

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		627.6	1,151.3	1,231.8	1,318.1	1,410.3
200 TRAVEL		11.7	21.8	23.8	25.9	28.2
300 CONTRACTUAL		248.1	463.7	505.4	550.9	600.5
400 COMMODITIES		49.6	92.7	101.0	110.1	120.0
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		937.0	1,729.5	1,862.0	2,005.0	2,159.0

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND		937.0	1,729.5	1,862.0	2,005.0	2,159.0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

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

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

A. Assumptions

1. All persons with mental illnesses who also are charged with criminal offenses are being housed either at Alaska Psychiatric Institute or within one of the state's correctional centers. Therefore, no additional beds will be needed if this legislation is enacted.
2. Persons in pre-trial status requiring psychiatric evaluation and observation be placed at the Anchorage Pre-trial Facility. The anticipated opening date is January 1, 1983, therefore, seven month funding is identified for this program component, allowing for facility familiarization and training. This will be a 36 bed mental health unit as an integral program within this facility.

IV. DATE May 20, 1982

PREPARED BY Roger C. Lodge

AGENCY Division of Adult Corrections

Original: Legislative Finance

PHONE 465-3376

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

B. Expenditures

1. Personal Services

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

The positions, are as follows:

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

Of the 24 positions, 7 are included in the FY 1983 budget request for Alaska Psychiatric Institute. These positions are:

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

These positions will be transferred to the Anchorage Pre-trial Facility.

2. Travel

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

3. Contractual

Contractual funds are requested to provide psychiatric services to inmates found guilty but mentally ill. This will permit an average of 36 hours of psychiatric medical treatment per month in each of the states correctional centers.

4. Commodities

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

5. Equipment

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

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

Personal Services	-7%
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Other expenditure categories	-9%
------------------------------	-----

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. SB898
 Title "An Act relating to the insanity defense..."
 Requested by _____ Date _____

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

EXPENDITURES (Thousands of Dollars)

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

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	-0-	(132.8)	(243.6)	(260.6)	(278.9)	(298.4)
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME	-0-	(7)	(7)	(7)	(7)	(7)
PART TIME						
TEMPORARY						

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

A. Assumptions

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

con't

IV. DATE 5/21/82

FORWARDED BY Gary Shaeffer
 DIVISION OF Division of Mental Health & DD
 PHONE 465-3370

Original: Leg. Review Unit
 cc: Leg. and Executive Staff
 Prime Sponsor (if not Legislator Name)

53-001 (REV. 12/81)

[Handwritten Signature]
 JCC

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

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

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

II. FISCAL DETAIL

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

EXPENDITURES (Thousands of Dollars)

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

FUNDING (Thousands of Dollars)

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

POSITIONS

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

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

A. Bed Space estimates:

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

IV. DATE April 15, 1982

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

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

PHONE 465-3376

Sections 1 and 2: Multiple Deaths

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

====

Section 4: Joyriding - Second Offense

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

===

Section 11: Multiple Offenses, Consecutive Sentencing

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

==

Section 13: First Offense Felony with Firearm

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

Section 15: Prior Conviction within past 10 years

The addition of 3 years to the retroactive period during which a convicted offender is in jeopardy changes from 7 to 10 years the span of vulnerability. Since the frequency of recidivism is a monotonically decreasing function we believe that the effect of this provision will be moderate at most. Our investigations have shown that more than 80% of repeat offenses occur during the first three years after release. If the balance were uniformly spread over the remaining seven years then recidivism could occur in the last three years of a ten year period. Further, if the frequency declined uniformly to zero by the end of the tenth year (see sketch) then only about 1.8% of the recidivist population would remain to be convicted after the 7th year. This last value yields an estimated increase in second offender felony convictions of slightly less than 3 per year. These would be spread in a proportionate manner over all classes of felony offenses. The approximate average increase in time served would be about 4.8 years for Class A felons, 1.85 years for Class B, and 1.05 years for Class C. If we had one each of A, B, C felons the aggregate man year increase would be approximately 7.7. The aggregate total of increased bed space needs is, therefore, 112.6 (rounded up to 113).

B. Cost Estimates

1. Capital Expenditures

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

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

13 requested in FY 1983

100 requested in FY 1984

2. Operating Expenditures

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

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

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

FISCAL NOTE

I. REQUEST

Bill/Resolution No. WORK ORDER HCS FOR CSSB 535 (JUDICIARY)
 Title AN ACT RELATING TO THE CRIMINAL LAWS OF THE STATE
 Requested by HOUSE JUDICIARY Date APRIL 14, 1992

II. FISCAL DETAIL

Agency Affected HEALTH & SOCIAL SERVICES
 Program Category Affected OFFENSES COMMITMENT, REFORMATION & SUPERVISION
 BRU, Program, Or Subprogram(s) Affected ADULT CONFINEMENT
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES			1,999.8	2,133.7	2,288.4	2,448.6
200 TRAVEL			13.5	14.8	16.1	17.5
300 CONTRACTUAL			274.7	299.4	326.4	355.7
400 COMMODITIES			36.1	39.6	434.9	474.1
500 EQUIPMENT			30.0	-	-	-
600 LAND & STRUCTURES		7,797.0				
700 GRANTS, CLAIMS, ETC.			36.0	39.2	42.8	46.6
TOTAL	-0-	7,797.0	2,719.1	2,891.1	3,108.6	3,342.5

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	-0-	7,797.0	2,719.1	2,891.1	3,108.6	3,342.5
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

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

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

IV. DATE APRIL 15, 1992 PREPARED BY ROGER C. LANGO
 AGENCY DIV. OF ADULT CORRECTIONS
 Original: Legislative Finance PHONE 465-3376
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)

Bed Impact - HCS. fol SB # 535 JUDICIARY

<u>SECTION</u>	<u>BEDS</u>	<u>OFFENSE / RESULT</u>
SECTIONS 1 & 2	8	MULTIPLE DEATHS - MANSLAU GUILTY, NEG. HOMICIDE
SEC. 4	4	JOYRIDING - REPORT OFF.
SEC. 11	30	MULTIPLE OFFENSES - CONSECUTIVE SENTENCES
SEC. 13	63	1 ST FELONY WITH USE OF FIREARM OR DANGEROUS INSTRUMENT; PRESUMP- TIVE SENTENCE LENGTH INCREASED FROM 6 YEARS TO 8 YEARS.
SEC. 15	7.7	PRIOR CONVICTION WITHIN PAST 10 YEARS (INSTEAD OF 7 YEARS) CONSIDERED FOR SENTENCING.

TOTAL

112.7 (113 ROUNDED)

CAPITAL COSTS

$$113 \times \$69,000 = \underline{\underline{\$7,797,000.}}$$

6.9
4.3

2.6

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House CS for CS for Senate Bill 327 (Judiciary)
 Title An Act Relating to Parole of Offenders: Continuing the Parole Board
 Requested by Senator Parr Date April 16, 1982

II. FISCAL DETAIL

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

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL		6.5	4.1	8.4	5.1	10.0
300 CONTRACTUAL		1.3	-0-	1.5	-0-	1.7
400 COMMODITIES		-0-	-0-	-0-	-0-	-0-
500 EQUIPMENT		-0-	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES		-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS, ETC.						
800 COMPENSATION		49.0	48.4	49.0	48.4	49.0
TOTAL		56.8	52.5	58.9	53.5	60.7

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND		56.8	52.5	58.9	53.5	60.7
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

NO NEW POSITIONS

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

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

See Attached Sheet

IV. DATE April 16, 1982 PREPARED BY Samuel H. Trivette
 AGENCY H & S.S. Parole Board
 Original: Legislative Finance PHONE 465-3384
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)

JCC

A. Section .050, Compensation

The bill would provide payment to the Board members for any day they are conducting business, including the reading of files, handling Board business by phone, as well as hearings.

- a) Reading reports-assume 225 cases/year x 3/4 hours per file = 23 "member days". Guess 23 days x 2.5 members x \$100 = 5.8
- b) Phone log shows average of 30 calls/quarter to the office x 4 quarters/year = 120 calls for handling appeals, requests for special hearings, mandatory release conditions, etc. x \$100 = 12.0
- c) Pay full days compensation for those days holding preliminary hearings, 1/2 day parole hearings, etc., now being paid @ \$50 per day. Guess 35 member days x \$50 =

1.8
19.6

Also, the bill increases the compensation of Board members from \$100 to \$150 per day. Current budget shows 257 per diem days x \$50 increase = 12.8

Increase a), b), & c) alone to \$100 per day x 213 days =

10.7
Total 43.1

B. Section .080, Responsibilities

Funds for teleconferencing of hearings to adopt regulation, advertise hearings, have staff travel to hearings to establish regulations in the Alaska Administrative Code. Budget every other year. Four member days compensation @ \$150 per day.

Contractual	1.3
Transportation	1.0
Per Diem	1.0
Compensation	.6
Total	3.9

C. Section .180, Change in Conditions

Anticipate 5 parolees will request a hearing pursuant to this Section resulting in 5 teleconference hearings by three Board members @ \$150.

Transportation	1.6
Per Diem	1.3
Compensation	2.3
Total	5.2

D. Section .280, Revocation Hearings

The "clear and convincing evidence" test will result in a representative from the District Attorney's office presenting some of the cases for the Division of Corrections, as is done in many probation revocation cases now. Assume District Attorneys will be present in 1/4 of the cases (7) which will result in a doubling in the length of the hearing time in those cases resulting in 4 additional "board days per year" x 5 members x \$150.

Per Diem	1.6
Compensation	3.0
Total	4.6

E. Assumption for FY-84 Through FY-87

- a) Travel = 15% in FY-84 and FY-85; 10% thereafter.
- b) Contractual = 8%

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House CS for CS for Senate Bill No. 327 (Judiciary)
 Title "An Act relating to parole of offenders."
 Requested by Senator Parr Date March 8, 1982

II. FISCAL DETAIL

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

EXPENDITURES (Thousands of Dollars)

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

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

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

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

The changes incorporated into Committee Substitute for Senate Bill No. 327 (HESS) have removed the fiscal impact which would have been experienced with enactment of the original bill.

It has been assumed that all parolees will cooperate with the probation officers and waive a formal hearing when a change of parole condition is considered necessary by Department staff. The alternative for a parolee is to be incarcerated for the period until the hearing could be scheduled.

IV. DATE March 9, 1982 PREPARED BY Roger C. Lange
 AGENCY Division of Adult Corrections
 PHONE 465-3376
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)

Roger C. Lange
JCC

Ramona,
Give a reason - SB#167.

The House only put \$100,000 in the
budget which is only enough to finish
up the year and then all they
can do is receive reports

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT

February 24, 1982

Gordon Evans, Esquire
ELY, GUESS & RUDD
Menden Hall Building, Suite A
Juneau, Alaska 99801

Dear Gordon:

In connection with your theft-of-service lobbying efforts on our behalf, let me respond to Senator Parr's concerns over theft of service language presently included in S.B. 535.

First of all, let me assure that theft of service is a significant problem to all subscription television operators nationwide. The issue is not one of technology but rather of opportunists taking illegal advantage of outmoded legislation that provides totally inadequate remedies for legitimate operators such as ourselves. The enclosed trade journal articles illustrate the current situation very graphically.

Here in Anchorage, VISIONS offers a single channel, 24-hour per day selection of proprietary programming via a microwave frequency not receivable on any television set without the benefit of specialized operator supplied receiving equipment (i.e., antenna plus electronic components). Our service is intended for and available to only those individuals desiring it. They sign a subscription agreement with us, pay an installation charge and thereafter a monthly fee to cover the costs of programming and antenna equipment rental and maintenance. (Our receiving equipment always remains our property and we are responsible for repairing it at all times without additional cost to our subscriber).

MDS receiving equipment is single purpose in nature. That is, it is capable of receiving only the single microwave frequency authorized by the FCC for our service in Anchorage and, in turn, converts that microwave frequency to a signal watchable on a normal television set. (Here in Anchorage we convert to Channel 6.)

Our problem, in the main, stems from out-of-state individuals or companies who illegally manufacture receiving equipment capable of receiving our service and then sell it in Alaska and elsewhere on the pretext of saving money by avoiding paying the monthly fee. Typically, these out-of-state manufacturers solicit in-state TV repair shops, electronic stores or the like to be their local distributors. While many local