

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9166 HOUSE JUDICIARY

1 guardian, other suitable person, or suitable nondetention setting such as with a relative
2 or in a foster home or residential [A FAMILY HOME, GROUP CARE FACILITY,
3 OR]'child care facility, whichever the department considers appropriate to implement
4 the treatment plan of the predisposition report; if the court orders the minor placed on
5 probation, it may specify the terms and conditions of probation; the department may
6 transfer the minor, in the minor's best interests, from one of the probationary
7 placement settings listed in this paragraph to another, and the minor, the minor's
8 parents or guardian, and the minor's attorney are entitled to reasonable notice of the
9 transfer; the probation may be for a period of time [,] not to exceed two years and in
10 no event extend past the day the minor becomes 19 years of age, except that the
11 department may petition for and the court may grant in a hearing

12 (A) two-year extensions of commitment that do not extend
13 beyond the minor's [CHILD'S] 19th birthday if the extension is in the best
14 interests of the minor and the public; and

15 (B) an additional one-year period of supervision past age 19 if
16 the continued supervision is in the best interests of the person and the person
17 consents to it;

18 (4) order the minor and the minor's parent to make suitable restitution
19 in lieu of or in addition to the court's order under (1), (2), or (3) of this subsection;
20 under this paragraph,

21 (A) except as provided in (B) of this paragraph, the court may
22 not refuse to make an order of restitution to benefit the victim of the act of the
23 minor that is the basis of the delinquency adjudication; and

24 (B) the court may not order payment of restitution by the parent
25 of a minor who is a runaway or missing minor for an act of the minor that was
26 committed by the minor after the parent has made a report to a law
27 enforcement agency, as authorized by AS 47.10.141(a), that the minor has run
28 away or is missing; for purposes of this subparagraph, "runaway or missing
29 minor" means a minor who a parent reasonably believes is absent from the
30 minor's residence for the purpose of evading the parent or who is otherwise
31 missing from the minor's usual place of abode without the consent of the

1 parent:

2 (5) order the minor committed to the department for placement in an
3 adventure based education program established under AS 47.21.020 with conditions
4 the court considers appropriate concerning release upon satisfactory completion of the
5 program or commitment under (1) of this subsection if the program is not satisfactorily
6 completed;

7 (6) in addition to an order under (1) - (5) of this subsection, [IF THE
8 DELINQUENCY FINDING IS BASED ON THE MINOR'S VIOLATION OF
9 AS 11.71.030(a)(3) OR 11.71.040(a)(4),] order the minor to perform [50 HOURS OF]
10 community service; for purposes of this paragraph, "community service" includes work

11 (A) defined as community service under AS 33.30.901; or

12 (B) that, on the recommendation of the city council or
13 traditional village council, would benefit persons within the city or village who
14 are elderly or disabled; or

15 (7) in addition to an order under (1) - (6) of this subsection, order the
16 minor's parent or guardian to comply with orders made under AS 47.12.155, including
17 participation in treatment under AS 47.12.155(b)(1).

18 * Sec. 16. AS 47.12.120(g) is amended to read:

19 (g) Within 18 months after the date a minor is initially taken into
20 [COMMITTED TO THE] custody by [OF] the department under (b)(3) of this section,
21 the court shall hold a hearing to review the placement and services provided and to
22 determine the future status of the minor. The court shall make appropriate written
23 findings, including findings related to the following:

24 (1) whether the minor should be returned to the parent;

25 (2) whether the minor should remain in out-of-home care for a
26 specified period;

27 (3) whether the minor should remain in out-of-home care on a
28 permanent or long-term basis because of special needs or circumstances;

29 (4) whether the minor should be placed for adoption or legal
30 guardianship.

31 * Sec. 17. AS 47.12.120 is amended by adding new subsections to read:

1 (i) When, under (a) of this section, the court enters judgment finding that a
2 minor is delinquent, the court may order the minor temporarily detained pending entry
3 of its dispositional order if the court finds that detention is necessary

4 (1) to protect the minor or the community; or

5 (2) to ensure the minor's appearance at a subsequent court hearing.

6 (j) If, in a case in which a district attorney has elected to seek imposition of
7 a dual sentence under AS 47.12.065, the court finds that the minor is delinquent for
8 committing an offense in the circumstances set out in AS 47.12.065, or if the minor
9 agrees as part of a plea agreement to be subject to dual sentencing, the court shall

10 (1) enter one or more orders under (b) of this section; and

11 (2) pronounce a sentence for the offense in accordance with the
12 provisions of AS 12.55; however, the sentence pronounced under this paragraph must
13 include some period of imprisonment that is not suspended by the court.

14 * Sec. 18. AS 47.12.140 is amended to read:

15 Sec. 47.12.140. Court ~~dispositional~~ order. In making its dispositional order
16 under AS 47.12.120(b)(1) - (3) and (5) and (i), the court shall

17 (1) consider both the best interests of the minor and the interests of the
18 public, and, in doing so, the court shall take into account

19 (A) the seriousness of the minor's delinquent act [,] and the
20 attitude of the minor and the minor's parents toward that act;

21 (B) the minor's culpability as indicated by the circumstances of
22 the particular case;

23 (C) the age of the minor;

24 (D) the minor's prior criminal or juvenile record [,] and the
25 success or failure of any previous orders, dispositions, or placements imposed
26 on the minor;

27 (E) the effect of the dispositional order to be imposed in
28 deterring the minor [CHILD] from committing other delinquent acts;

29 (F) the need to commit the minor to the department's custody
30 or to detain the minor in an institution or other suitable place in order to
31 prevent further harm to the public;

1 (G) the interest of the public in securing the minor's
2 rehabilitation; and

3 (H) the ability of the state to take custody of and to care for the
4 minor; and

5 (2) order the least restrictive alternative disposition for the minor; for
6 purposes of this paragraph, the "least restrictive alternative disposition" means that
7 disposition that is no more restrictive than is, in the judgment of the court, most
8 conducive to the minor's rehabilitation taking into consideration the interests of the
9 public.

10 * Sec. 19. AS 47.12.160 is amended by adding new subsections to read:

11 (d) The department may petition the court for imposition of sentence
12 pronounced under AS 47.12.120(j)(2) if the offender is still subject to the jurisdiction
13 of the court and if the offender, after pronouncement of sentence under
14 AS 47.12.120(j)(2),

15 (1) commits a subsequent felony offense;

16 (2) commits a subsequent offense against a person that is a
17 misdemeanor and involves injury to a person or the use of a deadly weapon;

18 (3) fails to comply with the terms of a restitution order;

19 (4) fails to engage in or satisfactorily complete a rehabilitation program
20 ordered by a court or required by a facility or juvenile probation officer; or

21 (5) escapes from a juvenile correctional facility.

22 (e) If a petition is filed under (d) of this section and if the court finds by a
23 preponderance of the evidence that the minor has committed a subsequent felony
24 offense that is a crime against a person or is the crime of arson, the court shall impose
25 the adult sentence previously pronounced under AS 47.12.120(j) and transfer custody
26 of the minor to the Department of Corrections. If the court finds by a preponderance
27 of the evidence that any of the other circumstances set out in (d)(1) - (5) of this
28 section exist, the court shall impose the adult sentence previously pronounced and
29 transfer custody of the minor to the Department of Corrections unless the minor proves
30 by preponderance of the evidence that mitigating circumstances exist that justify a
31 continuance in the stay of the adult sentence and the minor is amenable to further

1 treatment under this chapter. The court shall make written findings to support its
2 order.

3 * Sec. 20. AS 47.12.180(a) is amended to read:

4 (a) Except as provided by AS 47.12.160(d) and (e) and AS 47.12.170, an
5 adjudication under this chapter upon the status of a minor

6 (1) may not operate to impose any of the civil disabilities ordinarily
7 imposed by conviction upon a criminal charge;

8 (2) does not operate to permit a minor afterward to be considered a
9 criminal by the adjudication; and

10 (3) does not operate to permit the adjudication to be afterward
11 considered [DEEMED] a conviction, nor may a minor be charged with or convicted
12 of a crime in a court [,] except as provided in this chapter.

13 * Sec. 21. AS 47.12.210(b) is amended to read:

14 (b) Except as provided by AS 47.12.310(b)(1), fingerprint [FINGERPRINT]
15 records taken under this section are not subject to AS 47.12.310.

16 * Sec. 22. AS 47.12.240(c) is amended to read:

17 (c) Notwithstanding (a) of this section, a minor may be incarcerated in a
18 correctional facility

19 (1) if the minor is the subject of a petition filed with the court under
20 this chapter seeking adjudication of the minor as a delinquent minor or if the minor
21 is in official detention pending the filing of that petition; however, detention in a
22 correctional facility under this paragraph may not exceed the lesser of

23 (A) six hours; or

24 (B) the time necessary to arrange the minor's transportation to
25 a juvenile detention home or comparable facility for the detention of minors;

26 (2) if, in response to a petition of delinquency filed under this chapter,
27 the court has entered an order closing the case under AS 47.12.100(a), allowing the
28 minor to be prosecuted as an adult; [OR]

29 (3) if the incarceration constitutes a protective custody detention of the
30 minor that is authorized by AS 47.37.170(b); or

31 (4) if, under AS 47.12.160(e), the court has entered an order

1 imposing an adult sentence and transferring custody of the minor to the
2 Department of Corrections.

3 * Sec. 23. AS 47.12 is amended by adding a new section to read:

4 Sec. 47.12.245. Arrest. A peace officer

5 (1) may arrest a minor

6 (A) for the commission of an act that subjects the minor to the
7 provisions of this chapter under the same circumstances and in the same
8 manner as would apply to the arrest of an adult for violation of a criminal law
9 of the state or a municipality of the state;

10 (B) if the peace officer reasonably believes the minor is a
11 fugitive from justice;

12 (C) if the peace officer has probable cause to believe that the
13 minor has violated a condition of the minor's release or probation; or

14 (D) if the peace officer reasonably believes that the minor has
15 been adjudicated a delinquent and has escaped from an institution or absconded
16 from probation, parole, or the jurisdiction of a court;

17 (2) may continue the lawful arrest of a minor that is made by a citizen.

18 * Sec. 24. AS 47.12.300(c) is amended to read:

19 (c) Except as provided in (g) of this section, the [THE] name or picture of
20 a minor under the jurisdiction of the court may not be made public in connection with
21 the minor's status as a delinquent unless authorized by order of the court.

22 * Sec. 25. AS 47.12.300(d) is amended to read:

23 (d) Except as provided in (f) of this section, within [WITHIN] 30 days of
24 the date of a minor's 18th birthday or, if the court retains jurisdiction of a minor past
25 the minor's 18th birthday, within 30 days of the date on which the court releases
26 jurisdiction over the minor, the court shall order all the court's official records
27 pertaining to that minor in a proceeding under this chapter sealed, as well as records
28 of all driver's license proceedings under AS 28.15.185, criminal proceedings against
29 the minor, and punishments assessed against the minor. A person may not use these
30 sealed records for any purpose except that the court may order their use for good cause
31 shown or may order their use by an officer of the court in making a presentencing

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska

1 imposing an adult sentence and transferring custody of the minor to the
2 Department of Corrections.

3 * Sec. 23. AS 47.12 is amended by adding a new section to read:

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5 (1) may arrest a minor

6 (A) for the commission of an act that subjects the minor to the
7 provisions of this chapter under the same circumstances and in the same
8 manner as would apply to the arrest of an adult for violation of a criminal law
9 of the state or a municipality of the state;

10 (B) if the peace officer reasonably believes the minor is a
11 fugitive from justice;

12 (C) if the peace officer has probable cause to believe that the
13 minor has violated a condition of the minor's release or probation; or

14 (D) if the peace officer reasonably believes that the minor has
15 been adjudicated a delinquent and has escaped from an institution or absconded
16 from probation, parole, or the jurisdiction of a court;

17 (2) may continue the lawful arrest of a minor that is made by a citizen.

18 * Sec. 24. AS 47.12.300(c) is amended to read:

19 (c) Except as provided in (g) of this section, the [THE] name or picture of
20 a minor under the jurisdiction of the court may not be made public in connection with
21 the minor's status as a delinquent unless authorized by order of the court.

22 * Sec. 25. AS 47.12.300(d) is amended to read:

23 (d) Except as provided in (f) of this section, within [WITHIN] 30 days of
24 the date of a minor's 18th birthday or, if the court retains jurisdiction of a minor past
25 the minor's 18th birthday, within 30 days of the date on which the court releases
26 jurisdiction over the minor, the court shall order all the court's official records
27 pertaining to that minor in a proceeding under this chapter sealed, as well as records
28 of all driver's license proceedings under AS 28.15.185, criminal proceedings against
29 the minor, and punishments assessed against the minor. A person may not use these
30 sealed records for any purpose except that the court may order their use for good cause
31 shown or may order their use by an officer of the court in making a presentencing

1 report for the court. The provisions of this subsection relating to the sealing of records
2 do not apply to records of traffic offenses.

3 * Sec. 26. AS 47.12.300(e) is amended to read:

4 (e) The court's official records prepared under this chapter and not made
5 public under this section are confidential and may be inspected only with the
6 court's permission and only by persons having a legitimate interest in them. A person
7 with a legitimate interest in the inspection of a confidential [AN OFFICIAL] record
8 maintained by the court includes a victim who suffered physical injury or whose real
9 or personal property was damaged as a result of an offense that was the basis of an
10 adjudication or modification of disposition. If the victim knows the identity of the
11 minor, identifies the minor or the offense to the court, and certifies that the
12 information is being sought to consider or support a civil action against the minor or
13 against the minor's parents or guardian [GUARDIANS] under AS 34.50.020, the court
14 shall, subject to AS 12.61.110 and 12.61.140, allow the victim to inspect and use the
15 following records and information in connection with the civil action:

16 (1) a petition filed under AS 47.12.040(a) seeking to have the court
17 declare the minor a delinquent;

18 (2) a petition filed under AS 47.12.120 seeking to have the court
19 modify or revoke the minor's probation;

20 (3) a petition filed under AS 47.12.100 requesting the court to find that
21 a minor is not amenable to treatment under this chapter and that results in closure of
22 a case under AS 47.12.100(a); and

23 (4) a court judgment or order entered under this chapter that disposes
24 of a petition identified in (1) - (3) of this subsection.

25 * Sec. 27. AS 47.12.300(f) is amended to read:

26 (f) A person who has been tried as an adult under AS 47.12.100(a) or a
27 person whose records have been made public under (g) of this section, or the
28 department on the person's behalf, may petition the superior court to seal the records
29 of all criminal proceedings, except traffic offenses, initiated against the person, and all
30 punishments assessed against the person, while the person was a minor. A petition
31 under this subsection may not be filed until five years after the completion of the

1 sentence imposed for the offense for which the person was tried as an adult or five
2 years after a disposition was entered for an offense for which the records were
3 made public under (g) of this section. If the superior court finds that its order has
4 had its intended rehabilitative effect and further finds that the person has fulfilled all
5 orders of the court entered under AS 47.12.120, the superior court shall order the
6 record of proceedings and the record of punishments sealed. Sealing the records
7 restores civil rights removed because of a conviction. A person may not use these
8 sealed records for any purpose except that the court may order their use for good cause
9 shown or may order their use by an officer of the court in making a presentencing
10 report for the court. The court may not, under this subsection, seal records of a
11 criminal proceeding

12 (1) initiated against a person if the court finds that the person has not
13 complied with a court order made under AS 47.12.120; or

14 (2) commenced under AS 47.12.030(a) unless the minor has been
15 acquitted of all offenses with which the minor was charged or unless the most serious
16 offense of which the minor was convicted was not an offense specified in
17 AS 47.12.030(a).

18 * Sec. 28. AS 47.12.300 is amended by adding new subsections to read:

19 (g) When a district attorney has elected to seek imposition of a dual sentence
20 and a petition has been filed under AS 47.12.065, or when a minor agrees as part of
21 a plea agreement to be subject to dual sentencing, all court records shall be open to
22 the public except for predisposition reports, psychiatric and psychological reports, and
23 other documents that the court orders to be kept confidential because the release of the
24 documents could be harmful to the minor or could violate the constitutional rights of
25 the victim or other persons.

26 (h) A person who discloses confidential information in violation of this section
27 is guilty of a class B misdemeanor.

28 * Sec. 29. AS 47.12.310(b) is amended to read:

29 (b) A state or municipal agency or employee

30 (1) shall disclose information regarding a case to a state or
31 municipal law enforcement agency for a specific investigation being conducted by

1 that agency; and

2 (2) may disclose information regarding a case to

3 (A) [(1)] a guardian ad litem appointed by the court or to a
4 citizen review panel for permanency planning authorized by AS 47.14.200 -
5 47.14.220;

6 (B) [(2)] a person or an agency requested to provide
7 consultation or services for a minor who is subject to the jurisdiction of the
8 court under this chapter;

9 (C) [(3)] school officials as may be necessary to protect the
10 safety of school students and staff;

11 (D) [(4)] a governmental agency as may be necessary to obtain
12 that agency's assistance for the department in its investigation or to obtain
13 physical custody of a minor;

14 (E) [(5)] a state or municipal law enforcement agency as may
15 be necessary [FOR A SPECIFIC INVESTIGATION BEING CONDUCTED
16 BY THAT AGENCY OR] for disclosures by that agency to protect the public
17 safety; and

18 (F) [(6)] a victim or to the victim's insurance company as
19 may be necessary to inform the victim or the insurance company about the
20 arrest of the minor, an investigation regarding a case involving the minor,
21 or the disposition or resolution of a case involving a minor.

22 * Sec. 30. AS 47.12.310(g) is amended to read:

23 (g) The department and affected law enforcement agencies shall work with
24 school districts and private schools to develop procedures for the disclosure of
25 information to school officials under (b)(2)(C) [(b)(3)] and (c)(3) of this section. The
26 procedures must provide a method for informing the principal or the principal's
27 designee of the school the student attends as soon as it is reasonably practicable.

28 * Sec. 31. AS 47.12.320(a) is amended to read:

29 (a) Notwithstanding AS 47.12.300 and 47.12.310,

30 (1) a parent or legal guardian of a minor subject to a proceeding under
31 this chapter may disclose confidential or privileged information about the minor,

1 including information that has been lawfully obtained from agency or court files, to
2 the governor, the lieutenant governor, a legislator, the ombudsman appointed under
3 AS 24.55, the attorney general, and the commissioners of health and social services,
4 administration, or public safety, or an employee of these persons, for review or use in
5 their official capacities;

6 (2) the department may disclose confidential or privileged
7 information about the minor and make available for inspection documents about
8 the minor to the state officials or employees identified in (1) of this subsection for
9 review or use in their official capacities; and

10 (3) a [A] person to whom disclosure is made under (1) or (2) of this
11 subsection [SECTION] may not disclose confidential or privileged information about
12 the minor to a person not authorized to receive it.

13 * Sec. 32. AS 47.12.320(b) is amended to read:

14 (b) The disclosure right under (a)(1) [(a)] of this section is in addition to, and
15 not in derogation of, the rights of a parent or legal guardian of a minor.

16 * Sec. 33. AS 47.15.010 is amended by adding a new article to read:

17 ARTICLE XVII

18 RENDITION

19 (a) This article shall provide additional remedies and shall be binding only
20 between those party states which specifically execute it.

21 (b) All provisions and procedures of articles V and VI of the Interstate
22 Compact on Juveniles shall be construed to apply to any juvenile charged with being
23 a delinquent by reason of a violation of any criminal law. Any juvenile charged with
24 being a delinquent by reason of violating any criminal law shall be returned to the
25 requesting state upon a requisition to the state where the juvenile may be found. A
26 petition in such a case shall be filed in a court of competent jurisdiction in the
27 requesting state where the violation of criminal law is alleged to have been committed.
28 The petition may be filed regardless of whether the juvenile has left the state before
29 or after filing of the petition. The requisition described in article V of the compact
30 shall be forwarded by the judge of the court in which the petition has been filed.

31 * Sec. 34. AS 47.12.110(d), added by sec. 14 of this Act, has the effect of changing

1 Rules 3 and 21, Alaska Delinquency Rules, by reversing the presumption that the public shall
2 be excluded from hearings involving minors.

3 * Sec. 35. The provisions of AS 47.12.300(g), added by sec. 28 of this Act, have the effect
4 of changing Rule 27, Alaska Delinquency Rules, by making court records for certain juvenile
5 proceedings public documents in specified circumstances.

6 * Sec. 36. Rules 6, 7, and 21(f), Alaska Delinquency Rules, are repealed.

7 * Sec. 37. AS 47.12.110(c) is repealed.

8 * Sec. 38. APPLICABILITY OF SECTIONS 1 - 32. Sections 1 - 32 of this Act apply to
9 all offenses committed on or after the effective date of this Act.

10 * Sec. 39. SCOPE AND APPLICABILITY OF SECTION 33. The juvenile rendition
11 amendment to the Interstate Compact on Juveniles is hereby enacted into law by sec. 33 of
12 this Act and entered into by this state with all other states legally joining therein in the form
13 substantially as set out in sec. 33 of this Act. Section 33 of this Act applies to offenses
14 committed before, on, or after the effective date of this Act.

15 * Sec. 40. This Act takes effect July 1, 1997.

A M E N D M E N T

OFFERED IN THE HOUSE

TO: Draft CSHB 16() ("L" Version, Dated 4/24/97)

1 Page 1, line 8, following "3,":

2 Insert "10(c),"

3 Page 15, following line 17:

4 Insert a new bill section to read:

5 **** Sec. 24.** AS 47.12.250 is amended by adding a new subsection to read:

6 (f) At a hearing held under (c) of this section, hearsay evidence of a statement
7 related to the offense, not otherwise admissible, made to a law enforcement officer
8 by a victim of the offense or a witness to the offense and testified to by the law
9 enforcement officer may be admitted into evidence if

10 (1) the circumstances of the statement indicate its reliability;

11 (2) additional evidence is introduced to corroborate the statement; and

12 (3) the victim or witness whose statement is offered will be available
13 to testify at trial."

14 Renumber the following bill sections accordingly.

15 Page 20, following line 2:

16 Insert a new bill section to read:

17 **** Sec. 36.** AS 47.12.250(f), added by sec. 24 of this Act, has the effect of amending
18 Rule 10(c), Alaska Delinquency Rules, by allowing admission of certain hearsay evidence
19 during a temporary detention hearing."

20 Renumber the following bill sections accordingly.

1 Page 20, line 3:

2 Delete "sec. 28"

3 Insert "sec. 29"

4 Page 20, line 8:

5 Delete "SECTIONS 1 - 32."

6 Insert "SECTIONS 1 - 33."

7 Delete "Sections 1 - 32"

8 Insert "Sections 1 - 33"

9 Page 20, line 10:

10 Delete "SECTION 33"

11 Insert "SECTION 34"

12 Page 20, line 11:

13 Delete "sec. 33"

14 Insert "sec. 34"

15 Page 20, line 13:

16 Delete "sec. 33"

17 Insert "sec. 34"

18 Delete "Section 33"

19 Insert "Section 34"

NOT
Offered

A M E N D M E N T

OFFERED IN THE HOUSE

TO: Draft CSHB 16() ("L" Version, Dated 4/24/97)

1 Page 1, line 8, following "21,"

2 Insert "23(d),"

3 Page 13, line 5:

4 Delete "least restrictive"

5 Insert "most appropriate [LEAST RESTRICTIVE]"

6 Page 13, lines 6 - 9:

7 Delete "the "least restrictive alternative disposition" means that disposition that is no
8 more restrictive than is, in the judgment of the court, most conducive to the minor's
9 rehabilitation taking into consideration the interests of the public."

10 Insert "the "most appropriate [LEAST RESTRICTIVE] alternative disposition" means
11 that disposition that [IS NO MORE RESTRICTIVE THAN] is, in the judgment of the court,
12 most conducive to the minor's rehabilitation taking into consideration the interests of the
13 public."

14 Page 19, following line 30:

15 Insert a new bill section to read:

16 "** Sec. 34. Rule 23(d), Alaska Delinquency Rules, is amended to read:

17 (d) Order. The court's [IN ITS] disposition order [, THE COURT] shall
18 conform to AS 47.12.140 [ORDER THE LEAST RESTRICTIVE ALTERNATIVE
19 DISPOSITION UNDER AS 47.10.080(b) THAT ADDRESSES THE JUVENILE'S
20 TREATMENT NEEDS AND PROTECTS THE PUBLIC]."

21 Renumber the following bill sections accordingly.

2
3
4 WHEREAS, from 1990 to 1994, the Anchorage Police Department recorded the
5 following juvenile arrests for property crimes:

6
7

8	<u>Year</u>	<u>Theft/ Burglary</u>	<u>Arson</u>	<u>Forgery</u>	<u>Fraud</u>	<u>Vandalism</u>	<u>TOTAL</u>
9	1990	1,202	3	1	4	73	1,283
10	1991	1,237	5	8	6	72	1,328
11	1992	1,284	3	8	6	117	1,418
12	1993	1,576	13	6	4	97	1,696
13	1994	1,639	8	11	6	143	1,807

14

15 This represents a 40% increase in total juvenile arrests for these property crimes
16 between 1990 and 1994; and

17
18 WHEREAS, these violent crimes and property crimes are most likely to occur
19 during late night and early morning hours on our streets and highways; and

20
21 WHEREAS, during these hours, minors in public places are particularly
22 susceptible to participate in unlawful activities and are particularly vulnerable to
23 become victims of older perpetrators of crime; and

24
25 WHEREAS, the Municipality of Anchorage has an obligation to provide for the
26 protection of minors from each other and from other persons, for the enforcement of
27 parental control over and responsibility for children, for the protection of the general
28 public, and for the reduction of the incidence of juvenile crime; and

29
30 WHEREAS, to fulfill this obligation, the police need a variety of effective tools;
31 and

32
33 WHEREAS, a juvenile curfew ordinance is one tool to help preserve the public
34 safety and reduce acts of violence by and against juveniles that are occurring at rates
35 beyond the capacity of the police to assure public safety; and

36
37 WHEREAS, the Mayor and Assembly believe that a curfew for those under the
38 age of 18 will be in the best interest of the public health, safety, and general welfare
39 and will help attain the foregoing objectives.

40
41 NOW, THEREFORE, the Anchorage Municipal Assembly ordains:
42
43
44
45

2
3
4 Section 1: That Anchorage Municipal Code Section 8.05.440 is hereby
5 repealed and re-enacted as follows:
6

7 8.05.440 Minors - Curfew

8 A. Definitions.
9

10 In this section:

- 11
- 12 1. "curfew hours" means:
 - 13
 - 14 a. September through May:
 - 15
 - 16 (1). 11:00 p.m. on any Sunday, Monday, Tuesday,
 - 17 Wednesday, or Thursday until 5:00 a.m. of the
 - 18 following day; and
 - 19
 - 20 (2). 1:00 a.m. on any Saturday and Sunday until 5:00
 - 21 a..m. of the same day.
 - 22
 - 23 b. June through August: 1:00 a.m. on any day until 5:00
 - 24 a..m. of the same day.
 - 25
 - 26 2. "emergency" means an unforeseen combination of circumstances
27 or the resulting state that calls for immediate action. The term
28 includes, but is not limited to, a fire, natural disaster, automobile
29 accident, or any situation requiring immediate action to prevent
30 serious bodily injury or loss of life.
31
 - 32 3. "establishment" means any privately-owned place of business
33 operated for a profit to which the public is invited, including but not
34 limited to any place of amusement or entertainment.
35
 - 36 4. "guardian" means:
 - 37
 - 38 a. a person who, under court order, is the guardian of the
 - 39 minor; or
 - 40
 - 41 b. a public or private agency with whom a minor has been
 - 42 placed by a court.
 - 43
 - 44
 - 45

- 2
3
4 5. "knowingly" means, with respect to conduct or to a circumstance
5 described by a provision of law defining an offense, that a person
6 is aware that his or her conduct is of that nature or that the
7 circumstance exists; when knowledge of the existence of a
8 particular fact is an element of an offense, that knowledge is
9 established if a person is aware of a substantial probability of its
10 existence, unless the person actually believes it does not exist.
11
12 6. "minor" means any person under the age of 18 years.
13
14 7. "operator" means any individual, firm, association, partnership, or
15 corporation operating, managing, or conducting any establishment.
16 The term includes the members or partners of an association or
17 partnership and the officers of a corporation.
18
19 8. "parent" means a person who is:
20
21 a. a natural parent, adoptive parent, or step-parent of another
22 person; or
23
24 b. at least eighteen (18) years of age and authorized by a
25 parent or guardian to have the care and custody of a minor.
26
27 9. "public place" means any place to which the public or a
28 substantial group of the public has access, and includes but is not
29 limited to streets, highways, sidewalks, bridges, alleys, plazas,
30 parks, driveways, parking lots, and the common areas of schools,
31 hospitals, apartment houses, office buildings, transport facilities,
32 and shops.
33
34 10. "remain" means to:
35
36 a. linger or stay; or
37
38 b. fail to leave the premises when requested to do so by a
39 police officer or the owner, operator, or other person in
40 control of the premises.
41
42
43
44
45

- 2
3
4 11. "serious bodily injury" means bodily injury that creates a substantial
5 risk of death or that causes death, serious permanent
6 disfigurement, or protracted loss or impairment of the function of
7 any bodily member or organ.
8

9
10 B. Offenses.

- 11
12 1. A minor commits an offense if he or she remains in any public
13 place or on the premises of any establishment within the
14 Municipality of Anchorage during curfew hours.
15
16 2. A parent or guardian of a minor commits an offense if he or she
17 knowingly permits, or by insufficient control allows, the minor to
18 remain in any public place or on the premises of any establishment
19 within the Municipality of Anchorage during curfew hours in
20 violation of this Ordinance.

21
22 Indifference as to the activities or whereabouts of the minor shall
23 be prima facie evidence of insufficient control.
24

- 25 3. The owner, operator, or any employee of an establishment
26 commits an offense if he or she knowingly allows a minor to remain
27 upon the premises of the establishment during curfew hours.
28

29
30 C. Exceptions.

- 31
32 1. It is an exception to prosecution under subsections B.1. and B.2. if
33 the minor was:
34
35 a. accompanied by his or her parent or guardian;
36
37 b. on an errand at the written direction of his or her parent or
38 guardian, without any detour or stop (written direction must
39 be signed, timed, and dated by the parent or guardian and
40 must indicate the specific errand);
41
42 c. involved in an emergency;
43
44 d. engaged in an employment activity, or going to or returning
45 from an employment activity, without detour or stop;

2
3
4 e. on the public right-of-way immediately abutting the minor's
5 residence or immediately abutting the residence of a next-
6 door neighbor, if the neighbor did not complain to the police
7 department about the minor's presence;

8
9 f. attending, or going to or returning home from, without any
10 detour or stop, an official school, religious, or other
11 recreational activity supervised by adults and sponsored by
12 the Municipality of Anchorage, Anchorage School District, a
13 civic organization, or another similar entity that takes
14 responsibility for the minor;

15
16 g. exercising First Amendment rights protected by the United
17 States Constitution, such as the free exercise of religion,
18 freedom of speech, and the right of assembly; or

19
20 h. married or had disabilities of minority removed in
21 accordance with AS 9.55.540.

22
23 2. It is an exception to prosecution under subsection B.3. that the
24 owner, operator, or employee of an establishment promptly notified
25 the police department that a minor was present on the premises of
26 the establishment during curfew hours and refused to leave.
27

28
29 Section 2: That Anchorage Municipal Code Section 14.60.030 is hereby
30 amended to read as follows:

31
32 14.60.030 Fine Schedule.

33	34	35	36
CODE SECTION	OFFENSE	PENALTY/FINE	
37 8.05.440	Curfew	75.00 - <u>300.00</u>	

38 Section 3: Third Party Liability.

39
40 1. It is expressly the purpose of this Ordinance to provide for and
41 promote the health, safety, and welfare of the general public and
42 not to create or otherwise establish or designate any particular
43 class or group of persons who will or should be especially
44 protected by the provisions of this Ordinance.
45

2
3
4 2. It is the specific intent of this Ordinance that no provision nor any
5 term used in this Ordinance is intended to impose any duty
6 whatsoever upon the Municipality of Anchorage or any of its
7 officers, employees or agents, for whom the implementation and
8 enforcement of this Ordinance shall be discretionary and not
9 mandatory.

10
11 3. Nothing contained in this Ordinance is intended nor shall be
12 construed to create or form the basis of any liability on the part of
13 the Municipality of Anchorage, or its officers, employees or agents,
14 for any injury or damage resulting from any action or inaction on
15 the part of the Municipality of Anchorage, related in any manner to
16 the enforcement of this Ordinance by its officers, employees or
17 agents.

18
19
20 Section 4: Severability.

21
22 If any provision of this Ordinance is deemed invalid or unconstitutional by
23 a Court of competent jurisdiction, such invalidity or unconstitutionality shall not affect
24 the other provisions of the same.

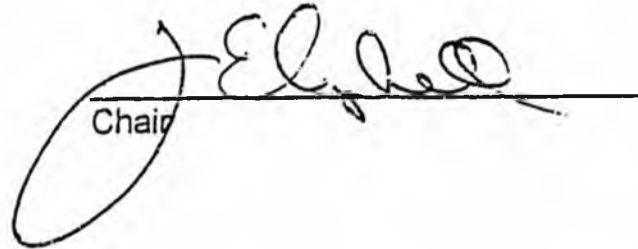
25
26
27 Section 5: Ordinance Review.

28
29 Within one year after the initial enforcement of this ordinance, the Mayor
30 shall review the ordinance and report and make recommendations to the Municipal
31 Assembly and make a report to the Anchorage Youth Commission concerning the
32 effectiveness of and the continuing need for the ordinance. The report shall specifically
33 include the following information:

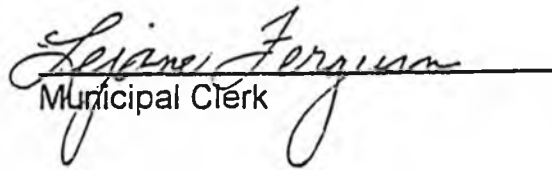
- 34
35 1. The practicality of enforcing the ordinance and any problems with
36 enforcement as identified by the police department;
37
38 2. The impact of the ordinance on crime statistics;
39
40 3. The number of persons cited for a violation of the ordinance; and
41
42 4. The Municipality's net cost of enforcing the ordinance.

43
44
45 Section 6: This ordinance shall become effective on January 1, 1996.

4
5 PASSED AND APPROVED by the Anchorage Assembly this 10th day of
6 October, 1995.
7

8
9
10
11
12 
13
14

15 ATTEST:

16
17
18
19
20 
21 Municipal Clerk
22
23
24

HB

22

Revision Date: _____ Dept. Affected: Revenue
 Title: Civil Liability for Bootleggers BRU: Alcoholic Beverage Control Board
 Component: Alcoholic Beverage Control Board
 Sponsor: Representative Ivan
 Requestor: (H) JUD COMPONENT SERIAL NO. 100

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends Alaska law to clearly assert that immunity for social hosts that serve alcoholic beverages does not extend to those persons engaged in the illegal sale of alcohol. Alaska's strong immunity provisions for social hosts was reaffirmed and relied upon in the 1996 Alaska Supreme Court decision, Chokwok v. Worley, that concluded that civil liability for social hosts applied even when serving minors. This bill is designed to remove the potential for this doctrine to be used as a defense by bootleggers facing prosecution.

No fiscal impact is anticipated.

Prepared by: Douglas B. Griffin Phone: (907) 277-8638
 Division: Alcoholic Beverage Control Board Date: January 22, 1997
 Approved by Commissioner: Wilson L. Condon Date: January 22, 1997
 Agency: Revenue

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 22

Revision Date: _____
Title: Civil liability for bootlegging

Dept. Affected: Alaska Court System
BRU: Trial Courts
Component: _____

Sponsor: Rep. Ivan
Requestor: House Judiciary

COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES (

Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

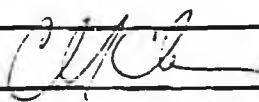
Estimate of any current year (FY 97) cost: None

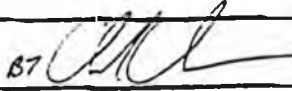
Positions

Full-Time					
Part-Time					
Temporary					

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel 
Agency: Alaska Court System

Approved by: Arthur H. Snowden, II, Administrative Director 
Agency: Alaska Court System

Phone: 264-8228
Date: 01/23/97
Date: 01/23/97

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 22

Revision Date: _____ Dept. Affected: Department of Law
 Title: An Act relating to civil liability for illegal sales of BRU: Civil Division
alcoholic beverages Component: General Legal Services
 Sponsor: Representative Ivan
 Requester: (H) JUDICIARY COMPONENT SERIAL NO. 2087

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

POSITIONS	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill would make individuals who sell or barter an alcoholic beverage to another person in violation of AS 04.11.010 strictly liable for civil damages resulting from the intoxication of the person receiving the alcoholic beverage.

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

Prepared by: Joan Kasson Phone: 455-5370
 Division: Administrative Services Division Date: 1/14/97
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 1/14/97
 Agency: Department of Law

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HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: January 13, 1997

FURTHER REFERRALS:

Date of Committee Action: 2/14/97

The JUDICIARY Committee considered:

HB 22

HOUSE BILL NO. 22

CIVIL LIABILITY FOR BOOTLEGGERS

"An Act relating to civil liability for illegal sales of alcoholic beverages; and providing for an effective date."

recommends it be replaced with the following committee substitute CSHB 22 (JUD) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal note(s) _____

fiscal note(s) _____

zero fiscal note(s) CT. SYS., DEPT. of LAW, ABC BD.

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i> CROFT	✓			
<i>[Signature]</i> ROKEBERG	✓			
<i>[Signature]</i> PORTER	✓			
<i>[Signature]</i> GREEN	✓			
<i>[Signature]</i> RUNDE	✓			
<i>[Signature]</i> JAMES	✓			
<i>[Signature]</i> BERKOWITZ	✓			

CHAIR'S SIGNATURE *[Signature]*

CS FOR HOUSE BILL NO. 22(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES IVAN, Porter

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil liability for illegal sale or barter of an alcoholic
2 beverage or a controlled substance; and providing for an effective date."

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

4 * Section 1. AS 04.21.020 is amended by adding new subsections to read:

5 (b) Notwithstanding (a) of this section, a person who sells or barter an
6 alcoholic beverage to another person in violation of AS 04.11.010 is strictly liable
7 (1) to the recipient or another person for civil damages if, while under the influence
8 of the alcoholic beverage, the person receiving the alcoholic beverage engages in
9 conduct that results in civil damages and the recipient's being under the influence of
10 the alcoholic beverage substantially contributes to the civil damages; and (2) for the
11 cost to the state or a political subdivision of the state to criminally prosecute a person
12 who receives an alcoholic beverage from a person who violates AS 04.11.010 if the
13 prosecution results from the violation of AS 04.11.010 described in this subsection.
14 In this subsection, "civil damages" includes damages for personal injury, death, or

1 injury to property of a person, including the state or a political subdivision of the state.

2 (c) In an action under (b) of this section, it is not a defense that the person
3 receiving the alcoholic beverage voluntarily consumed the alcoholic beverage or that
4 the person receiving the alcoholic beverage was voluntarily under the influence of the
5 alcoholic beverage.

6 * Sec. 2. AS 09.65 is amended by adding a new section to read:

7 **Sec. 09.65.205. Civil liability for controlled substances offense.** (a) A
8 person who sells or barter a controlled substance in violation of AS 11.71 is strictly
9 liable

10 (1) to the recipient or another person for civil damages if, while under
11 the influence of the controlled substance, the person receiving the controlled substance
12 engages in conduct that results in civil damages and the recipient's being under the
13 influence of the controlled substance substantially contributes to the civil damages; and

14 (2) for the cost to the state or political subdivision to criminally
15 prosecute a person who receives a controlled substance from a person who violates
16 AS 11.71 if the prosecution results from the violation of AS 11.71 described in this
17 subsection.

18 (b) In an action under (a) of this section, it is not a defense that the person
19 receiving the controlled substance voluntarily consumed the controlled substance or
20 was voluntarily under the influence of the controlled substance.

21 (c) In this section,

22 (1) "civil damages" includes damages for personal injury, death, or
23 injury to property of a person, including the state or a political subdivision of the state;

24 (2) "controlled substance" has the meaning given in AS 11.71.900.

25 * Sec. 3. This Act takes effect July 1, 1997.

CS FOR HOUSE BILL NO. 22()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE IVAN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil liability for illegal sale or barter of an alcoholic
2 beverage or a controlled substance; and providing for an effective date."

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

4 * Section 1. AS 04.21.020 is amended by adding new subsections to read:

5 (b) Notwithstanding (a) of this section, a person who sells or barter an
6 alcoholic beverage to another person in violation of AS 04.11.010 is strictly liable to
7 the recipient or another person for (1) civil damages if, while under the influence of
8 the alcoholic beverage, the person receiving the alcoholic beverage engages in conduct
9 that results in civil damages and the recipient's being under the influence of the
10 alcoholic beverage substantially contributes to the civil damages; and (2) ^{for} the cost to
11 the state or a political subdivision of the state to criminally prosecute a person who
12 receives an alcoholic beverage from a person who violates AS 04.11.010 if the
13 prosecution results from the violation of AS 04.11.010 described in this subsection.
14 In this subsection, "civil damages" includes damages for personal injury, death, or

1 injury to property of a person, including the state or a political subdivision of the state.

2 (c) In an action under (b) of this section, it is not a defense that the person
3 receiving the alcoholic beverage voluntarily consumed the alcoholic beverage or that
4 the person receiving the alcoholic beverage was voluntarily under the influence of the
5 alcoholic beverage.

6 * Sec. 2. AS 09.65 is amended by adding a new section to read:

7 Sec. 09.65.205. Civil liability for controlled substances offense. (a) A
8 person who sells or barter⁽¹⁾s a controlled substance in violation of AS 11.71 is strictly
9 liable to the recipient or another person for

10 ~~(1)~~ civil damages if, while under the influence of the controlled
11 substance, the person receiving the controlled substance engages in conduct that results
12 in civil damages and the recipient's being under the influence of the controlled
13 substance substantially contributes to the civil damages; and

14 ^{for} (2) the cost to the state or political subdivision to criminally prosecute
15 a person who receives a controlled substance from a person who violates AS 11.71 if
16 the prosecution results from the violation of AS 11.71 described in this subsection.

17 (b) In an action under (a) of this section, it is not a defense that the person
18 receiving the controlled substance voluntarily consumed the controlled substance or
19 was voluntarily under the influence of the controlled substance.

20 (c) In this section,

21 (1) "civil damages" includes damages for personal injury, death, or
22 injury to property of a person, including the state or a political subdivision of the state;

23 (2) "controlled substance" has the meaning given in AS 11.71.900.

24 * Sec. 3. This Act takes effect July 1, 1997.

WORK DRAFT

WORK DRAFT

WORK DRAFT

0-LS0148VE
Ford
1/28/97

CS FOR HOUSE BILL NO. 22()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE IVAN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil liability for illegal sales of alcoholic beverages and to
2 civil liability for controlled substances offenses; and providing for an effective
3 date."

Attch 4
Title 28
35.029
35.033

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

5 * Section 1. AS 04.21.020 is amended by adding new subsections to read:

6 (b) Notwithstanding (a) of this section, a person who sells or barters an
7 alcoholic beverage to another person in violation of AS 04.11.010 is strictly liable for
8 civil damages if the person receiving the alcoholic beverage becomes intoxicated and
9 the intoxication substantially contributed to the civil damages. In this subsection,
10 "civil damages" includes personal injury, death, or property damage of an individual,
11 the state, or a political subdivision of the state and the cost to the state or a political
12 subdivision of the state to criminally prosecute a person who receives an alcoholic
13 beverage from a person who violates AS 04.11.010.

intox
def.
crim
statute

14 (c) Voluntary intoxication by an alcoholic beverage or a controlled substance

positive expression of no defense

WORK DRAFT

WORK DRAFT

0-LS0148VE

1 is not a defense to a claim for civil damages under (b) of this section.

2 * Sec. 2. AS 09.65 is amended by adding a new section to read:

3 **Sec. 09.65.205. Civil liability for controlled substances offense.** A person
 4 who is ~~convicted~~ of an offense under AS 11.71 or 11.73 is ~~also~~ strictly liable for civil
 5 damages that result from the commission of the offense if the commission of the
 6 offense substantially contributed to the civil damages. Voluntarily being under the
 7 influence of a controlled substance is not a defense to a claim for civil damages under
 8 this section. In this section, "civil damages" includes personal injury, death, or
 9 property damage of an individual, the state, or a political subdivision of the state.

10 * Sec. 3. This Act takes effect July 1, 1997.

intox?

*too wide a net
sell provisions
only?*

CORRECTION

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CS FOR HOUSE BILL NO. 22()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE IVAN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil liability for illegal sales of alcoholic beverages and to
2 civil liability for controlled substances offenses; and providing for an effective
3 date."

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

5 * Section 1. AS 04.21.020 is amended by adding new subsections to read:

6 (b) Notwithstanding (a) of this section, a person who sells or barters an
7 alcoholic beverage to another person in violation of AS 04.11.010 is strictly liable for
8 civil damages if the person receiving the alcoholic beverage becomes intoxicated and
9 the intoxication substantially contributed to the civil damages. In this subsection,
10 "civil damages" includes personal injury, death, or property damage of an individual,
11 the state, or a political subdivision of the state and the cost to the state or a political
12 subdivision of the state to criminally prosecute a person who receives an alcoholic
13 beverage from a person who violates AS 04.11.010.

14 (c) Voluntary intoxication by an alcoholic beverage or a controlled substance

positive expression of no defense

*File 4
Title 28
35.029
.033*

*intox
def.
Crim
Statute*

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Co./Dept.	SPECIAL LITIG.	Co.	HOUSE JUD.
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Fax #	465 6735	Fax #	465 4316

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Co./Dept.	Law - Crim.	Co.	House Jud
Phone #		Phone #	465-4990
Fax #	465 4043	Fax #	" 4316

WORK DRAFT

WORK DRAFT

0-LS0148NF

1 is not a defense to a claim for civil damages under (b) of this section.

2 * Sec. 2. AS 09.65 is amended by adding a new section to read:

3 **Sec. 09.65.205. Civil liability for controlled substances offense.** A person
 4 who is ~~convicted~~ of an offense under AS 11.71 or 11.73 is ~~also~~ strictly liable for civil
 5 damages that result from the commission of the offense if the commission of the
 6 offense substantially contributed to the civil damages. Voluntarily being under the
 7 influence of a controlled substance is not a defense to a claim for civil damages under
 8 this section. In this section, "civil damages" includes personal injury, death, or
 9 property damage of an individual, the state, or a political subdivision of the state.

10 * Sec. 3. This Act takes effect July 1, 1997.

intox?

*too wide a net
sell provision
only?*

0-LS0148\H
Ford
2/10/97

CS FOR HOUSE BILL NO. 22()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE IVAN

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to civil liability for illegal sale or barter of an alcoholic**
2 **beverage or a controlled substance; and providing for an effective date."**

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

4 *** Section 1. AS 04.21.020 is amended by adding new subsections to read:**

5 (b) Notwithstanding (a) of this section, a person who sells or barter an
6 alcoholic beverage to another person in violation of AS 04.11.010 is strictly liable for
7 (1) civil damages if, while under the influence of the alcoholic beverage, the person
8 receiving the alcoholic beverage engages in conduct that results in civil damages and
9 the recipient's being under the influence of the alcoholic beverage substantially
10 contributes to the civil damages; and (2) the cost to the state or a political subdivision
11 of the state to criminally prosecute a person who receives an alcoholic beverage from
12 a person who violates AS 04.11.010 if the prosecution results from the violation of
13 AS 04.11.010 described in this subsection. In this subsection, "civil damages" includes
14 damages for personal injury, death, or injury to property of a person, including the

1 state or a political subdivision of the state.

2 (c) In an action under (b) of this section, it is not a defense that the person
3 receiving the alcoholic beverage voluntarily consumed the alcoholic beverage or that
4 the person receiving the alcoholic beverage was voluntarily under the influence of the
5 alcoholic beverage.

6 * Sec. 2. AS 09.65 is amended by adding a new section to read:

7 **Sec. 09.65.205. Civil liability for controlled substances offense.** (a) A
8 person who sells or barter a controlled substance in violation of AS 11.71 is strictly
9 liable for

10 (1) civil damages if, while under the influence of the controlled
11 substance, the person receiving the controlled substance engages in conduct that results
12 in civil damages and the recipient's being under the influence of the controlled
13 substance substantially contributes to the civil damages; and

14 (2) the cost to the state or political subdivision to criminally prosecute
15 a person who receives a controlled substance from a person who violates AS 11.71 if
16 the prosecution results from the violation of AS 11.71 described in this subsection.

17 (b) In an action under (a) of this section, it is not a defense that the person
18 receiving the controlled substance voluntarily consumed the controlled substance or
19 was voluntarily under the influence of the controlled substance.

20 (c) In this section.

21 (1) "civil damages" includes damages for personal injury, death, or
22 injury to property of a person, including the state or a political subdivision of the state;

23 (2) "controlled substance" has the meaning given in AS 11.71.900.

24 * Sec. 3. This Act takes effect July 1, 1997.



FACSIMILE TRANSMISSION COVER SHEET

TORT Section
1031 W. 4TH AVE.
SUITE 200

ANCHORAGE, AK 99501

PHONE: (907) 269-5190 FAX: (907) 258-0760

DATE: 2/7/97

TO: LISA KIRSCH FAX: (907) 465-4316

COUNSEL FOR HOUSE JUDICIARY COMMITTEE

FROM: GAIL VOITLANDER

ASSISTANT ATTORNEY GENERAL

NUMBER OF PAGES INCLUDING THIS SHEET: 2

MESSAGE: _____

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(b) Notwithstanding (a) of this section, a person who sells or barter an alcoholic beverage in violation of AS 04.11.010 is strictly liable for (1) civil damages if the recipient of the alcoholic beverage from that person engages in conduct, while under the influence of the alcoholic beverage, which results in civil damages and the intoxication of the recipient substantially contributes to the civil damages; and (2) the cost, to the state or a political subdivision of the state, of the criminal prosecution of the recipient for conduct engaged in while under the influence of the alcoholic beverage received in violation of AS 04.11.010.

*Lisa -
How about above with
parallel changes to drug
sale provisions?
Gail Viglander*

Alaska State Legislature



House of Representatives
House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

MEMORANDUM

Date: February 7, 1997

To: Gail Voigtlander, AAG
Fax: 258-0760

From: Lisa Kirsch, Counsel for House Judiciary Committee
Fax: 465-4316

RE: HB 22 Bootlegger Liability

Here's my proposed amendment:

Page 1, line 7, after, "(1) civil damages if"

Insert: "while under the influence of the alcoholic beverage the person receiving the alcoholic beverage engages in conduct which results in civil damages and the intoxication of the person receiving the alcoholic beverage substantially contributes to the civil damages."

Delete: line 7 from "the person receiving the alcoholic beverage..." through line 8, "...under the influence of the alcoholic beverage;"

269 - 5190
HB 22 Gail V.

Post-It® Fax Note	7671	Date	2/6/97	# of pages	2
To	GAIL VOIGTLANDER		From	LISA KIRSCH	
Co./Dept.	Spec. Prosec.		Co.	HOUSE JUD.	
Phone #	269 5100		Phone #	465 4990	
Fax #	258 0760		Fax #	4316	

0-LS0148VF
Ford
2/5/97

ANY Q CALL ME PLEASE

CS FOR HOUSE BILL NO. 22()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE IVAN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil liability for illegal sale or barter of an alcoholic
2 beverage or a controlled substance; and providing for an effective date."

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

4 * **Section 1.** AS 04.21.020 is amended by adding new subsections to read:

5 (b) Notwithstanding (a) of this section, a person who sells or barter an
6 alcoholic beverage to another person in violation of AS 04.11.010 is strictly liable for
7 (1) civil damages if the person receiving the alcoholic beverage substantially
8 contributed to the civil damages while under the influence of the alcoholic beverage;
9 and (2) the cost to the state or a political subdivision of the state to criminally
10 prosecute a person who receives an alcoholic beverage from a person who violates
11 AS 04.11.010 if the prosecution results from the violation of AS 04.11.010 described
12 in this subsection. In this subsection, "civil damages" includes damages for personal
13 injury, death, or injury to property of a person, including the state or a political
14 subdivision of the state.

1 (c) In an action under (b) of this section, it is not a defense that the person
2 receiving the alcoholic beverage voluntarily consumed the alcoholic beverage or that
3 the person receiving the alcoholic beverage was voluntarily under the influence of the
4 alcoholic beverage.

5 * Sec. 2. AS 09.65 is amended by adding a new section to read:

6 **Sec. 09.65.205. Civil liability for controlled substances offense.** (a) A
7 person who sells or barter a controlled substance in violation of AS 11.71 is strictly
8 liable for

9 (1) civil damages if the person receiving the controlled substance
10 substantially contributed to the civil damages while under the influence of the
11 controlled substance; and

12 (2) the cost to the state or political subdivision to criminally prosecute
13 a person who receives a controlled substance from a person who violates AS 11.71 if
14 the prosecution results from the violation of AS 11.71 described in this subsection.

15 (b) In an action under (a) of this section, it is not a defense that the person
16 receiving the controlled substance voluntarily consumed the controlled substance or
17 was voluntarily under the influence of the controlled substance.

18 (c) In this section,

19 (1) "civil damages" includes damages for personal injury, death, or
20 injury to property of a person, including the state or a political subdivision of the state;

21 (2) "controlled substance" has the meaning given in AS 11.71.900.

22 * Sec. 3. This Act takes effect July 1, 1997.

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Ford
1/28/97

CS FOR HOUSE BILL NO. 22()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE IVAN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil liability for illegal sales of alcoholic beverages and to
2 civil liability for controlled substances offenses; and providing for an effective
3 date."

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

5 * Section 1. AS 04.21.020 is amended by adding new subsections to read:

6 (b) Notwithstanding (a) of this section, a person who sells or barter's an
7 alcoholic beverage to another person in violation of AS 04.11.010 is strictly liable for
8 civil damages if the person receiving the alcoholic beverage becomes intoxicated and
9 the intoxication substantially contributed to the civil damages. In this subsection,
10 "civil damages" includes ^{damages for} personal injury, death, or ^{injury to} property ~~damage~~ of an individual,
11 the state, or a political subdivision of the state and the cost to the state or a political
12 subdivision of the state to criminally prosecute a person who receives an alcoholic
13 beverage from a person who violates AS 04.11.010.

14 (c) Voluntary intoxication by an alcoholic beverage or a controlled substance

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is not a defense to a claim for civil damages under (b) of this section.

* Sec. 2. AS 09.65 is amended by adding a new section to read:

Sec. 09.65.205. Civil liability for controlled substances offense. A person who is convicted of an offense under AS 11.71 or 11.73 is also strictly liable for civil damages that result from the commission of the offense if the commission of the offense substantially contributed to the ~~civil damages~~ ^{personal injuries, death or injury to} property. Voluntarily being under the influence of a controlled substance is not a defense to a claim for civil damages under this section. In this section, "civil damages" includes ^{damages for} personal injury, death, or property ~~damage~~ of an individual, the state, or a political subdivision of the state. →

* Sec. 3. This Act takes effect July 1, 1997.

and to the state or political subdivision of the state for the cost to the state or a political subdivision of the state to criminally prosecute a person who receives the controlled substance from a person who is convicted of an offense under AS 11.71 or AS 11.73.

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HB22

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 — Doug Griffin Div. ABC Bd

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~~Am. 4037~~

William Walters

 Tamara Chrest

 800 478 6822 ex 3273

HB22

Carpetti

2/5/97

§ 2 ~~11.73~~

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 crim def.

✓ [11.71 included poss.

 might want to name

Gail Voigtlander

substantially contributed

Sim v State excessive force
break in nexus

Toomey's Elbow Room

legal vs prox cause

Supreme Ct

substantial factor

Title 4 - Drunken person

substantially impaired

§2

Self defense

M v O F

11.71.010-060

28.35.033 (c)

cannot limit competent ev.

PROTESTANDO

Protestando /prɒtɛstændɔw/. L. Lat. *Protesting*. The emphatic word formerly used in pleading by way of protestation. See *Protestation*.

Protestants. Those who adhered to the doctrine of Luther; so called because, in 1529, they protested against a decree of the emperor Charles V and of the diet of Spire, and declared that they appealed to a general council. The name is now applied indiscriminately to all the sects, of whatever denomination, who have seceded from the Church of Rome.

Protestation. In old pleading, the indirect affirmation or denial of the truth of some matter which cannot with propriety or safety be positively affirmed, denied, or entirely passed over. The exclusion of a conclusion.

Protest fee. Fee charged by banks or other financial agencies when items (such as checks) presented for collection cannot be collected.

Prothonotary /prɒtɒnɔwdəri/prɒwɒs/. The title given (in e.g. Pennsylvania) to an officer who officiates as principal clerk of some courts.

Protocol /prɒtɒkɔl/. A brief summary of the text of a document. Also, the minutes of a meeting which are generally initiated by the parties present to reflect their assent to the accuracy of the minutes.

A section of the Department of State charged with the preparation of agreements and treaties. Commonly, term refers to the etiquette of diplomacy and the ranking of officials.

Protutor /prɒtɔwtɔr/. Lat. In the civil law, he who, not being the tutor of a minor, has administered his property or affairs as if he had been, whether he thought himself legally invested with the authority of a tutor or not. He who marries a woman who is tutrix becomes, by the marriage, a protutor. The protutor is equally responsible with the tutor.

Prout patet per recordum /prɒwt pɛtət pɛr rɔkɔrdəm/. As appears by the record. In the Latin phraseology of pleading, this was the proper formula for making reference to a record.

Provable. Susceptible of being proved.

Prove. To establish or make certain; to establish a fact or hypothesis as true by satisfactory and sufficient evidence. *Lawson v. Superior Court In and For Los Angeles County*, 155 Cal.App.2d 755, 318 P.2d 812, 814. As used in legal matters and proceedings means to establish, to render or make certain. *Texas & N. O. R. Co. v. Flowers*, Tex.Civ.App., 336 S.W.2d 907, 914. See also *Proof*.

Prover. In old English law, a person who, on being indicted of treason or felony, and arraigned for the same, confessed the fact before plea pleaded, and appealed or accused others, his accomplices, in the same crime, in order to obtain his pardon.

Provide. To make, procure, or furnish for future use, prepare. To supply; to afford; to contribute.

Provided. The word used in introducing a proviso (*q.v.*). Ordinarily it signifies or expresses a condition; but this is not invariable, for, according to the context, it may import a covenant, or a limitation or qualification, or a restraint, modification, or exception to something which precedes.

Provided by law. This phrase when used in a constitution or statute generally means prescribed or provided by some statute.

Province. The district into which a country has been divided; as, the province of Quebec in Canada. More loosely, a sphere of activity or a profession such as medicine or law.

Provincialis /prɒvɪnshijəylɪs/. Lat. In the civil law, one who has his domicile in a province.

Provision. Foresight of the chance of an event happening, sufficient to indicate that any present undertaking upon which its assumed realization might exert a natural and proper influence was entered upon in full contemplation of it as a future possibility.

In commercial law, funds remitted by the drawer of a bill of exchange to the drawee in order to meet the bill, or property remaining in the drawee's hands or due from him to the drawer, and appropriated to that purpose.

Provisional. Temporary; preliminary; tentative; taken or done by way of precaution or *ad interim*.

A term of the check collection process describing payment, credit or other settlement for a check or other item when the person giving the settlement reserves a right, by law or agreement, to recover the payment or credit if the item is not finally paid.

Provisional committee. A committee appointed for a temporary occasion.

Provisional court. A federal court with jurisdiction and powers governed by the order from which it derives its authority. A provisional court established in conquered or occupied territory by military authorities, or the provisional government, is a federal court deriving its existence and all its powers from the federal government.

Provisional government. One temporarily established in anticipation of and to exist and continue until another (more regular or more permanent) shall be organized and instituted in its stead.

Provisional injunction. Term sometimes used for interlocutory or temporary injunction.

Provisional remedy. A remedy provided for present need or for the immediate occasion; one adapted to meet a particular exigency. Particularly, a temporary process available to a plaintiff in a civil action, which secures him against loss, irreparable injury, dissipation of the property, etc., while the action is pending. Such include the remedies of injunction, appointment of a receiver, attachment, or arrest.

Provisional seizure. A remedy known under the law of Louisiana, and substantially the same in general nature as attachment of property in other states.

Proviso /prɒvɪzɔw/. A condition, stipulation, limitation, or provision which is inserted in a deed, lease, mortgage, or contract, and on the performance or non-performance of which the validity of the instrument frequently depends; it usually begins with the word "provided."

A limitation or exception to a grant made or authority conferred, the effect of which is to declare that the one shall not operate, or the other be exercised, unless in the case provided.

A clause or part of a clause in a statute, the office of which is either to except something from the enacting clause, or to qualify or restrain its generality, or to exclude some possible ground of misinterpretation of its extent.

A "proviso" is used to limit, modify or explain the main part of section of statute to which it is appended. *Saginaw County Tp. Officers Ass'n v. City of Saginaw*, 373 Mich. 477, 130 N.W.2d 30, 32. The office of a "proviso" in a statute is to restrict or make clear that which has gone before. *Allen v. Burkhardt*, Okl., 377 P.2d 821, 827. A clause engrafted on a preceding enactment for the purpose of restraining or modifying the enacting clause or of excepting something from its operation which would otherwise have been within it. *Stoller v. State*, 171 Neb. 93, 105 N.W.2d 852, 856. A proviso is sometimes misused to introduce independent pieces of legislation. *Cox v. Hart*, 260 U.S. 427, 43 S.Ct. 154, 157, 67 L.Ed. 332. Its proper use, however, is to qualify what is affirmed in the body of the act, section, or paragraph preceding it, or to except something from the act, but not to enlarge the enacting clause. And it cannot be held to enlarge the scope of the statute.

Exception and proviso distinguished. See Exception.

Proviso est providere presentia et futura, non præterita /prɒvɪzɔw ɛst prɒvɪdɪrɪ prɛzɛnshijə ɛt fytʃɪtʃɪrə, nɒn prætɛhrətɪ/. A proviso is to provide for the present or future, not the past.

Provisor /prɒvɪzɔr/. In old English law, a provider, or purveyor. Also a person nominated to be the next incumbent of a benefice (not yet vacant) by the pope. He that hath the care of providing things necessary; but more especially one who sued to the court of Rome for a provision.

Proviso, trial by. In old English practice, a trial brought on by the defendant, in cases where the plaintiff, after issue joined, neglects to proceed to trial; so called from a clause in the writ to the sheriff, which directs him, in case two writs come to his hands, to execute but one of them. The defendant may take out a *venire facias* to the sheriff, which hath in it these words, *Proviso quod*, etc., provided that if the plaintiff shall take out any writ to that purpose, the sheriff shall summon but one jury on them both.

Provocation. The act of inciting another to do a particular deed. That which arouses, moves, calls forth, causes, or occasions. Such conduct or actions on the part of one person towards another as tend to arouse rage, resentment, or fury in the latter against the former, and thereby cause him to do some illegal act against or in relation to the person offering the provocation. See also *Provoker*.

Provocation which will reduce killing to manslaughter must be of such character as will, in mind of average reasonable man, stir resentment likely to cause violence, obscure the reason, and lead to action from passion rather than judgment. There must be a state of passion without time to cool placing defendant beyond control of his reason. Provocation carries with it the idea of some physical aggression or some assault which suddenly arouses heat and passion in the person assaulted.

Provoke. To excite; to stimulate; to arouse. To irritate, or enrage.

Provost-Marshal. In military law, the officer acting as the head of the military police of any post, camp, city or other place in military occupation, or district under the reign of martial law. He or his assistants may, at any time, arrest and detain for trial, persons subject to military law committing offenses, and may carry into execution any punishments to be inflicted in pursuance of a court martial.

Proxenota /prɒksɔniətə/. Lat. In the civil law, a broker; one who negotiated or arranged the terms of a contract between two parties, as between buyer and seller; one who negotiated a marriage; a match-maker.

Proximate. Immediate; nearest; direct, next in order. In its legal sense, closest in causal connection. *Armijo v. World Ins. Co.*, 78 N.M. 204, 429 P.2d 904, 905. Next in relation to cause and effect.

Proximate cause. That which, in a natural and continuous sequence, unbroken by any efficient intervening cause, produces injury, and without which the result would not have occurred. *Wisniewski v. Great Atlantic & Pac. Tea Co.*, 226 Pa.Super. 574, 323 A.2d 744, 748. That which is nearest in the order of responsible causation. That which stands next in causation to the effect, not necessarily in time or space but in causal relation. The proximate cause of an injury is the primary or moving cause, or that which, in a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the accident could not have happened, if the injury be one which might be reasonably anticipated or foreseen as a natural consequence of the wrongful act. An injury or damage is proximately caused by an act, or a failure to act, whenever it appears from the evidence in the case, that the act or omission played a substantial part in bringing about or actually causing the injury or damage; and that the injury or damage was either a direct result or a reasonably probable consequence of the act or omission.

The last negligent act contributory to an injury, without which such injury would not have resulted. The

"But For"

dominant, moving or producing cause. The efficient cause; the one that necessarily sets the other causes in operation. The causes that are merely incidental or instruments of a superior or controlling agency are not the proximate causes and the responsible ones, though they may be nearer in time to the result. It is only when the causes are independent of each other that the nearest is, of course, to be charged with the disaster. Act or omission immediately causing or failing to prevent injury; act or omission occurring or concurring with another, which, had it not happened, injury would not have been inflicted. *Herron v. Smith Bros.*, 116 Cal.App. 518, 2 P.2d 1012, 1013.

See also Concurrent causes; Efficient cause; Immediate cause; Legal cause.

Proximate consequence or result. One which succeeds naturally in the ordinary course of things. A consequence which, in addition to being in the train of physical causation, is not entirely outside the range of expectation or probability, as viewed by ordinary men. *The Mars, D.C.N.Y.*, 9 F.2d 183, 184. One ordinarily following from the negligence complained of, unbroken by any independent cause, which might have been reasonably foreseen. One which a prudent and experienced man, fully acquainted with all the circumstances which in fact existed, would, at time of the negligent act, have thought reasonably possible to follow, if it had occurred to his mind. *Coast S. S. Co. v. Brady, C.C.A.Ala.*, 8 F.2d 16, 19. A mere possibility of the injury is not sufficient, where a reasonable man would not consider injury likely to result from the act as one of its ordinary and probable results.

Proximate damages. See Damages.

Proximately. Directly or immediately. Pertaining to that which in an ordinary natural sequence produces a specific result, no independent disturbing agency intervening. *Weaver v. Landis*, 66 Cal.App.2d 34, 151 P.2d 884, 886. See Proximate; Proximate cause.

Proximity. Kindred between two persons. Quality or state of being next in time, place, causation, influence, etc.; immediate nearness.

Proximus est cui nemo antecedit, supremus est quem nemo sequitur /próksímás ést k(yuw)ay níymow ántesýdét, sáprímás ést kwém níymow sékwotar/. He is next whom no one precedes; he is last whom no one follows.

Proxy. (Contracted from procuracy.) A person who is substituted or deputed by another to represent him and act for him, particularly in some meeting or public body. An agent representing and acting for principal. Also the instrument containing the appointment of such person. *Cliffs Corporation v. United States, C.C.A.Ohio*, 103 F.2d 77, 80.

Written authorization given by one person to another so that the second person can act for the first, such as that given by a shareholder to someone else to represent him and vote his shares at a shareholders' meeting. Depending on the context, proxy may also refer to the

grant of authority itself (the appointment), or the document granting the authority (the appointment form). See also Power of attorney; Proxy statement; Voting trust.

Proxy marriage. A marriage contracted or celebrated through agents acting on behalf of one or both parties. A proxy marriage differs from the more conventional ceremony only in that one or both of the contracting parties are represented by an agent; all the other requirements having been met. *State v. Anderson*, 239 Or. 200, 396 P.2d 558, 561.

Proxy statement. Information required by SEC to be given stockholders as a prerequisite to solicitation of proxies for a security subject to the requirements of Securities Exchange Act. The purpose of the proxy statement is to provide shareholders with the appropriate information to permit an intelligent decision on whether to permit their shares to be voted as solicited for particular matter at forthcoming stockholders meeting. See also Buried facts doctrine.

Prudence. Carefulness, precaution, attentiveness, and good judgment, as applied to action or conduct. That degree of care required by the exigencies or circumstances under which it is to be exercised. This term, in the language of the law, is commonly associated with Care and Diligence and contrasted with Negligence. See those titles.

Prudent. Sagacious in adapting means to end; circumspect in action, or in determining any line of conduct. Practically wise, judicious, careful, discreet, circumspect, sensible. *Tureen v. Peoples Motorbus Co. of St. Louis, Mo.App.*, 97 S.W.2d 847, 848. In defining negligence, practically synonymous with cautious.

Prudenter agit qui praecepto legis obtemperat /pruw-déntar éyjat kwáy práseptow líyjas obtemperat/. He acts prudently who obeys the command of the law.

Prudent Man Rule. An investment standard. In some states, the law requires that a fiduciary, such as a trustee for pension funds, may invest the trust's or fund's money only in a list of securities designated by the state—the so-called legal list. In other states, the trustee may invest in a security if it is one which a prudent man of discretion and intelligence, who is seeking a reasonable income and preservation of capital, would buy. For example, New York's "prudent man rule," trustee is bound to employ such diligence and such prudence in care and management of fund as, in general, prudent men of discretion and intelligence in such matters employ in their own like affairs. *Withers v. Teachers' Retirement System of City of New York, D.C.N.Y.*, 447 F.Supp. 1248, 1254. A federal "prudent man rule" which governs investment of pension funds is found in ERISA § 40(a)(1); 29 U.S.C.A. § 1104(a)(1).

Prurient interest. A shameful or morbid interest in nudity, sex, or excretion. *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 498, 105 S.Ct. 2794, 2799, 86 L.Ed.2d 394. Model Penal Code § 251.4(1). An obsessive interest in immoral and lascivious matters. An excessive or unnatural interest in sex. One of the criteria of obscen-

ty enunciated in *Miller v. California*, 413 U.S. 15, 93 S.Ct. 2607, 37 L.Ed.2d 419, is whether the material appeals to the "prurient interest" in sex. See also Obscene; Obscenity.

P.S. An abbreviation for "Public Statutes," also for "postscript."

Pseudo /s(y)úwdow/. False, counterfeit, pretended, spurious.

Pseudograph /s(y)úwdográf/. False writing.

P.S.I.A. An abbreviation for "pounds per square inch absolute."

Psychoneurosis /sáykown(y)árwósws/. See Insanity.

Psychosis /sáykówsás/. A severe mental disorder in which the patient departs from the normal pattern of thinking, feeling, and acting. There is generally a loss of contact with reality. Progressive deterioration may occur. See also Insanity.

Psychotherapy /sáykowáhrópiy/. A method or system of alleviating or curing certain forms of disease, particularly diseases of the nervous system or such as are traceable to nervous disorders, by suggestion, persuasion, encouragement, the inspiration of hope or confidence, the discouragement of morbid memories, associations, or beliefs, and other similar means addressed to the mental state of the patient, without (or sometimes in conjunction with) the administration of drugs or other physical remedies.

PTI. See Previously taxed income; Pre-trial intervention.

Puberty. The earliest age at which persons are capable of begetting or bearing children. In the civil and common law, the age at which one became capable of contracting marriage. It was in boys fourteen, and in girls twelve years.

Public, n. The whole body politic, or the aggregate of the citizens of a state, nation, or municipality. The inhabitants of a state, county, or community. In one sense, everybody, and accordingly the body of the people at large; the community at large, without reference to the geographical limits of any corporation like a city, town, or county; the people. In another sense the word does not mean all the people, nor most of the people, nor very many of the people of a place, but so many of them as contradistinguishes them from a few. Accordingly, it has been defined or employed as meaning the inhabitants of a particular place; all the inhabitants of a particular place; the people of the neighborhood. Also, a part of the inhabitants of a community.

Public, adj. Pertaining to a state, nation, or whole community; proceeding from, relating to, or affecting the whole body of people or an entire community. Open to all; notorious. Common to all or many; general; open to common use. Belonging to the people at large; relating to or affecting the whole people of a state, nation, or community; not limited or restricted to any particular class of the community. *Peacock v. Retail Credit Co.*, D.C.Ga., 312 F.Supp. 418, 423.

As to public Accounts; Acknowledgment; Act; Adjurer; Administrator; Agent; Attorney; Auction; Breach; Blockade; Boundary; Business; Capacity; Carnar; Charge; Charge; Charity; Company; Corporation; Debt; Domain; Easement; Enemy; Ferry; Fund; Grant; Health; Highway; Holiday; Hospital; House; Incident; Institution; Market; Minister; Money; Necessity; Notice; Nuisance; Office; Officer; Peace; Policy; Property; Prosecutor; Record; Revenue; River; Rose; Sale; School; Seal; Square; Stock; Store; Tax; Thing; Thoroughfare; Trial; Trust; Trustee; Verdict; Vessel; War; Works; Worship, and Wrong, see those titles.

Public accommodation. Within the meaning of the Civil Rights Act of 1964, which prohibits racial discrimination in such places, it is generally a business establishment, affecting interstate commerce or supported in its activities by State action, which provides lodging, food, entertainment or other services and is open to the public. 42 U.S.C.A. § 2000a(b).

Public advocate. One who may or may not be an attorney who purports to represent the public at large in matters of public concern such as utility rates, environmental quality, and other consumer matters. See also Ombudsman.

Public agency. A department or agency of government which has official or quasi official status. An administrative body.

Publican /públakán/. In the civil law, a farmer of the public revenue; one who held a lease of some property from the public treasury; a collector of taxes and tolls.

In English law, a person authorized by license to keep a public house, and retail therein, for consumption on the premises where sold, all intoxicating liquors; also termed "licensed victualler." A victualler; one who serves food or drink prepared for consumption on the premises.

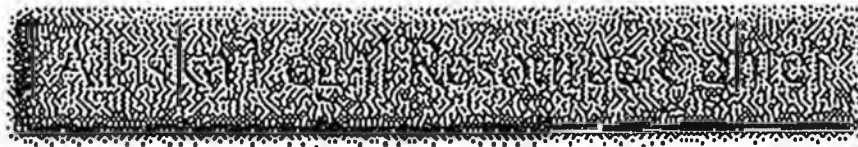
Publicanus /públakéyns/. Lat. In Roman law, a farmer of the customs; a publican.

Public appointments. Public offices or positions which are to be filled by the appointment of individuals, under authority of law, instead of by election.

Publication. To make public; to make known to people in general; to bring before public; to exhibit, display, disclose or reveal. *Tiffany Productions v. Dewing, D.C.Md.*, 50 F.2d 911, 914. The act of publishing anything, offering it to public notice, or rendering it accessible to public scrutiny. An advising of the public; a making known of something to them for a purpose. It implies the means of conveying knowledge or notice. See also Notice; Proclamation; Publish.

Term "publication" is both a business term meaning printing and distribution of written materials and a legal term meaning communication of libelous matter to a third person. *Applewhite v. Memphis State University, Tenn.*, 495 S.W.2d 190, 192. See also Law of libel; below; and Libel; Utter.

As descriptive of the publishing of laws and ordinances, it means printing or otherwise reproducing copy-



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Results of search: "substantially contributed"

The following items were returned as matches for "substantially contributed" by the keyword search. They are ordered with the best matches first.

- AS 10.50.275. Consideration For Company Interests.
(Score=1000, Size=377)
- AS 44.47.290. Contributions By Parent or Guardian.
(Score=786, Size=408)
- ● AS 09.65.210. Damages Resulting From Commission of a Felony.
(Score=659, Size=600)
- AS 21.69.500. Dividends to Mutual Policyholders.
(Score=584, Size=610)
- AS 14.30.650. Funding.
(Score=551, Size=647)
- AS 24.45.116. Disclosure of Contributions.
(Score=546, Size=696)
- AS 21.48.220. Employee Life Insurance.
(Score=483, Size=744)
- AS 21.69.490. Dividends to Stockholders.
(Score=479, Size=746)
- AS 37.06.080. Adoption of Regulations.
(Score=446, Size=864)
- AS 39.35.158. Administrative Director of Courts.
(Score=446, Size=872)
- ● AS 04.11.020. Exceptions: License or Permit Not Required.
(Score=424, Size=874)
- ● AS 23.25.030. Contract, Insurance, or Indemnity is Not a Defense.
(Score=404, Size=887)
- AS 24.20.156. Purposes.
(Score=401, Size=1053)
- ● AS 45.03.406. Negligence Contributing to Forged Signature or Alteration of Instrument.
(Score=364, Size=1154)
- ● AS 32.05.340. Rights Where Partnership Contract Rescinded For Fraud or Misrepresentation.
(Score=337, Size=1064)
- AS 36.10.160. Preference For Residents of Economically Distressed Zones.

(Score=329, Size=1268)

- AS 36.10.175. Preference For Economically Disadvantaged Female Residents.
(Score=328, Size=1327)
- AS 42.05.471. Depreciation Rates, Initial Losses and Accounts.
(Score=313, Size=1237)
- ● AS 23.30.017. Immunity For Third-Party Design Professional.
(Score=307, Size=1383)
- AS 21.69.630. Mutual Member's Share of Assets On Liquidation.
(Score=304, Size=1256)
- AS 14.43.325. Funding.
(Score=278, Size=1350)
- AS 36.10.150. Determination of Zone of Underemployment.
(Score=267, Size=1665)
- AS 10.50.860. Maintenance of Records.
(Score=246, Size=1621)
- AS 36.10.170. Preference For Economically Disadvantaged Minority Residents.
(Score=239, Size=1884)
- AS 22.25.012. Retirement Benefits of Administrative Director.
(Score=237, Size=1744)
- AS 09.17.070. Collateral Benefits.
(Score=236, Size=1655)
- AS 39.20.245. Donation of Leave.
(Score=235, Size=1546)
- AS 32.11.840. Records to Be Kept.
(Score=215, Size=1828)
- AS 29.60.600. Human Services Community Matching Grants.
(Score=206, Size=1997)
- AS 21.87.080. Application For Certificate of Authority.
(Score=194, Size=2074)
- AS 14.11.008. School District Participation in Grant Program.
(Score=191, Size=2174)
- ● AS 45.03.404. Impostors; Fictitious Payees.
(Score=191, Size=2159)
- AS 10.13.440. Purchase.
(Score=190, Size=237)
- AS 21.48.070. Credit Union Group.
(Score=188, Size=2042)
- AS 38.05.874. Public Access Fund Created.
(Score=185, Size=2073)
- ● AS 32.05.130. Rules Determining Rights and Duties of Partners.
(Score=184, Size=2104)
- AS 21.75.270. Financial Impairment; Determination of Insolvency.
(Score=177, Size=2149)
- AS 21.76.080. Joint Insurance Fund.
(Score=176, Size=2403)
- AS 18.67.080. Awarding Compensation.
(Score=174, Size=2098)

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3.11 INJURY OR DEATH SUFFERED IN THE COMMISSION OF A FELONY

The plaintiff cannot recover for the claimed loss(es) if the (injury) (death) (injury and death) of the (plaintiff) (deceased) occurred while the (plaintiff) (deceased) was engaged in the commission of a felony for which the (plaintiff) (deceased) was convicted and the felony substantially contributed to the (injury) (death) (injury and death). You are instructed that in this case the (plaintiff) (deceased) has been convicted of a felony of _____ which occurred (insert date and location where felony occurred).

Therefore, you may not award damages to the plaintiff if you decide that it is more likely true than not true that:

(1) the (injury) (death) (injury and death) occurred while the (plaintiff) (deceased) was engaged in the commission of a felony; and

(2) the (injury) (death) (injury and death) would not have happened "but for" the commission of the felony; and

(3) the commission of the felony was so important in bringing about the (injury) (death) (injury and death) that reasonable people would regard it as a cause and attach responsibility to it.

If you decide that each of the above elements is more likely true than not true, you must return a verdict for the defendant(s) in this case. Otherwise, you cannot deny plaintiff recovery on the basis of this law and this instruction.

Use Note: This instruction should be used only when the party suffering the death or injury has been convicted of a felony. Thus, usually the conviction will not be a disputed issue of fact.

Comment

Effective May 1986, the legislature amended Title Nine (09) to prohibit recovery of damages by a convicted felon if the felony substantially contributed to the injury or death which is the subject matter of the litigation. AS 09.17.030. The proximate or legal cause test for substantiality has been incorporated into this instruction because policy underlying this statute and proximate cause are the same: liability for acts or omissions which injure others does not extend beyond the point at which reasonable people would attach responsibility to such acts. The additional factor here, of course, is that the policy has been made applicable to a certain class of people injured under circumstances that constitute a convictable felony.

vesting of title in Kopanuk. We granted Kopanuk's petition for hearing.

III. DISCUSSION

A. Standard of Review

[1] The standard of review is *de novo*. In *Kennecorp Mortgage & Equities, Inc. v. First National Bank of Fairbanks*, 685 P.2d 1232 (Alaska 1984), appellants challenged the trial court's denial of a Rule 60(b)(4) motion to set aside the default judgment. We noted that, "In reviewing the denial of a Rule 60(b)(4) motion, this court does not defer to the discretion of the trial court." *Id.* at 1236. We give no deference to the superior court because "the validity of a judgment is strictly a question of law." *Id.* (quoting *Aguchak v. Montgomery Ward Co.*, 520 P.2d 1352, 1354 (Alaska 1974)). According to *Perry v. Newkirk*, 371 P.2d 1150, 1153 n. 5 (Alaska 1994), "[v]oidness under 60(b)(4) also encompasses the concept of lack of subject matter jurisdiction."

[2,3] Interpretation of a contractual agreement presents a question of law. *Aviation Assocs., Ltd. v. TEMSCO Helicopters, Inc.*, 881 P.2d 1127, 1130 (Alaska 1994). When reviewing questions of law, this court applies its independent judgment. *Summers v. Hagen*, 852 P.2d 1165, 1168-69 (Alaska 1993).

B. The District Court Lacked Jurisdiction to Adjudicate the Dispute

[4] District courts are courts of limited jurisdiction. AS 22.15.050. District courts do not have jurisdiction over "an action in which the title to real property is in question" or "actions of an equitable nature, except as otherwise provided by law." AS 22.15.050(1), (2).¹ Kopanuk invokes both of these prohibitions in his brief. He claims

that title is in dispute because he has "equitable ownership interests" in the house. We address only whether this action involves equitable ownership interests.

[5,6] The district court's jurisdiction depends upon whether equitable interests exist. Typically a lease will not give rise to equitable interests in the lessee; however, an installment contract often will give rise to equitable interests in the purchaser. See 3 Richard R. Powell, *Powell on Real Property* 37-155 (1994). We noted the differences between installment and option contracts in *Dillingham Commercial Co., Inc. v. Spears*, 641 P.2d 1 (Alaska 1992):

The purchaser under an installment land contract is treated as the equitable owner and the vendor as holding the bare legal title merely as security for the purchase price. In contrast, an optionee under a purchase option holds only a contractual right to the land.

Id. at 7 n. 7 (citations omitted).

Kopanuk argues that the contract at issue is more like an installment contract than a lease/option contract, and urges that the substance of the contract be examined. Conversely, AVCP RHA argues that the contract is a lease-option.

[7] Kopanuk emphasizes several contract provisions as evidence that the contract is an installment contract. First is use of the word "homebuyer" throughout the agreement.² Second is the non-refundable contribution of land. Third is the existence of "equity accounts" for holding payments in excess of a certain amount. Fourth is the lack of a payment required to exercise the purchase option, if exercised after twenty-five years. Fifth is the ability to purchase the home before the price drops to zero by paying the declining balance. Sixth is lan-

complex inquiries, such as when equitable ownership interests are at stake. Therefore, although AS 22.15.030(a)(6) specifically grants the district court power to hear FED actions, this is not a grant of jurisdiction over all equitable actions.

2. "Homebuyer" is defined as "The person(s) who has executed this MHO agreement . . . and who has not yet achieved homeownership."

1. As a preliminary matter, the nature of FED jurisdiction must be clarified. In *Vinson v. Hanthorn*, 854 P.2d 733, 737 (Alaska 1993), this court held that "in an FED hearing, an award of possession constitutes equitable relief." AVCP argues that this holding means that "[t]he statutory power to hear FED proceedings simultaneously grants power to hear an equitable action." Although an FED action may result in equitable relief, it is a swift and summary proceeding. FED actions are unsuited for resolution of more

*No recovery for negligent
criminal injured party* HB22

Ricky J. BURCINA, Appellant,

v.

CITY OF KETCHIKAN, Gateway Center
for Human Resources and Russell A.
Huffman, Jr., Appellees.

No. S-5893.

Supreme Court of Alaska.

Sept. 22, 1995.

Following his conviction for arson, mental patient brought action against mental health facility and his psychiatrist, claiming that negligent treatment aggravated his mental illness and caused him to set fire. The Superior Court, First Judicial District, Ketchikan, Larry C. Zervos, J., granted summary judgment for defendants, and patient appealed. The Supreme Court, Rabinowitz, J., held that: (1) public policy principle that precludes person who has been convicted of crime from imposing liability on others for consequences of crime applied in instant case; (2) patient's plea of *nolo contendere* in criminal case had collateral estoppel effect as to issue of his mental capacity; and (3) patient waived for appellate review issue related to his entitlement to recover for injuries unrelated to arson conviction.

Affirmed.

1. Judgment \ominus 181(2), 185(2)

Party is entitled to summary judgment if there is no genuine issue of material fact and moving party is entitled to judgment as a matter of law; all reasonable inferences of fact must be drawn against moving party and in favor of nonmoving party.

program to be a lease program. The HUD regulations are irrelevant, as we hold under state law that equitable interests may exist and the district court therefore lacks jurisdiction. HUD has no power to interpret state law, and the cited regulations do not interpret any provisions of federal law purporting to override the state law at issue here.

guage in the contract stating that a "homebuyer" "must purchase" the home if certain conditions are met, such as ability to meet the routine costs of ownership.

AVCP RHA emphasizes other provisions in support of its position. First is a list of homebuyer obligations similar to those in the Uniform Residential Landlord and Tenant Act, citing AS 34.03.120 and MHOA § 5.4.³ Second is variable monthly payments changeable at AVCP RHA's discretion. Third is a counseling and inspection requirement. Fourth is the income reporting requirement and the restrictions on who may reside in the home. Fifth is the fact that no subletting or assignment is allowed. Sixth is the housing authority's control of insurance. Seventh is detailed termination information.

[8] The MHOA is a hybrid contract, containing provisions typical of both lease/option contracts and installment contracts. Indeed, a contract more difficult to categorize is hard to imagine. However, we need not determine the exact label to be applied to the contract, as we conclude that the contract creates equitable interests, or potential equitable interests, in the homebuyer, which preclude the district court from hearing the case. One of the justifications for FED actions is the lack of equity held by the tenant-in-possession. This is not the case here. Equity may exist in fact since the "homebuyer" has put up land for a "down payment." Furthermore, a person who maintains property over a period of years may have equity in the appreciated value of that property. Since the district court lacks jurisdiction over equitable actions, AS 22.15.050(2), the judgment of the superior court is REVERSED.⁴



3. Specifically, keeping the house clean and safe, disposing of waste properly, using appliances reasonably, refraining from damaging the property, avoiding disturbing neighbors, and refraining from illegal activity. AS 34.03.120(a)(1)-(6); MHOA 5.4(c)-(j).

4. The United States, as amicus curiae, argues that HUD has consistently interpreted the MHOA

2. Appeal and Error \S 842(1)

Where appeal raises questions of law and public policy, state Supreme Court applies its independent judgment and adopts rule of law that is most persuasive in light of precedent, reason, and policy.

3. Action \S 12Negligence \S 105

Alaska Supreme Court has recognized public policy principle that precludes person who has been convicted of crime from imposing liability on others for consequences of that antisocial conduct.

4. Mental Health \S 51.20

Public policy principle precluding person who has been convicted of crime from imposing liability on others for consequences of such antisocial conduct applied in action brought against mental health facility and psychiatrist by patient who was convicted of arson, notwithstanding patient's contention that there should be exception to such principle due to fact that he was insane at time he committed arson.

5. Judgment \S 648

Mental patient's plea of *nolo contendere* to charge of arson had collateral estoppel effect in patient's subsequent suit against mental health facility and psychiatrist in which patient claimed that negligent treatment caused him to set fire, and patient could thus not relitigate issue of whether he was insane at time of arson; necessary element of conviction was that patient have requisite intent.

6. Judgment \S 648

Based on public policy grounds, civil plaintiff is collaterally estopped from relitigating any element of criminal charge to which he has pled *nolo contendere*.

7. Appeal and Error \S 179(1), 758.1

Mental patient waived for appellate review in his action against mental health facility and psychiatrist issue of whether public

1. Burcina injured several people in a psychotic episode and was subsequently charged with six counts of assault, convicted and incarcerated. Burcina was then committed to the Alaska Psychiatric Institute where he was diag-

policy did not bar his claims for injuries unrelated to his criminal conviction; patient did not include claim in any of his pleadings or in his statement of points on appeal, and his only reference to injuries unrelated to conviction was contained in footnote in memorandum in opposition to defense motion for judgment on the pleadings.

Caroline B. Crenna and Thomas W. Findley, Dillon & Findley, P.C., Juneau, for Appellant.

A. Fred Miller and Kevin G. Miller, A. Fred Miller, Attorneys at Law, Ketchikan, for Appellees City of Ketchikan and Gateway Center for Human Resources.

Geoffrey G. Currall, Keene & Currall, P.C., Ketchikan, for Appellee Russell A. Huffman, Jr.

Before MOORE, C.J., RABINOWITZ, MATTHEWS, COMPTON and EASTAUGH, JJ.

OPINION

RABINOWITZ, Justice.

I. INTRODUCTION

Ricky Burcina, who has a long history of mental illness and substance abuse, set fire to the Gateway Mental Health Drop-In Center and was subsequently convicted of arson. Thereafter, Burcina filed suit against the Gateway Center for Human Resources and his psychiatrist, Dr. Russell Huffman, claiming that he had received negligent treatment which aggravated his mental illness and caused him to set the fire. Burcina appeals from the superior court's grant of summary judgment in favor of both defendants. We affirm.

II. FACTS AND PROCEEDINGS

Following his release from prison in early 1986,¹ Ricky Burcina began outpatient mental health care with Gateway Center for Human Resources (Gateway), a department of the City of Ketchikan. Burcina began seeing

Dr. Wandall Winn, a psychiatrist and a mixed substance abuser, "with primary drug abuse being LSD, but to include cocaine and marijuana."

Dr. Wandall Winn, a psychiatric consultant to Gateway, who prescribed Navane (an anti-psychotic medication) as part of Burcina's treatment program. In February of 1987, Burcina requested that his medication be reduced. Dr. Winn believed that it was appropriate to begin to taper Burcina off his antipsychotic medication because Burcina's mental condition had stabilized and he was receiving vocational training that required fine motor coordination.

Burcina began seeing Dr. Russell Huffman in June of 1987.² Dr. Huffman provided "talk therapy" to Burcina, and may have had a role in monitoring Burcina's medication. However, Burcina continued to consult with and have his medication prescribed and monitored by Dr. Winn and Gateway.

In July 1987, Dr. Winn informed Burcina that he could gradually reduce his medication with the goal of completely discontinuing it in about sixty days. However, by November, Dr. Winn became concerned about Burcina's conduct and suggested that he restart the medication. Burcina refused. Nancy Hunter, a social worker at Gateway, also suggested that Burcina restart his medication, but he again refused. Over the next several months, Dr. Huffman, Dr. Winn, and Hunter continued to inform Burcina that he should be taking his medication. However, Burcina refused and thus became progressively more delusional.

On February 5, 1988, Burcina set fire to the Gateway Mental Health Drop-In Center (Drop-In Center). Burcina explained that he "thought that alien forces were trying to capture and kill [him]," and that he "set fire to the Drop-In Center in order to get the FBI's attention so that the FBI could protect [him] and debrief [him]." Burcina was charged with arson in the first degree.³

Thereafter, the superior court ordered a psychological evaluation. Burcina revealed to the psychologist that he had been abusing various substances including street drugs

2. During the period from 1986 through 1988, Dr. Huffman was employed in the private practice of psychiatry in Ketchikan. In addition, he had a contract with the City for "referred emergency mental health patients ... needing urgent care."

prior to February 5. The psychologist concluded that Burcina's psychotic episodes were induced by substance abuse and indicated that he would not be willing to make a diagnosis of schizophrenia "unless it can be clearly proven that [Burcina] demonstrates symptoms of schizophrenia on an outpatient basis when not using euphorogenic or mind-altering street drugs." The psychologist concluded that Burcina was competent to stand trial. Burcina subsequently entered a plea of *nolo contendere* to arson and was sentenced to eight years of incarceration with five and one half years suspended.

On February 2, 1990, Burcina filed suit against Gateway and Dr. Huffman claiming that he had received negligent treatment which aggravated his mental illness and, during a psychotic episode, caused him to set fire to the Drop-In Center. Burcina alleged that as a result of his conviction for arson and subsequent imprisonment, he had suffered and continues to suffer mental anguish, loss of income, loss of enjoyment of life, and emotional distress.

Before trial, Gateway and Dr. Huffman moved for summary judgment. The superior court granted Gateway's and Dr. Huffman's motions holding that Burcina's claims are prohibited by public policy. Specifically, the superior court relied upon the general rule that

[a] person cannot maintain an action if, in order to establish his cause of action, he must rely, in whole or in part, on an illegal or immoral act or transaction to which he is a party. Also, he cannot maintain a claim for damages based on his own wrong or caused by his own neglect, ... or where he must base his cause of action, in whole or in part, on a violation by himself of the criminal or penal laws.

1A C.J.S. Actions \S 29, at 386-87 (1985). Burcina now appeals.

3. Under AS 11.46.400, "[a] person commits the crime of arson in the first degree if the person intentionally damages any property by starting a fire or causing an explosion and by that act recklessly places another person in danger of serious physical injury."

drugs

III. DISCUSSION

A. *Burcina's Claims are Prohibited by Public Policy*⁴

[1-3] This court has recognized the public policy principle which precludes a person who has been convicted of a crime from imposing liability on others for the consequences of that antisocial conduct.⁵ Under this court's previous decisions, recovery is precluded at the "very threshold of the plaintiff's application for judicial relief." *Lord v. Fogcutter Bar*, 813 P.2d 660, 663 (Alaska 1991) (quoting *Barker v. Kallash*, 63 N.Y.2d 19, 479 N.Y.S.2d 201, 203-05, 468 N.E.2d 39, 41-42 (1984)).

[4] The superior court granted summary judgment in favor of Gateway and Dr. Huffman on the ground that Burcina's suit is prohibited by public policy. On appeal, Burcina argues that his suit is not barred because he was insane at the time he committed the crime of arson. In effect, Burcina requests that an exception be created to *Adkinson*, *Lord*, *Shaw*, and *Beilgard* in the circumstance where the person is insane at the time he or she commits the criminal act.

This court first held that, as a matter of public policy, a person who has been convicted of a crime is precluded from imposing civil liability on others for the consequences of his or her own criminal conduct in *Adkinson v. Rossi Arms Co.*, 659 P.2d 1236 (Alaska 1983). We held that Adkinson, who was convicted of manslaughter for shooting and killing a person with a shotgun, had no claim for relief in tort against either the manufacturer or the seller of the shotgun. *Id.* at 1240. In holding that Adkinson's claims were barred by public policy, we stated that "allowing a criminal defendant, who has been convicted of an intentional killing, to impose liability on oth-

ers for the consequences of his own antisocial conduct runs counter to basic values underlying our criminal justice system." *Id.* Thus, we concluded that because Adkinson was convicted based on his intentional conduct, he alone was responsible for any resultant personal losses.

In *Lord v. Fogcutter Bar*, 813 P.2d 660, 663 (Alaska 1991), we held that Lord, who was convicted of kidnapping, rape and assault which took place after he was served more than fourteen drinks at the Fogcutter Bar, was precluded from recovering in tort against the Fogcutter Bar. Lord alleged that the Fogcutter was liable for the damages he suffered as a result of his imprisonment because the Fogcutter and its employee violated Alaska's dram shop statute by selling Lord alcohol while he was a "drunken person." *Id.* at 662. We noted that "[c]ourts have consistently refused to aid those whose claims are based on their own illegal acts," and held that Lord's claim was barred for the same reason that summary judgment was affirmed in *Adkinson*. *Id.* at 663.

In *Shaw v. State, Department of Administration*, 861 P.2d 566, 571 (Alaska 1993) (*Shaw II*), this court held that the public policy principle enunciated in *Adkinson* and *Lord* prevented recovery on the part of a plaintiff in a professional malpractice action against his former defense attorney where the plaintiff in fact engaged in the criminal conduct with which he was charged. We noted our previous holdings "that civil recovery should not be a tool for shifting an individual's responsibility for the individual's criminal acts." *Id.* As in *Adkinson* and *Lord*, we held "that if plaintiffs engaged in the criminal conduct they are accused of, then they alone should bear full responsibility for the consequences of their acts, including imprisonment." *Id.* at 572.

rule of law which is most persuasive in light of precedent, reason and policy." *Shanks*, 835 P.2d at 1193.

5. *Beilgard v. State*, 896 P.2d 230, 233-34 (Alaska 1995); *Shaw v. State, Dep't of Admin.*, 861 P.2d 566 (Alaska 1993) (*Shaw II*); *Lord v. Fogcutter Bar*, 813 P.2d 660, 663-64 (Alaska 1991); *Adkinson v. Rossi Arms Co.*, 659 P.2d 1236, 1240 (Alaska 1983).

4. A party is entitled to summary judgment if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Shanks v. Uppolu Co.*, 835 P.2d 1189, 1193 (Alaska 1992). In determining whether a party is entitled to judgment as a matter of law, all reasonable inferences of fact must be drawn against the moving party and in favor of the non-moving party. *Wright v. State*, 824 P.2d 718, 720 (Alaska 1992). And where, as here, an appeal raises questions of law and public policy, we apply our independent judgment and adopt "the

In *Beilgard v. State*, 896 P.2d 230 (Alaska 1995), we held that Beilgard, who was convicted of violating Alaska's game laws after requesting information and assistance from State employees as to what permits were required for his business, possessed no viable claim for relief in tort against the State. Our holding in *Beilgard* was grounded on the public policy principle enunciated in *Adkinson*, *Lord*, and *Shaw II*. *Id.* at 233-34.

In recognizing and applying this public policy principle, we have favorably cited two cases which are factually similar to the present case.⁶ In *Cole v. Taylor*, 301 N.W.2d 766 (Iowa 1981), the Iowa Supreme Court held that Cole was prohibited from recovering in tort from her psychiatrist, Taylor, on her claim that Taylor negligently failed to prevent her from committing murder. Cole shot and killed her former husband, and was subsequently charged, tried and convicted of first-degree murder. *Id.* at 766. Cole alleged that during her course of treatment, Taylor became aware that she had violent inclinations and was thinking about killing her former husband. *Id.* at 767. Cole claimed that Taylor failed in his treatment of her, that he failed to restrain her by hospitalization, and that he failed to warn her former husband of any impending danger. *Id.* After recognizing the general policy rule that a person should not be able to rely on an illegal act to maintain a cause of action, the lower court dismissed Cole's suit. The Supreme Court of Iowa held that Cole's responsibility for her criminal conduct was established by her murder conviction, and "that it would be, plainly and simply, wrong as a matter of public policy to allow recovery." *Id.* at 768.

Likewise, in *Glazier v. Lee*, 171 Mich.App. 216, 429 N.W.2d 857, 860 (1988), the Michigan Court of Appeals followed *Cole* and held that Glazier was precluded from recovering in tort from his psychologist, Lee, on his

claim that Lee negligently failed to prevent him from committing murder. Glazier shot and killed his girlfriend and was subsequently convicted of voluntary manslaughter. *Id.* 429 N.W.2d at 858. Glazier claimed that Lee negligently failed to medicate or hospitalize him, suggested violence to him when he was in a volatile, dependent state of mind, and failed to warn Glazier's girlfriend of his potential for violence. *Id.* The court held that Glazier's claim was barred based on the rule articulated in *Cole*. *Id.* 429 N.W.2d at 859. The controlling factor was Glazier's own criminal responsibility as evidenced by his voluntary manslaughter conviction. *Id.*

Based on the foregoing, we conclude that the public policy principle which precludes a person who has been convicted of a crime from imposing liability on others for the consequences of his or her own antisocial conduct applies here. Thus, we hold that Burcina's claims against Gateway and Dr. Huffman are barred.⁷

B. *Burcina's Plea of Nolo Contendere Has Collateral Estoppel Effect*

[5] Burcina also asserts that summary judgment was inappropriate because there was a genuine issue of material fact as to whether he was legally insane when he set the fire. He argues that because he was insane, the policies discussed in the previous section should not preclude his claim. See *Boruschewitz v. Kirts*, 197 Ill.App.3d 619, 144 Ill.Dec. 73, 554 N.E.2d 1112 (1990). However, because a necessary element of Burcina's criminal conviction for arson was that he have the requisite intent,⁸ we conclude that he is collaterally estopped from relitigating the issue of his mental capacity.⁹

[6] In *Sun v. State*, 830 P.2d 772, 777 & n. 9 (Alaska 1992), we held that AS 09.17.030¹⁰ collaterally estops a civil plaintiff

6. *Lord*, 813 P.2d at 663; *Adkinson*, 659 P.2d at 1240.

7. Our holding that public policy bars Burcina's claims against Gateway and Dr. Huffman makes it unnecessary for us to consider whether Burcina's claims are also prohibited by AS 09.17.030.

8. See *supra* note 3 for the text of AS 11.46.400 defining the crime of arson in the first degree.

Alaska Rep. 2d (902-905)-5

9. Because we conclude that Burcina is collaterally estopped from relitigating the issue of his insanity, we need not decide whether to adopt the exception announced in *Boruschewitz*.

10. Former AS 09.17.030, subsequently renumbered as AS 09.65.210, provides:

A person who suffers personal injury or death may not recover damages for the person-

from denying a criminal act to which he plead *nolo contendere*. Although our holding was based on the express language of AS 09.17.030, we have noted that AS 09.17.030 embodies the public policy principle enunciated in Alaska case law. *Lord*, 815 P.2d at 663. We now combine and clarify these rules. We hold, based on public policy grounds, that a civil plaintiff is collaterally estopped from relitigating any element of a criminal charge to which he has pled *nolo contendere*.

Such a conclusion is supported by Alaska rules and decisional law on the subject of *nolo contendere* pleas. *Pletnikoff v. John-*

al injury or death if the injuries or death occurred while the person was engaged in the commission of a felony, the person has been convicted of a felony, including conviction based on a guilty plea or a plea of *nolo contendere*, and the felony substantially contributed to the injury or death. This section does not affect a right of action under 42 U.S.C. 1983.

11. In *Pletnikoff*, this court expressly refrained from considering whether a conviction based on a plea of *nolo contendere* has collateral estoppel effect because the issue was not adequately briefed by the parties. *Id.* at 976 n. 2. In a dissent, Chief Justice Matthews reasoned that collateral estoppel should apply to the conviction at issue even though the subject was not adequately briefed. *Id.* at 979. Chief Justice Matthews noted that under federal law the rule of collateral estoppel does not apply to convictions based on pleas of *nolo contendere*. *Id.* He then discussed the differences between Alaska law and federal law, and why these differences justify applying the rule of collateral estoppel to convictions based on pleas of *nolo contendere* in Alaska:

The Alaska Rules are significantly different from the Federal Rules on the question of the effect of a plea of *nolo contendere*. Rule 410 of the Federal Rules of Evidence explicitly states that *nolo contendere* pleas are inadmissible while Alaska Rule of Evidence 410 does not. Further, Federal Criminal Rule 11(b) provides that a defendant may plead *nolo contendere* only with the consent of the court and only then after the court has given "due consideration of the views of the parties and the interest of the public in the effective administration of justice." Alaska has no counterpart to this provision. Moreover, Federal Criminal Rule 11(e)(6)(B) explicitly makes inadmissible a plea of *nolo contendere*. Alaska Criminal Rule 11(e)(6) contains no such provision. Finally, Federal Evidence Rule 803(22) provides that "[e]vidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of *nolo contendere*), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year" is not hearsay. This suggests by implication that a con-

son, 765 P.2d 973, 979-82 (Alaska 1988) (Matthews, C.J., dissenting).¹¹ We note that had Burcina wished to avoid these collateral consequences of his *nolo contendere* plea, he could have asserted the defenses of either insanity¹² or mental disease or defect,¹³ or he could have entered a plea of guilty but mentally ill.¹⁴

Based on the foregoing, we hold that Burcina's plea of *nolo contendere* has collateral estoppel effect in this subsequent civil litigation because his claim is prohibited by public policy.

viction based upon a plea of *nolo contendere* is hearsay. By contrast the Alaska Evidence Rules contain no exception to the hearsay rule for judgments of previous conviction. The commentary explains that this omission was made advisedly, since the effect of a judgment of conviction is properly a subject governed by the rules of collateral estoppel, rather than the rules of evidence. See Alaska Evidence Rule 803 and commentary at 390 (1988).

As a matter of decisional law, Alaska law also differs from federal law concerning *nolo* pleas. In the federal system the trial judge has the discretion to reject a *nolo* plea. In Alaska a defendant may plead *nolo* rather than guilty as a matter of right. *Miller v. State*, 617 P.2d 516, 518 (Alaska 1980); *Lowell v. State*, 574 P.2d 1281, 1285 (Alaska 1978).

Pletnikoff, 765 P.2d at 979-80 (Matthews, C.J., dissenting).

12. Alaska Statute 12.47.010(a) states as follows:

In a prosecution for a crime, it is an affirmative defense that when the defendant engaged in the criminal conduct, the defendant was unable, as a result of a mental disease or defect, to appreciate the nature and quality of that conduct.

13. Alaska Statute 12.47.020(a) provides as follows:

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.

14. Alaska Statute 12.47.030(a) provides as follows:

A defendant is guilty but mentally ill if, when the defendant engaged in the criminal conduct, the defendant lacked, as a result of a mental disease or defect, the substantial capacity either to appreciate the wrongfulness of that conduct or to conform that conduct to the requirements of the law. A defendant found guilty but mentally ill is not relieved of criminal responsibility for criminal conduct and is subject to the provisions of AS 12.47.050.

C. *Burcina Waived Any Claims for Injuries Unrelated to the Arson Conviction*

[7] Burcina argues that the superior court erred in dismissing his entire suit because public policy does not bar his claims for injuries unrelated to the arson conviction. Burcina contends that his injuries include mental anguish, loss of enjoyment of life and emotional distress which he suffered before he set fire to the Drop-In Center.

We conclude that Burcina has waived this argument on appeal. As noted by Gateway and Dr. Huffman, Burcina failed to assert such a claim in his complaint,¹⁵ he failed to include it in his responses to interrogatories,¹⁶ he failed to include it in his statement of points on appeal, and he failed to oppose a motion for entry of final judgment dismissing his suit. In fact, Burcina suggested that his claims include injuries unrelated to the arson on only one occasion before the superior court. This appears in his memorandum in opposition to Dr. Huffman's motion for judgment on the pleadings. Burcina stated in a footnote as follows:

Additionally, plaintiff suffered mental anguish prior to the February 5, 1988, arson, as he gradually became delusional during the period following Huffman's December, 1987, instruction to discontinue his anti-psychotic medication. As with the injury suffered by plaintiff after the arson,

15. In Count I of his complaint, Burcina alleges in part as follows:

As a result of Defendant Gateway's failure to provide Plaintiff with medication, Plaintiff became psychotic. While in a psychotic state, Plaintiff set fire to the Mental Health Drop-in Center in Ketchikan, and as a consequence of this, he has suffered and will continue to suffer imprisonment, mental anguish, loss of income, loss of enjoyment of life and emotional distress.

The allegations contained in Counts II, III and IV are essentially the same as Count I. Count I clearly states that Burcina's mental anguish, loss of enjoyment of life, and emotional distress are a consequence of Burcina setting fire to the Drop-In Center. Thus, Burcina's complaint does not advance any claims for injuries unrelated to the arson.

16. During discovery Gateway served interrogatories on Burcina. Interrogatory No. 7 asked:

this mental anguish did not occur while plaintiff was engaged in the commission of a felony, and AS 09.17.030 cannot bar plaintiff's claim for these pre-arson damages.

In *Jeffries v. Glacier State Telephone Co.*, 604 P.2d 4 (Alaska 1979), we held that an issue was not properly before our court where the issue was not properly raised or briefed at the superior court level and was not included in the statement of points on appeal. *Id.* at 11. As in the present case, the only reference to the issue appeared in a memorandum in opposition to a motion for judgment on the pleadings. *Id.* at 11 n. 26. Thus, based on our holding in *Jeffries*, we hold that any claims for injuries unrelated to the arson conviction are not properly before this court. See also *In re L.A.M.*, 727 P.2d 1057, 1059 (Alaska 1986); *Wickwire v. McFadden*, 633 P.2d 278, 281 n. 6 (Alaska 1981).

IV. CONCLUSION

For these reasons, we AFFIRM the superior court's grants of summary judgment dismissing Burcina's claims against Gateway and Dr. Huffman.



Please describe the loss of enjoyment of life that you allege you have sustained in paragraphs 8 and 12 of your Complaint.

Burcina responded as follows:

I became severely mentally impaired by psychosis and delusions of paranoid schizophrenia. I was in fear of my life and personal safety because of my paranoid delusions. I almost committed suicide on several occasions because I believed I was going to get a 22-year jail sentence. I was severely depressed during my jail time. I am still depressed because I lost my girlfriend because of the complaint and I almost committed suicide over that. I have bad memories of the delusional psychosis that makes me have nightmares. I have nightmares about prison life. In prison other prisoners taunted me because I was an arsonist and called me crazy. In Ketchikan, I have a reputation as the insane arsonist and am unable to get dates with women in my age group. Thus, Burcina's response does not include claims for injuries unrelated to the arson conviction.

Alaska State Legislature



House of Representatives
House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

MEMORANDUM

Date: January 27, 1997
To: Susan Cox, Special Litigation Section
Fax no: 465-6735
From: Lisa Kirsch, House Judiciary Committee
Re: HB 22, Civil Liability for Bootleggers

Enclosed please find memo dated January 24, 1997 with proposed section (b) amendment and second page with drafts of new sections (c) regarding liability to government entities and section (d) preventing a controlled substance defense.

Any input you may have would be appreciated, particularly as to the interaction with AS 09.55.570 or AS 09.55.580.

Mike Ford is the Legislative Counsel involved on this bill.

Thanks for your assistance.

TO: BRIAN

FM: JIM



Re: HB 22 Bootlegger Bill

Date: January 24, 1997

1. I recommend that you consider changing the bill to read as follows:

*Section 1. AS 04.21.020 is amended by adding a new subsection to read:

(b) Notwithstanding (a) of this section, a person who sells or barter an alcoholic beverage to another person in violation of AS 04.11.010 is strictly liable for civil damages FOR PERSONAL INJURIES, DEATH, AND PROPERTY DAMAGES, resulting from the intoxication of the person receiving the alcoholic beverage IF THE INTOXICATION SUBSTANTIALLY CONTRIBUTED TO THE PERSONAL INJURIES, DEATH AND PROPERTY DAMAGES.

(c) A person who violates subsection (b) shall also be civilly liable to the State of Alaska and to the municipality, if any, in which the sale or barter occurred, for the costs of criminally prosecuting the intoxicated person who received the alcoholic beverage, and shall also be civilly liable for property damage inflicted on state or municipal property by such intoxicated person.

(d) It shall be no defense to the person who sells or barterers in violation of subsection (b), or to the intoxicated person who received the alcoholic beverage, that the intoxicant was also acting under the influence of an illegal controlled substance.

01/24/97

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM

LTN1150

13:01:25

PARTICIPANT LIST (ALL PARTICIPANTS)

BY:ANC

TCN:70128

SCHEDULED FOR:01/24/97 13:00 TO 15:00

FOR:ANC

PUBLIC HEARING

HOUSE JUDICIARY

LOCATION: ANCHORAGE

HB 22	LINDA	O'BANNON	AAG	TESTIFY
HB 9	SARAH	MUSGRAVE		TESTIFY
HB 9	MARTI	GREESON	MADD	TESTIFY
HB 9	JANICE	LIENHART		TESTIFY
HB 9	JANELLE	DIXSON		TESTIFY

01/24/97

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM

LTN1150

13:05:40

PARTICIPANT LIST (ALL PARTICIPANTS)

BY:ANC

TCN:70128

SCHEDULED FOR:01/24/97 13:00 TO 15:00

FOR:ANC

PUBLIC HEARING

HOUSE JUDICIARY

LOCATION: ANCHORAGE

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HB 9	MARTI	GREESON	MADD	TESTIFY
HB 9	JANICE	LIENHART		TESTIFY
HB 9	JANELLE	DIXSON		TESTIFY
HB 9	RALPH	SAMMELS		TESTIFY
HB 9	DAWN	SCHERGERT		TESTIFY
HB 9	KAREN	CAMPBELL		TESTIFY
HB 9	CHARLOTTE	PHELPS		TESTIFY
HB 9	BARBARA	BRINK	AK PUBLIC DEFEND	TESTIFY

Additions

Has "Time restraint" to disregard testify. Will get details

HOUSE BILL NO. 22

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE IVAN

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil liability for illegal sales of alcoholic beverages; and
2 providing for an effective date."

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

4 * Section 1. AS 04.21.020 is amended by adding a new subsection to read:

5 (b) Notwithstanding (a) of this section, a person who sells or barter an
6 alcoholic beverage to another person in violation of AS 04.11.010 is strictly liable for
7 civil damages resulting from the intoxication of the person receiving the alcoholic
8 beverage.

9 * Sec. 2. This Act takes effect July 1, 1997.

LAW OFFICES

HEDLAND, FLEISCHFR, FRIEDMAN, BRENNAN & COOKE

A PROFESSIONAL CORPORATION

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907 279-5528

April 16, 1996

Mr. Ivan M. Ivan
Representative, House District 39
Alaska State House of Representatives
Alaska State Capitol
Juneau, Alaska 99801-1182

Dear Representative Ivan:

The Department of Law sent me a copy of their letter to you of April 12, 1996 dealing with civil liability for bootleggers. As you know, the current law seems to exempt those who sell liquor without a license from any civil liability for the damages that may be caused their illegal acts.

I think that the second proposal made by the Department of Law for strict liability of those who illegally sell or traffic in liquor is appropriate. I hope you will be able to introduce and persuade the legislature to pass such a bill.

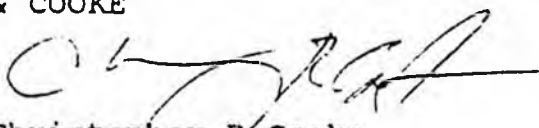
Certainly the proof requirements against a bootlegger should be less stringent than the proof required to show that a licensed dealer in alcohol engaged in conduct which should make him civilly liable for injuries resulting from intoxication. Also, the connection between the proposed strict liability statute and the unlicensed sale or trafficking in alcohol should separate those situation from the circumstances of social hosts. As shown by the Chokwak v. Worley decision, the legislature and the courts have been reluctant to impose civil liability on social hosts. As mentioned in my previous correspondence, however, the circumstances of someone who is profiting from illegal sale of alcohol are quite different from the circumstances of a private person who may provide liquor to guests at a social function.

If there is not time in the current legislative session to propose and consider a provision for civil liability of bootleggers, I ask

Mr. Ivan M. Ivan
Representative, House District 39
April 16, 1996
Page 2

that your staff might at least draft the proposed amendment so it could be available for filing as soon as the next legislative session begins. Thank you for your help on this matter.

Very truly yours,
HEDLAND, BRENNAN, HEIDEMAN,
& COOKE



Christopher R. Cooke

CRC:cls

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 12, 1996

The Honorable Ivan M. Ivan
Representative, House District 39
Alaska State House of Representatives
Alaska State Capitol
Juneau, Alaska 99801-1182

Dear Representative Ivan:

This is in response to your recent letter to the Attorney General in which you forwarded a copy of Mr. Christopher Cooke's letter about a recent decision of the Alaska Supreme Court concerning civil immunity of social hosts serving minors. The decision was Chokwak v. Worley, Op. No. 4323 (Alaska, March 8, 1996). In Chokwak the Alaska Supreme Court held that the grant of civil immunity in AS 04.21.020 to social hosts applies even if the social hosts provide alcohol to minors. Although the Supreme Court did not address the question in the Chokwak decision, Mr. Cooke believes that "the interpretation of the statute rendered in this opinion seems to extend civil immunity to any person who is not a licensee, even if that person is an unlicensed seller of liquor or is otherwise unlawfully trafficking in alcohol." Since the Supreme Court did not specifically address the issue of whether the civil immunity of AS 04.21.020 extends to unlawful sellers of alcoholic beverages, this office cannot determine for certain that Mr. Cooke's interpretation of the Supreme Court's ruling is correct with regard to bootleggers.

Mr. Cooke's comments are well taken, however. Certainly the legislature could address this subject if they so wish. If the legislature wishes that civil immunity not be extended to "bootleggers" then we agree with Mr. Cooke that the statute should be amended for clarification. You may wish to have the legislature's staff draft various proposed amendments. One simple approach would be to make the existing statute paragraph (a) and add a paragraph (b) to AS 04.21.020 to provide:

(b) Notwithstanding (a) of this section a person who provides alcoholic beverages to another person in violation of AS 04.11.010 may be held civilly liable for injuries resulting from the intoxication of that person.

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

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ANCHORAGE, ALASKA 99501-1993
PHONE (907) 269-5100
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FAX: (907) 451-2846
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JUNEAU, ALASKA 99811-0300
PHONE (907) 465-3600
FAX: (907) 465-5735

The Honorable Ivan M. Ivan
Representative, House District 39
Alaska State House of Representatives

April 12, 1996
Page 2

Mr. Cooke's letter also addresses whether there should be strict civil liability for unlicensed sellers of alcoholic beverages. This is a policy decision for the legislature. If the legislature wishes to institute such a policy the legislature could add a subsection (b) to AS 04.21.20 to provide:

(b) Notwithstanding (a) of this section a person who provides alcoholic beverages to another person in violation of AS 04.11.010 may be held strictly liable for injuries resulting from the intoxication of that person.

The Alaska Supreme Court remarked in Chokwak:

As difficult as it is to defend a policy specifically immunizing those who unlawfully furnish liquor to minors from civil liability, we agree . . . that a policy immunizing social hosts in general from liability for injuries caused by intoxicated persons to whom they have served liquor is not indefensible.

Id. at 13.

Whether the legislature wants to continue to provide civil immunity to those social hosts who provide minors with alcoholic beverages is also a policy issue for the legislature.

I hope this answers your questions. If you need other information or assistance concerning this issue don't hesitate to contact us. The Attorney General appreciated receiving this information and thanks you for keeping him informed of your concerns.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:

Linda M. O'Bannon
Linda M. O'Bannon
Assistant Attorney General

LMO/cw

cc: Christopher R. Cooke, Esq.
Bruce Botelho, Attorney General

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO

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DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 12, 1996

Christopher R. Cooke, Esq.
Hedland, Fleischer, Brennan & Cooke
P.O. Box 555
Bethel, Alaska 99559

Re: Civil Immunity/Liability for Unlicensed Providers of
Liquor

Dear Mr Cooke:

Thank you for your recent letter to the Attorney General expressing your concerns about the possibility that the Alaska Supreme Court's decision in Chokwak v. Worley, Opinion No. 4323 (Alaska, March 8, 1996) could be interpreted to exempt "bootleggers" from civil liability for serving alcoholic beverages to minors. The Attorney General asked me to respond to your letter since I am the Assistant Attorney General who represents the Alcoholic Beverage Control Board. He very much appreciated your taking the time to express your views on this important subject.

Your letter was also forwarded to the Attorney General by Representative Ivan. I have enclosed a copy of my response to Rep. Ivan which I believe addresses the issues you raised in your letter.

Your concerns raise important policy considerations for the legislature. We will be happy to provide any interested legislator with assistance as requested.

Don't hesitate to write again if there are issues that you believe need to be brought to our attention.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:

Linda M. O'Bannon
Linda M. O'Bannon
Assistant Attorney General

LMO/cw

cc: Representative Ivan M. Ivan
Bruce Botelho, Attorney General

LAW OFFICES

HEDLAND, FLEISCHER, [REDACTED] BRENNAN & COOKE

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AMY L. VAUDREUIL

ERIC C. CROFT

March 18, 1996

Mr. Bruce M. Botelho, Attorney General
Attorney General's Office
P.O. Box 110300
Juneau, Alaska 99811-0300

Re: Civil Immunity/Liability for Unlicensed
Providers of Liquor

Dear Attorney General Botelho:

I recently read the Alaska Supreme Court's opinion in Phillip Chokwak v. Les Worley & Ron Worley, Opinion No. 4323, issued March 8, 1996, which interprets A.S. 04.21.020 dealing with civil liability of persons providing alcoholic beverages. The opinion holds that A.S. 04.21.020 grants civil immunity to social hosts who unlawfully provide liquor to minors and that this grant of immunity is not unconstitutional.

Although the focus of the opinion is on "social hosts" the interpretation of the statute rendered in this opinion seems to extend civil immunity to any person who is not a licensee, even if that person is an unlicensed seller of liquor or is otherwise unlawfully trafficking in alcohol.

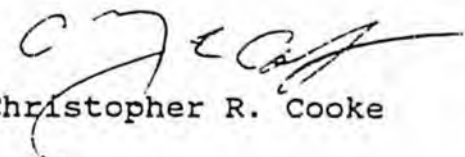
For example, if only licensees who violate subsections (1) and (2) of A.S. 04.21.020 may be held civilly liable for injuries resulting from intoxication and all others are immune, then a person who illegally sells alcohol to a minor or to an adult or in violation of a local option statute apparently has immunity from civil liability. If this statute means that "bootleggers" cannot be sued for any injuries resulting from the alcohol they illegally sell, that is an outcome with which I and, I believe, many in rural Alaska would disagree with. I also think that additional legislation is needed to impose civil liability on bootleggers for the consequences of their actions.

Mr. Bruce M. Botelho, Attorney General
Attorney General's Office
March 18, 1996
Page 2

Therefore, I am interested in your opinion as to whether the immunity arising from A.S. 04.21.020 includes bootleggers in rural Alaska and elsewhere. I am also interested in what sort of legislative remedy you would recommend to impose civil liability on such persons and what specific statutory language might accomplish this purpose. Personally, I believe strict liability - rather than just negligence - should apply to such conduct.

Because passing such legislation would obviously involve those in the political arena, I am sending copies of this letter to my legislative representatives and others who may have an interest in addressing this issue. Thank you for your consideration.

Very truly yours,
HEDLAND, FLEISCHER, BRENNAN &
COOKE



Christopher R. Cooke

cc: Senator Lyman Hoffman
Representative Ivan M. Ivan
Senator Georgianna Lincoln
Senator Al Adams
Representative Richard Foster
Representative Don Long
Representative Irene Nicholai
Mr. James Metcalfe, Bethel District Attorney

CRC:cls

Alaska State House of Representatives
House District 39



Session
Alaska State Capital
Juneau, Alaska 99801-1182
Phone: (907) 465-4942

Interim
P.O. Box 137
Akiak, Alaska 99552
Phone: (907) 765-7526

Representative Ivan M. Ivan

SPONSOR STATEMENT - HOUSE BILL 22

Current law seemingly exempts those who sell liquor without a license (bootleggers) from any civil liability for the damages that may be caused by their illegal acts. The basis of House Bill 22 is to remove that exemption and make bootleggers strictly liable for their actions.

When in negative form? croft
Sec. 04.21.020. Civil liability of persons providing alcoholic beverages.

A person who provides alcoholic beverages to another person may not be held civilly liable for injuries resulting from the intoxication of that person unless the person who provides the alcoholic beverages holds a license authorized under AS 04.11.080 - 04.11.220, or is an agent or employee of such a licensee and

(1) the alcoholic beverages are provided to a person under the age of 21 years in violation of AS 04.16.051, unless the licensee, agent, or employee secures in good faith from the person a signed statement, liquor identification card, or driver's license meeting the requirements of AS 04.21.050(a) and (b), that indicates that the person is 21 years of age or older; or

(2) the alcoholic beverages are provided to a drunken person in violation of AS 04.16.030.

History -

(sec. 5 ch 131 SLA 1980; am sec. 14 ch 109 SLA 1983)

Revisors Notes -

In 1980, this section was rearranged for clarity.

Cross References -

For responsibility of licensee for violations, see AS 04.16.150; for responsibility of licensees, agents and employees, see AS 04.21.030.

Decisions -

Editor's notes. - Many of the cases cited in the notes below were decided under former AS 04.10.180 and 04.15.020.

Constitutionality. - This section is not so completely lacking in rationality or legitimacy of purpose as to be unconstitutional. Immunizing social hosts from liability caused by their guests' conduct can rationally be based on a view that it is an undesirable interference with normal hospitality to require a social host to monitor guests' alcohol consumption. Further, the primary actor responsible for harm caused by a drunken person is the drunken person. *Chokwak v. Worley*, 912 P.2d 1248 (Alaska 1996).

Legislative intent. - The intent of the legislature in enacting this section was to limit vendor liability in cases where the vendor has provided alcohol in a statutorily permissible manner. *Williford v. L.J. Carr Invs., Inc.*, 783 P.2d 235 (Alaska 1989).

"Provide" alcohol. - A vendor may "provide" alcohol even unwittingly to third parties. *Williford v. L.J. Carr Invs., Inc.*, 783 P.2d 235 (Alaska 1989).

This section does not immunize vendors who violate AS 04.16.030, - which prohibits certain conduct relating to drunken persons. *Williford v. L.J. Carr Invs., Inc.*, 783 P.2d 235 (Alaska 1989).

Proximate cause. - AS 04.16.030 and this section require for purposes of liability only that the defendant's intoxication, and not the particular sale of intoxicants to a drunken person, be a proximate cause of the accident. *Kavorkian v. Tommy's Elbow Room, Inc.*, 711 P.2d 521 (Alaska 1985).

Even though the plaintiffs may frame the "but for" causation question in terms of the providee's intoxication, they are not required to do so, and may instead take the more traditional approach toward proximate cause, that is, in terms of the negligent provision of the liquor. *Gonzales v. Krueger*, 799 P.2d 1318 (Alaska 1990).

Recognition of bystander's right to recover damages for negligent infliction of emotional distress caused by injury to another. - See *Tommy's Elbow Room, Inc. v. Kavorkian*, 727 P.2d

1038 (Alaska 1986).

Civil liability under former law. - The common-law rule as to the nonliability of the vendor of intoxicating liquor for torts committed by the drinker of liquor while the latter was intoxicated, without more, generally prevailed. *Cherbonnier v. Rafalovich*, 12 Alaska 634, 88 F. Supp. 900 (D. Alaska 1950) See *Vance v. United States*, 355 F. Supp. 756 (D. Alaska 1973).

Although it was true that policy embodied in former AS 04.10.180 could also be enforced by criminal and administrative sanctions, there was no reason for giving that statute a narrow interpretation that would preclude a private right of action for unlawful conduct. *Alesna v. LeGrue*, 614 P.2d 1387 (Alaska 1980).

It is not unfair to hold a licensee responsible for the establishment's operation even though the licensee does not have actual control of the day-to-day functions. *Alesna v. LeGrue*, 614 P.2d 1387 (Alaska 1980).

For construction of former AS 04.15.020(a) as setting a minimum standard of care for the purposes of the common-law cause of action based upon ordinary negligence, see *Vance v. United States*, 355 F. Supp. 756 (D. Alaska 1973).

Liability of social host. - Employer, as a social host, owed no legal duty to plaintiffs. Since employer did not hold a liquor license, it was not liable as a social host for injuries resulting from a guest's intoxication, nor was it liable (under a "control" theory) as the employer of an intoxicated person who caused injuries. *Mulvihill v. Union Oil Co.*, 859 P.2d 1310 (Alaska 1993).

Nonlicensees illegally furnishing liquor to minors. - Given the plain language of this section and the absence of convincing contrary legislative history, the court cannot by statutory interpretation construe this section to be inapplicable to nonlicensees who illegally furnish liquor to minors. *Chokwak v. Worley*, 912 P.2d 1248 (Alaska 1996).

Liability of alcohol seller. - Even though this section does not define the elements of all viable causes of action against liquor licensees, it does present a bar to all such causes of action based on providing alcoholic beverages if the conditions giving rise to immunity are met. A jury's conclusion that defendant did not with criminal negligence sell to a drunken person means that defendant was immune under the statute for all unlawful providing claims. The focus of the jury's attention should be whether the seller responded as a reasonable person would to the appearance and outward behavior manifestations of the person to whom the alcoholic beverage was sold, not on any specialized training the seller should have had as an aid to recognizing when a person is intoxicated. *Gonzales v. Safeway Stores, Inc.*, 882 P.2d 389 (Alaska 1994).

Sale to group. - A licensed provider of alcoholic beverages is entitled to immunity from civil liability only if he does not sell to a drunken person, and since vendor sold liquor to a group, one of whom was clearly a drunken person, he could not avoid liability. *Gonzales v. Krueger*, 799 P.2d 1318 (Alaska 1990).

Quoted in *Gordon v. Alaska Pac. Bancorporation*, 753 P.2d 721 (Alaska 1988); *Lord v. Fogcutter Bar & Stacy Cap.* 813 P.2d 660 (Alaska 1991).

Collateral Refs -

45 Am. Jur. 2d, Intoxicating Liquors, sec. 553-614.

48A C.J.S., Intoxicating Liquors, sec. 428-463.

Liability of innkeeper, restaurateur, or tavernkeeper for injury occurring on or about premises to guest or patron by person other than proprietor or his servant. 70 ALR2d 628; 28 ALR4th 80; 43 ALR4th 281.

Who is, as "owner" of premises on which intoxicating liquor is sold, liable under civil

damage or dram shop act. 18 ALR3d 1323.

Third person's participating in or encouraging drinking as barring him from recovering under civil damage or similar acts. 26 ALR3d 1112.

Right of one liable under Civil Damage Act to contribution or indemnity from intoxicated person, or vice versa. 31 ALR3d 438.

Proof of causation of intoxication as a prerequisite to recovery under civil damage act. 64 ALR3d 882.

Liability of state or municipality in tort action for damages arising out of sale of intoxicating liquor by state or municipally operated liquor store or establishment. 95 ALR3d 1243.

Common-law right of action for damage sustained by plaintiff in consequence of sale or gift of intoxicating liquor or habit-forming drug to another. 97 ALR3d 528; 62 ALR4th 16.

Liability of persons furnishing intoxicating liquor for injury to or death of consumer, outside coverage of civil damages act. 98 ALR3d 1230.

Choice of law as to liability of liquor seller for injuries caused by intoxicated person. 2 ALR4th 952.

Employer's liability for furnishing or permitting liquor on social occasion. 51 ALR4th 1048.

Social host's liability for injuries incurred by third parties as a result of intoxicated guest's negligence. 62 ALR4th 16.

Sec. 04.11.010. License or permit required.

(a) Except as provided in AS 04.11.020, a person may not manufacture, sell, offer for sale, possess for sale or barter, traffic in, or barter an alcoholic beverage unless under license or permit issued under this title.

(b) Except as provided in this subsection, a person may not solicit or receive orders for the delivery of an alcoholic beverage in an area that has adopted a local option under AS 04.11.491. If the area has adopted a local option under AS 04.11.491(a)(1), (2), or (3), or (b)(1) or (2), a package store licensee outside of that local option area may receive orders as provided under AS 04.11.150 but may not solicit in that area or receive orders through an agent or employee in that area. This subsection does not apply to a package store licensee who operates a package store in an area that has adopted a local option under AS 04.11.491(a)(2)(C) or (3)(C) or (b)(2)(C). A person who violates this subsection is punishable upon conviction as provided under AS 04.16.200(a) or (b).

(c) In a criminal prosecution for possession of alcoholic beverages for sale in violation of (a) of this section, the fact that a person possessed more than 12 liters of distilled spirits, 24 liters or more of wine, or 12 gallons or more of malt beverages in an area where the sale of alcoholic beverages is restricted or prohibited under AS 04.11.491 creates a presumption that the person possessed the alcoholic beverages for sale

History -

(sec. 2 ch 131 SLA 1980; am sec. 1 ch 156 SLA 1988; am sec. 2, 3 ch 101 SLA 1995)

Amendment Notes -

The 1995 amendment, effective July 1, 1995, rewrote subsection (b) and, in subsection (c), substituted "12 gallons" for "45 liters," inserted "restricted or," and inserted a section reference.

History Reports -

For Senate letter of intent relating to the enactment of (c) of this section by sec. 1, ch. 156, SLA 1988 (HCS CSSB 371 (Jud) am H), see 1988 Senate Journal 2939.

AG Opinions -

A "cooperative" that purchases alcoholic beverages for its members and charges them the actual cost of the purchase plus a percentage "to cover administrative and shipping costs" is required to obtain a license under this section. July 2, 1987, Op. Att'y Gen.

Decisions -

Editor's notes. - Many of the cases cited in the notes below were decided under former AS 04.10.010 and earlier statutes.

This chapter sets forth the only conditions under which a liquor license may be issued - for the sale of liquor within Alaska. In re Kaye, 11 Alaska 556 (1948).

Possession must be with intent to sell. - AS 04.11.010 - 04.11.700 does not make it illegal to possess intoxicating liquors unless the possession is with the intention to sell the same in Alaska. Territory of Alaska v. 188 Cases of Mixed Intoxicating Liquors, 10 Alaska 414 (1944).

The right to sell liquor may be prohibited altogether - in Alaska. In re Kaye, 11 Alaska 556 (1948).

For legislative history of liquor license legislation, - see K & L Distributions, Inc. v. Alaska, 184 F. Supp. 496 (D. Alaska 1960), vacated, 318 F.2d 498 (9th Cir. 1963).

Interpretation of liquor license statutes. - Resort may be had to the legislative history of the liquor license statutes, evidenced by subsequent enactments and amendments, as an aid to their interpretation and application. K & L Distributions, Inc. v. Alaska, 184 F. Supp. 496 (D.

Alaska 1960), vacated, 318 F.2d 498 (9th Cir. 1963).

Constitutionality of AS 04.16.200. - When read in conjunction with this section, AS 04.16.200(b), governing the sale of alcoholic beverages by unlicensed persons, defines an offense, affords adequate notice of the proscribed conduct and the prescribed penalty, and satisfies due process requirements. *Burnor v. State*, 829 P.2d 837 (Alaska Ct. App. 1992).

AS 04.16.200(b) as it existed prior to 1988 construed. - See *Morgan v. State*, 661 P.2d 1102 (Alaska Ct. App. 1983).

Liability of licensee. - In the absence of a statute expressly imposing liability, a person was not liable to a wholesale liquor dealer for the purchase money for liquor merely because he owned the liquor license for the establishment where the dealer had sold the liquor. The protection of creditors of retail dealers in liquor did not come within the spirit or purpose of purely regulatory or revenue producing liquor license statutes. *Sabre Jet Room, Inc. v. K & L Distribs., Inc.*, 384 P.2d 952 (Alaska 1963). For present provisions concerning the licensee's liability, see AS 04.16.150 and 04.21.030.

Availability of defense to accomplice. - If the perpetrator receives a profit, an accomplice may not avail himself of the defense to a charge of illegal sale of alcohol for one who does not profit. *Kinegak v. State*, 747 P.2d 541 (Alaska Ct. App. 1987).

Purchasing agent defense. - A defendant cannot defend against a charge of selling alcohol without a license by alleging that he in effect acted as a purchasing agency by serving as a go-between between the consumer of the alcohol and a third-party seller, and is not entitled to a jury instruction defining sale as requiring a transfer of title from the defendant to the consumer. *Herrera v. State*, 753 P.2d 150 (Alaska Ct. App. 1988).

Evidence sufficient to convict of sale of alcohol and possession of alcohol for sale. - See *Hernandez v. State*, 691 P.2d 287 (Alaska Ct. App. 1984).

Conviction and sentence upheld. - See *Azzarella v. State*, 703 P.2d 1182 (Alaska Ct. App. 1985); *Tuckfield v. State*, 805 P.2d 982 (Alaska Ct. App. 1991).

Sentence upheld. - Concurrent sentences of 240 days with 120 days suspended and concurrent fines of \$3,000 with \$2,000 suspended for sale of alcohol and possession of alcohol for sale were not clearly mistaken. *Hernandez v. State*, 691 P.2d 287 (Alaska Ct. App. 1984).

Sentence of six months' incarceration as a condition of receiving a suspended imposition of sentence, upon conviction of one count of selling intoxicating beverages without a license in a local option area, was not clearly mistaken, where defendant had set up a commercial enterprise, although of short duration, and sold a pint of whiskey to a man who murdered a woman shortly after buying the whiskey. *Wassillie v. State*, 790 P.2d 1385 (Alaska Ct. App. 1990).

Sentence modification. - A trial judge who sentenced a worst offender to two maximum consecutive terms of one year for conviction of one count of selling alcoholic beverages without a license and one count of possession of alcoholic beverages for sale in a local option area, with 275 days of the first sentence suspended, was clearly mistaken in imposing consecutively the unsuspended portion of the offender's jail term for selling alcoholic beverages without a license, where the judge specifically commented at sentencing that the chances for the offender's rehabilitation seemed good and that there was no reason to believe the offender would be inclined to resume a criminal lifestyle. In order to impose consecutive sentences that exceed the maximum sentence for the single most serious count, the sentencing court must expressly find that the full term of imprisonment is necessary for the protection of the public. *Peruski v. State*, 711 P.2d 573 (Alaska Ct. App. 1985).

Cited in *Cleland v. State*, 759 P.2d 553 (Alaska Ct. App. 1988); *Noah v. State*, 887 P.2d

981 (Alaska Ct. App. 1995).

Collateral Refs -

45 Am. Jur. 2d, Intoxicating Liquors, sec. 114-227.

48 C.J.S., Intoxicating Liquors, sec. 90-116.

What constitutes "sale" of liquor in violation of statute or ordinance. 89 ALR3d 551.

Article Notes -

Editors Notes. Section 5, ch. 136, SLA 1996 provides that "the Alcoholic Beverage Control Board shall hold a public hearing on or before January 1, 1997, for the purpose of discussing the alcoholic beverage licenses currently being issued by the board and the interrelationship between those licenses."