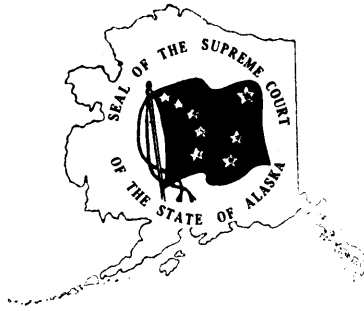


LDIR#020

CRIMINAL LAW

REVISION

1965



Supreme Court
State of Alaska
941 FOURTH AVENUE
ANCHORAGE, ALASKA
99501

BUELL A. NESBETT, CHIEF JUSTICE
JOHN H. DIMOND, ASSOCIATE JUSTICE
JAY A. RABINOWITZ, ASSOCIATE JUSTICE

RECEIVED
JUN 30 1965
ALASKA LEGISLATIVE COUNCIL
JUNEAU, ALASKA
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JUL 2 - 1965
ALASKA LEGISLATIVE COUNCIL
JUNEAU, ALASKA

June 30, 1965

Mr. Roger D. Young
Deputy Director
Alaska Legislative Council
P.O. Box 2199
Juneau, Alaska

Dear Mr. Young:

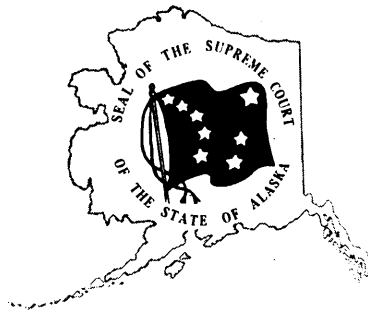
Your letter of June 11, 1965, inviting the comments of the judiciary of Alaska on areas of the present criminal laws which need legislative attention is acknowledged.

Mr. Thomas Stewart, Administrative Director of Courts, is arranging to canvas all judges and magistrates in this respect. Their replies and suggestions will be compiled, commented upon and forwarded to you by the deadline of September 30, 1965 which you mention in your letter.

Thank you for soliciting our views.

Sincerely yours,

Buell A. Nesbett
Buell A. Nesbett
Chief Justice



RECORDED
9/21 3 1965
ALASKA LEGISLATIVE COUNCIL
JUNEAU, ALASKA

Alaska Court System

State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

941 FOURTH AVENUE

ANCHORAGE, ALASKA

99501

THOMAS B. STEWART
DIRECTOR

September 29, 1965

Mr. Roger D. Young
Deputy Director
Alaska Legislative Council
P.O. Box 2199
Juneau, Alaska

Dear Mr. Young:

With regard to your letter of June 11, 1965, inviting comments relating to revision of the state criminal code, we distributed our Administrative Office Bulletin No. 65-7, (copy enclosed) to all judicial officers on July 1, 1965.

There are enclosed for your information copies of all of the replies received in response to that bulletin. Please advise us if you wish further materials from the court system with regard to this important study for revision of the criminal code. We will appreciate an opportunity to review and comment as appropriate on the draft revision when it is completed by your agency.

Very truly yours,
Thomas B. Stewart
Thomas B. Stewart
Administrative Director

TBS/vlk
Encls.

BURR, BONEY & PEASE

LAW OFFICES

825 W. EIGHTH AVENUE

ANCHORAGE, ALASKA 99501

TELEPHONE
BR 2-5401

E. L. ARNELL 1913-1958

D. A. BURR

G. F. BONEY

T. M. PEASE, JR.

L. S. KURTZ, JR.

W. W. MATTHEWS, JR.

R. A. NESBETT

July 28, 1965

Mr. Roger D. Young
Deputy Director
Legislative Council
Box 2199
Juneau, Alaska

RECEIVED
JUL 29 1965
ALASKA LEGISLATIVE COUNCIL
JUNEAU, ALASKA

ATTN: Mr. Roger D. Young

Dear Mr. Young:

Your Memorandum dated June 10, 1965, to the members of the Alaska Bar is appreciated. I have read it and will forward to you my immediate thoughts. I have a very small criminal law practice, and even less experience with the Administrative Procedure Act. However, two aspects of the Criminal Code have bothered me for a long time, and perhaps changes are in order in both cases.

1. The Criminal Code should not govern private morality. As you point out, the Model Penal Code drafters apparently reached this conclusion, and I hope that serious consideration will be given to following the same route in Alaska. During the four years I have been in private practice, I have seen two cases where A. S. 11.40.010 was used to "blackmail" an individual, in one case a man of high standing in his community. However, I have not heard of any cases prosecuted by the Department of Law under this section. I believe this section at this point in time is used only for "blackmail" purposes, and consider such a statute to be contrary to the public interest of enforcing existing criminal statutes and creating public respect for such statutes.

2. If the criminal law is going to continue to govern private morality, A. S. 11.40.030 should be eliminated or modified to cover men and women on the same terms. If women are to have equal rights, as they are given by the Alaska Constitution and statutes, they also should bear equal responsibility for adulterous relationships.



ROBERTSON, MONAGLE, EASTAUGH & ANNIS
ATTORNEYS AT LAW
P. O. BOX 1211
JUNEAU, ALASKA 99801

R. E. ROBERTSON (1885-1961)
M. E. MONAGLE
F. O. EASTAUGH
R. J. ANNIS
~~J. B. BRADLEY~~
J. B. BRADLEY

200 NATIONAL BANK OF ALASKA BLDG.
PHONE JUNIPER 6-3340
CABLE ADDRESS: ROMEA

August 17, 1965

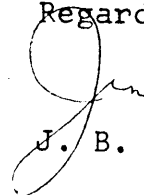
Mr. Roger D. Young
Deputy Director
Alaska Legislative Council
Box 2199
Juneau, Alaska

RECEIVED
AUG 18 1965
ALASKA LEGISLATIVE COUNCIL
JUNEAU, ALASKA

Dear Roger:

Supplementing my letter of August 11 regarding re-
vision of the criminal code, I felt I should call to your
attention the various criminal provisions relating to fire
which are found in Chapter 15, Title 41. This is an example
of something which is quite common in our codification;
that is, criminal provisions scattered throughout the
statutes annotated. I am sure that you can think of many
other examples without much effort. I feel that these pro-
visions should probably be contained in the criminal portion
of the statutes and even if they are not there, they should
certainly be cross-referenced into the criminal code.

Regards,


J. B. Bradley

JBB:bl

JAMES E. FISHER
ATTORNEY
TRADE BUILDING - P. O. BOX 397
KENAI, ALASKA
TELEPHONE 283-7565

27 July 1965

RECEIVED
JUL 29 1965
ALASKA LEGISLATIVE COUNCIL
JUNEAU, ALASKA

Mr. Jack Doyle
Executive Director
Alaska Legislative Council
Box 2199
Juneau, Alaska

Dear Mr. *Jack* Boyle:

In response to your Memorandum dated 10 June 1965, regarding revision of the Criminal Code and the Administrative Procedure Act, I do have some comments with respect to the manner in which traffic regulation is presently handled.

At the present time, the State Police arrest people on State highways for violation for something called "Rules of the Road". Apparently this is a set of rules promulgated pursuant to Statute. This seems to be a poor way to do it. It would be far better if it was in statutory form. I would recommend that the Rules of the Road be revised and incorporated into statutory form if it has not already been done.

One other aspect is the matter of discovery in criminal proceedings. With due respect to the rights of the accused, I do think there should be more discovery in criminal procedure. The way of trying criminal actions by surprise seems to be extremely old fashioned. I say this without too much specialized knowledge of the criminal field, however, I do have some experience in the civil field and am fully aware of the advantages of the use of discovery.

Thank you for this notification and I hope the above general comments will be of some assistance.

Yours truly,

James E. Fisher
JAMES E. FISHER

W. EUGENE GUESS
JOSEPH RUDD
JOHN E. HAVELOCK
HERBERT D. SOLL
DAVID B. RUSKIN

LAW OFFICES OF
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202 CRAWFORD BUILDING
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ANCHORAGE, ALASKA 99501

TELEPHONE
272-4577

July 19, 1965

RECEIVED
JUL 20 1965
ALASKA LEGISLATIVE COUNCIL
JUNEAU, ALASKA

Alaska State Legislative Council
Box 2199
Juneau, Alaska 99801

Attention: Roger D. Young, Deputy Director

Re: Revision of the Criminal Code and the
Administrative Procedure Act.

Dear Roger:

Unfortunately, I do not have the time to make a detailed review of the matters raised in your memorandum of June 10. Your 7 questions, of course, answer themselves "yes". I would support a complete revision of the Criminal Code in the manner suggested by the model Penal Code.

Penal Code

As to the Administrative Code, from my experience the present adjudication procedures are nowhere near elaborate enough. There are vast silences covering fundamental questions of administrative adjudication. This experience is based largely on observation of the function of the Public Service Commission but to some extent applies to other adjudications. I believe that in situations where the present code is too elaborate, the adjudicative function involved should be entirely exempt from the Administrative Procedure Act, allowing the agency more freedom to devise its own procedures suitable to the function involved. For those types of proceedings, however, where an attorney is commonly retained by a party or parties involved, a much more complete system of administrative adjudication is required.

Very truly yours,


John E. Havelock

JEH/ec.

JAMES N. WANAMAKER
ATTORNEY AT LAW
845 FIFTH AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE BROADWAY 7-3544

RECEIVED
JUN 22 1965
ALASKA LEGISLATIVE COUNCIL
JUNEAU, ALASKA

June 21, 1965

Mr. Roger D. Young
Deputy Director
Alaska Legislative Council
Box 2199
Juneau, Alaska

RE: Needed amendments to the Criminal Code

Dear Roger:

I am very pleased that the legislature is taking an overall look at our criminal law. The following are some problem areas that I noticed during my three years as a State Prosecutor.

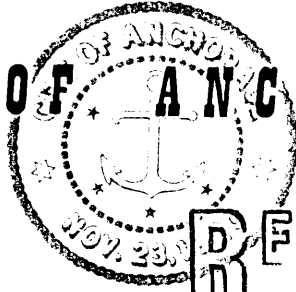
1. Embezzlement- AS 11.20.330 and AS 11.20.340 - These sections provide that a trustee of property, a banker, broker, merchant, or attorney who embezzles the property of another entrusted to his care is guilty only of a misdemeanor. Conversely, a person who does not fall in this class and embezzles property exceeding \$100 in value is liable for a punishment up to ten years under AS 11.20.280. One only need to read Coughlan vs. United States, 15 Alaska 153, 216 Federal Second 324, to realize what a ludicrous situation is created by these sections of the embezzlement statute. In other words, an attorney, a banker, or a trustee could embezzle ten million dollars and face only a penalty of one year in jail whereas an employee in a drug store who embezzled \$150 would face up to ten years in jail. If anything the penalty for a fiduciary who embezzles should be greater than that for a nonfiduciary.

2. AS 12.45.030 "Necessary evidence for false pretenses" should be repealed. Very few bunco artists bother to put their false pretenses in writing. It seems to me that the matter should be left merely as a matter of proof as in other cases. (As I read this section the false pretense could be under oath in a court of law, and if not accompanied by writing, it would make the offense of false pretenses unprosecutable.)

3. AS 11.20.520 should be rewritten along these lines: (1) malicious destruction of personal property at a value greater than \$100 is a felony, (2) malicious destruction of personal property of under \$100 is a misdemeanor. This



CITY OF ANCHORAGE



RECEIVED
SEP 23 1965

P. O. BOX 400
ANCHORAGE, ALASKA 99501

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All America City

Rodger D. Young, Deputy Director
The Alaska Legislative Council
Box 2199
Juneau, Alaska

ALASKA LEGISLATIVE COUNCIL
JUNEAU, ALASKA

RE: Lenience of Penalties
Prostitution, Gambling, Etc.

Dear Mr. Young:

In reference to your letter of June 18, 1965 asking for our comments in regard to various state statutes, and recommendations for additional state statutes, we have compiled the following information and request your consideration. We have attempted to set forth what we feel is needed and also the reasons that we feel the public would be better protected with these recommended statutes.

In the area of vice, we feel that very little is accomplished by the present method of handling vice cases. We feel that the present penalties for such crimes as prostitution, maintaining houses of prostitution, operating number rackets, operating illegal gambling and liquor establishments should be covered more completely in the law.

The operators of the gambling games, the operators of the houses of prostitution and the freelance prostitutes have little feeling one way or the other about another conviction on their record. Since in most of these cases little or no jail time is given, these people feel toward another conviction about the same as they feel toward paying any other bill. In cases of organized gambling, the occasional raid on the gambling establishment does little except throw another bill their way. These people enter the field with the knowledge that they will be assessed fines in the courts and this, to them, is no different than paying a light bill, telephone bill or some other utility. To these people, another conviction on a petty offense means little or nothing. We have had several occasions in the Anchorage area where large amounts of money was seized along with the furnishings and other property of the gambling establishments, and we know that these establishments have been back in operation sometimes within a few hours.

We further feel that in the area of vice crimes, the State of Alaska is in a position where these people who wish to organize crime can do so with little or no fear of anything other than another fine. If the State of Alaska is to avoid having the organized syndicated crime of the lower "48", we will have to have some kind of jail sentences for people involved in this type activity. We feel that on the second and subsequent convictions of prostitution, procuring for prostitution, maintaining a house of prostitution, transporting for prostitution, gambling, maintaining a gambling establishment, the unlawful sale or activity concerning liquor, and operation of numbers rackets, the penalty should be greater and mandatory jail sentences should be handed down.

AIRMAIL IS FASTER

> > > > > > > > > >



ROBERTSON, MONAGLE, EASTAUGH & ANNIS
ATTORNEYS AT LAW
P. O. BOX 1211
JUNEAU, ALASKA 99801

R. E. ROBERTSON (1885-1961)
M. E. MONAGLE
F. O. EASTAUGH
R. J. ANNIS
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200 NATIONAL BANK OF ALASKA BLDG.
PHONE JUNIPER 6-3340
CABLE ADDRESS:ROMEAL

December 22, 1965

Roger Young, Esq.
Deputy Director
Alaska Legislative Council
State Capitol Building
Juneau, Alaska

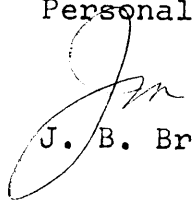
Re: Proposed Revision of Criminal Code

Dear Roger:

In connection with your request for points of view relating to the criminal code revision, I wonder whether you have had an opportunity to review the article in the November 1965 Michigan Law Review entitled "Reasonable Mistake of Age: A Needed Defense to Statutory Rape". The article to me appears to present a very reasonable and realistic approach to a problem which has plagued both scholars and practitioners for a long time. The area presents one of the greatest single areas of injustice of which I am aware.

I hope you will have an opportunity to review the article. If you do not have it at your offices, I would be most happy to make my copy available to you.

Personal regards,


J. B. Bradley

JBB:nlk

November 26, 1965

Karl L. Walter, Jr. Esq.
President
Alaska Bar Association
P. O. Box 279
Anchorage, Alaska 99501

Dear Karl:

This is to acknowledge with thanks your letter of November 23 in response to my letter of November 19 relating to the participation of the Alaska Bar Association in the project for the revision of the criminal code.

I am pleased to have your report that the subject has been placed on the agenda for the December meeting of the Board of Governors. You can be assured of the Council's cooperation and support through its staff agency.

Regards,

JOHN C. DOYLE
EXECUTIVE DIRECTOR

cc: Representative Mike Gravel
Chairman, Alaska Legislative
Council

JCD/eh

November 26, 1965

James N. Wanamaker, Esq.
Executive Secretary
Alaska Bar Association
P. O. Box 279
Anchorage, Alaska 99501

Dear Jim:

I very much appreciate your letter of November 22 which preceded by one day a letter from Karl Walter.

I have written to Karl to express our appreciation for the plan to have the subject of the revision of the criminal code an item on the agenda of the Board of Governors meeting in December.

The feasibility of managing a committee of the Bar in an operation like this does raise a problem. As in the past I assume that most action would have to be handled by correspondence and the exchange of drafts. I know that this office could be of assistance by providing duplicating and mailing services for members of the committee working with our staff.

The main problem as I now see it is to get something for committee members and other interested members of the Bar to get their teeth into. We have considered a draft but we were depending on suggestions from the Bar (even though varying) as a basis for discussion and expansion. We do think that using the Model Penal Code as a foundation (as did Illinois) makes good sense. It could be compared section for section with our code sections to see what could or should be added, subtracted or modified. Suggestions already received, by letter or orally, point to defects in the law on arson, discrepancies regarding embezzlement, a suggestion that adultery be stricken, and intimations that ecclesiastical prohibitions of the Middle Ages should be removed from the civil law.

Pending receipt of additional suggestions or suggestion areas of attention from members of the Bar and other interested persons I think it would be presumptuous to start a redraft of the criminal code on such a sketchy basis.



Roger

FROM: Richard Whittaker
District Attorney
Ketchikan

SUBJECT: Revision of Criminal Code

Following are some suggestions for changing the Criminal Code, based on my experience here at Ketchikan. I have made no attempt to review the entire Code, nor report sections which have been reported to me as needing revision, as I assume these recommendations will be made by the District Attorneys who have encountered the problem.

I do believe that a review of the Code could cut out a lot of dead wood and make the Code infinitely more usable.

I would also suggest that some consideration be given to the problem of alcoholism and booze as a good portion of our criminal work here concerns drunks. I am not aware myself just what other states have done in this area of statutory reform of the Criminal Code, but I am sure that some improvements can be made. Under the current situation, we have simply a holding operation -- we are not recognizing adequate gain for the cost to the state.

Some consideration might be given also to making a misdemeanor of giving false information to a police officer. Also, we need a section making it unlawful to aid an escapee. And one Magistrate recently interpreted 11.30.210, obstructing an officer, as not applying where a seine boat crew, under arrest, was ordered by the boat captain to leave in a small boat and beat the seized seiner to town. I would hope that the .210 could be amended to make clear that arrest is continuing up until the incarceration.

Extent of revision needed --

11.05.040 - gives some trouble judging from comments from YAA and Federal prison officials who interpret it as limiting the power of the court to retroactively sentence. Should be clarified to clearly give the court the power to sentence retroactively.

11.15.060 - without regard to the practicalities or the morality of abortion, the more modern view of abortion is not that it should be allowed only to preserve the life of the mother, but rather where it is medically necessary to protect the health of the mother. The Oregon Code, for instance, allows a medically performed abortion where two M.D.s agree the abortion is necessary, as I remember it, because of the

JAMES E. FISHER
ATTORNEY
TRADE BUILDING - P. O. BOX 397
KENAI, ALASKA
TELEPHONE 283-7565

11 May, 1966

Alaska Legislative Council
Box 2199
Juneau, Alaska

Re: Criminal Code

Attention: Mr. Jack Doyle

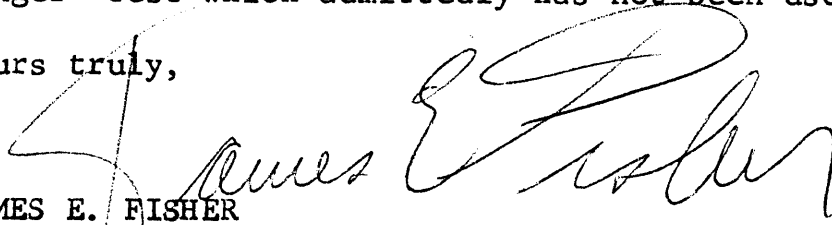
Dear Jack Doyle:

Just a comment on the proposed "Criminal Code", proposed Section AS 11.45.030.

The proposed section as set forth in the outline, dated May, 1966, seems to be extremely broad. It seems to be so very broad as to threaten the potential, or rather existing, civil rights of the general public at large. I realize you are trying to avoid and do away with the vagrancy statutes as well as the drunken statutes, but this does seem to be awfully *(unwisely)* broad.

I realize that it may be no broader than the existing statutes, but that doesn't mean it shouldn't be more narrowly defined. Probably a narrower definition should include threatening the person of another or behaving in a loud and offensive manner as to constitute an immediate threat or incitement to violence. Some such language as that or as the famous "clear and present danger" test which admittedly has not been used in this area.

Yours truly,


JAMES E. FISHER

cc: Attorney John Havelock

RECEIVED
MAY 13 1966
ALASKA LEGISLATIVE COUNCIL
JUNEAU, ALASKA

ELLY GUESS RUDD AND HAVELOCK

July 15, 1966

John E. Havelock, Esq.
Ely, Guess, Rudd and Havelock
Attorneys at Law
P.O. Box 1332
Anchorage, Alaska 99501

Dear John:

We are in receipt of your thoughtful letter of July 13 relating to your comments on the first discussion draft of a revision of the criminal code. I am devout in my wish that more members of the Bar would take like interest in the subject.

Your response was just what we wanted to elicit -- evidence that the commentator has read and thought about the thing. We followed what I have found to be essential in getting people, mostly legislators, to rise to the occasion and propose something different -- something solid to chew on rather than just a general idea. In the very preliminary presentation we followed the Illinois adaptation of the Model Penal Code, including some questionable compromises, and threw in the obscenity thing in honor of Senator Pollock's recent legislative effort. Howard has since caught so much hell that he won't mention the subject again. The draft is also noteworthy on occasions for what it failed to list as criminal.

I do hope that you have a chance to come by the office when you are in town and I would enjoy having a chat with you with John Elliott and Jane present. This is one way I can get some return on my ACLU contributions.

Sincerely,

John C. Doyle
Executive Director

JCD/mh

why deviate sexual assault has a lesser punishment than the