

**CS FOR SENATE BILL NO. 234(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - SECOND SESSION

**BY THE SENATE JUDICIARY COMMITTEE**

**Offered: 3/21/08**

**Referred: Finance**

**Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to certain persons who lend money on secondhand articles; relating to**  
2 **penalizing certain recidivist offenders as felons; relating to defenses for the detention**  
3 **of persons suspected of committing concealment of merchandise or theft; relating to**  
4 **controlled substances; relating to the determination of time of a conviction; relating to**  
5 **issuance of search warrants; relating to persons found incompetent to stand trial**  
6 **concerning criminal conduct; relating to criminal extradition authority of the**  
7 **governor; removing the statutory bar to prosecution of certain crimes; amending Rule**  
8 **37(b), Alaska Rules of Criminal Procedure, relating to execution of warrants; and**  
9 **providing for an effective date."**

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

11 **\* Section 1.** AS 08.76.010 is amended by adding a new subsection to read:

12 (b) A person who lends money on secondhand articles under (a) of this

1 section and is located in a municipality that has a population of over 5,000 shall also  
 2 maintain an electronic record that provides the information required by (a)(1) and (4)  
 3 of this section for the secondhand articles on which the person lends money. The  
 4 person shall submit the electronic record as required by the municipal law  
 5 enforcement agency.

6 \* **Sec. 2.** AS 08.76.020 is amended to read:

7 **Sec. 08.76.020. Manner of recording entry.** The entries in the book and  
 8 the electronic record required by AS 08.76.010 shall appear in chronological order  
 9 and, when made in a book, in ink or indelible pencil. Blank lines may not be left  
 10 between entries. Obliterations, alterations, or erasures may not be made. Corrections  
 11 shall be made by drawing a line [IN INK] through the entry without destroying its  
 12 legibility, and, when made in a book, the line shall be drawn in ink. The book  
 13 shall be open to the inspection of a peace officer at reasonable times.

14 \* **Sec. 3.** AS 11.41.220(a) is amended to read:

15 (a) A person commits the crime of assault in the third degree if that person

16 (1) recklessly

17 (A) places another person in fear of imminent serious  
 18 physical injury by means of a dangerous instrument;

19 (B) causes physical injury to another person by means of a  
 20 dangerous instrument; or

21 (C) while being 18 years of age or older

22 (i) causes physical injury to a child under 10 years of  
 23 age and the injury would cause a reasonable caregiver to seek medical  
 24 attention from a health care professional in the form of diagnosis or  
 25 treatment;

26 (ii) causes physical injury to a child under 10 years of  
 27 age on more than one occasion;

28 (2) with intent to place another person in fear of death or serious  
 29 physical injury to the person or the person's family member makes repeated threats to  
 30 cause death or serious physical injury to another person;

31 (3) while being 18 years of age or older, knowingly causes physical

1 injury to a child under 16 years of age but at least 10 years of age and the injury  
2 reasonably requires medical treatment; [OR]

3 (4) with criminal negligence causes serious physical injury under  
4 AS 11.81.900(b)(56)(B) to another person by means of a dangerous instrument; or

5 (5) violates AS 11.41.230(a)(1) or (2) and, within the preceding 10  
6 years, the person was convicted on two or more separate occasions of a crime in  
7 violation of

8 (A) AS 11.41.100 - 11.41.170;

9 (B) AS 11.41.200 - 11.41.220;

10 (C) AS 11.41.230(a)(1) or (2);

11 (D) AS 11.41.280 - 11.41.282;

12 (E) AS 11.41.260 - 11.41.270;

13 (F) AS 11.41.410, 11.41.420, 11.41.436, or 11.41.438;

14 (G) a law in another jurisdiction that is similar to those  
15 described in (A) - (F) of this paragraph.

16 \* **Sec. 4.** AS 11.41.220 is amended by adding a new subsection to read:

17 (e) In (a)(5) of this section, the court shall consider the date of a previous  
18 conviction as occurring on the date that sentence is imposed for the previous offense.

19 \* **Sec. 5.** AS 11.46.230(a) is amended to read:

20 (a) In a civil or criminal action upon the complaint of a person who has been  
21 detained in or in the immediate vicinity of a commercial establishment for the  
22 purpose of investigation or questioning as to the ownership of merchandise, it is a  
23 defense that

24 (1) the person was detained in a reasonable manner and for not more  
25 than a reasonable time to permit investigation or questioning by a peace officer or by  
26 the owner of the commercial establishment or the owner's agent; and

27 (2) the peace officer, owner, or owner's agent had probable cause to  
28 believe that the person detained was committing or attempting to commit  
29 concealment of merchandise or theft from the commercial establishment.

30 \* **Sec. 6.** AS 11.46.295 is amended to read:

31 **Sec. 11.46.295. Prior convictions.** For purposes of considering prior

1 convictions in prosecuting a crime of theft under AS 11.46.130(a)(6) or  
 2 11.46.140(a)(3), or in prosecuting the crime of concealment of merchandise under  
 3 AS 11.46.220(c), a conviction for an offense under another law or ordinance with  
 4 similar elements is a conviction of an offense having elements similar to those of an  
 5 offense defined as such under Alaska law at the time the offense was committed.

6 **The court shall consider the date of a prior conviction as occurring on the date**  
 7 **that sentence is imposed for the prior offense.**

8 \* **Sec. 7.** AS 11.71.170(b) is amended by adding new paragraphs to read:

9 (30) carisprodol;

10 (31) zolpidem;

11 (32) zopiclone.

12 \* **Sec. 8.** AS 12.35.010(a) is amended to read:

13 (a) A judicial officer may issue a search warrant upon a showing of probable  
 14 cause, supported by oath or affirmation, and particularly describing the place to be  
 15 searched and the thing to be seized. **The court may issue a search warrant for a**  
 16 **place or property located either in the state or outside the state.**

17 \* **Sec. 9.** AS 12.35.015(a) is amended to read:

18 (a) A judicial officer may issue a search warrant upon the sworn oral  
 19 testimony of a person communicated by telephone or other appropriate means, or  
 20 sworn affidavit transmitted by facsimile machine [, IF THE JUDICIAL OFFICER  
 21 FINDS THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT

22 (1) THE PRESENTATION OF THE APPLICANT'S AFFIDAVIT  
 23 OR TESTIMONY PERSONALLY BEFORE THE JUDICIAL OFFICER WOULD  
 24 RESULT IN A DELAY IN OBTAINING OR EXECUTING A SEARCH  
 25 WARRANT; AND

26 (2) THE DELAY MIGHT RESULT IN LOSS OR DESTRUCTION  
 27 OF THE EVIDENCE SUBJECT TO SEIZURE OR MIGHT INTERFERE WITH  
 28 AN ONGOING INVESTIGATION].

29 \* **Sec. 10.** AS 12.47.110(a) is amended to read:

30 (a) When the trial court determines by a preponderance of the evidence, in  
 31 accordance with AS 12.47.100, that a defendant is so incompetent that the defendant

1 is unable to understand the proceedings against the defendant or to assist in the  
 2 defendant's own defense, the court shall order the proceedings stayed, except as  
 3 provided in (d) of this section shall, [AND MAY] commit a [THE] defendant  
 4 **charged with a felony and may commit a defendant charged with any other**  
 5 **crime** to the custody of the commissioner of health and social services or the  
 6 commissioner's authorized representative for further evaluation and treatment until  
 7 the defendant is mentally competent to stand trial, or until the pending charges  
 8 against the defendant are disposed of according to law, but in no event longer than  
 9 90 days.

10 \* **Sec. 11.** AS 12.47.110(b) is amended to read:

11 (b) On or before the expiration of the initial 90-day period of commitment,  
 12 the court shall conduct a hearing to determine whether or not the defendant remains  
 13 incompetent. If the court finds by a preponderance of the evidence that the defendant  
 14 remains incompetent, the court may recommit the defendant for a second period of  
 15 90 days. The court shall determine at the expiration of the second 90-day period  
 16 whether the defendant has become competent. If, at the expiration of the second 90-  
 17 day period, the court determines that the defendant continues to be incompetent to  
 18 stand trial, the charges against the defendant shall be dismissed without prejudice,  
 19 and continued commitment of the defendant shall be governed by the provisions  
 20 relating to civil commitments under AS 47.30.700 - 47.30.915 unless the defendant  
 21 is charged with a crime involving force against a person and the court finds that the  
 22 defendant presents a substantial danger of physical injury to other persons and that  
 23 there is a substantial probability that the defendant will regain competency within a  
 24 reasonable period of time, in which case the court may extend the period of  
 25 commitment for an additional six months. If the defendant remains incompetent at  
 26 the expiration of the additional six-month period, the charges shall be dismissed  
 27 without prejudice, and continued [EITHER CIVIL] commitment proceedings shall  
 28 be **governed by the provisions relating to civil commitment under AS 47.30.700 -**  
 29 **47.30.915** [INSTITUTED OR THE COURT SHALL ORDER THE RELEASE OF  
 30 THE DEFENDANT]. If the defendant remains incompetent for five years after the  
 31 charges have been dismissed under this subsection, the defendant may not be

1 charged again for an offense arising out of the facts alleged in the original charges,  
2 except if the original charge is a class A felony or unclassified felony.

3 \* **Sec. 12.** AS 12.47.110 is amended by adding a new subsection to read:

4 (e) A defendant charged with a felony and found to be incompetent to  
5 proceed under this section is rebuttably presumed to be mentally ill and to present a  
6 likelihood of serious harm to self or others in proceedings under AS 47.30.700 -  
7 47.30.915. In evaluating whether a defendant is likely to cause serious harm, the  
8 court may consider as recent behavior the conduct with which the defendant was  
9 originally charged.

10 \* **Sec. 13.** AS 12.70.280(2) is amended to read:

11 (2) "governor" includes

12 (A) a person performing the functions of governor by  
13 authority of the law of this state; and

14 (B) the lieutenant governor or the head of a principal  
15 department in the executive branch appointed by the governor to act on  
16 behalf of the governor in performing extradition duties under this  
17 chapter; the appointment shall be in writing and filed with the lieutenant  
18 governor;

19 \* **Sec. 14.** AS 47.30.780 is amended to read:

20 **Sec. 47.30.780. Early discharge. Except as provided in (b) of this section,**  
21 **the** [THE] professional person in charge shall at any time discharge a respondent on  
22 the ground that the respondent is no longer gravely disabled or likely to cause serious  
23 harm as a result of mental illness. A certificate to this effect shall be sent to the court,  
24 which shall enter an order officially terminating the involuntary commitment.

25 \* **Sec. 15.** AS 47.30.780 is amended to add a new subsection to read:

26 (b) The professional person in charge shall give the prosecuting authority 10  
27 days' notice before discharging a respondent who was committed after having been  
28 found incompetent to proceed under AS 12.47.110.

29 \* **Sec. 16.** AS 12.35.015(f) is repealed.

30 \* **Sec. 17.** AS 11.71.310 and AS 12.20.010 are repealed.

31 \* **Sec. 18.** The uncodified law of the State of Alaska is amended by adding a new section

1 to read:

2 DIRECT COURT RULE AMENDMENT. Rule 37(b), Alaska Rules of  
3 Criminal Procedure, is amended to read:

4 (b) **Execution and Return with Inventory.** The warrant shall be executed  
5 and returned within 30 [10] days after its date of issuance. However, upon sworn  
6 application made before the expiration of the initial 30 [10] day period or any  
7 subsequent extension, the court may for good cause extend the execution period for a  
8 reasonable time not to exceed 30 [10] days. Good cause includes protecting the  
9 confidentiality of an ongoing investigation and protecting a person working  
10 with law enforcement authorities on an investigation. The officer taking property  
11 under the warrant

12 (1) shall give to the person from whom or from whose premises the  
13 property was taken a copy of the warrant, a copy of the supporting affidavits, and  
14 receipt for the property taken, or

15 (2) shall leave the copies and the receipt at the place from which the  
16 property was taken.

17 The return shall be made promptly and shall be accompanied by a written inventory  
18 of any property taken as a result of the search pursuant to or in conjunction with the warrant.  
19 The inventory shall be made in the presence of the applicant for the warrant and the person  
20 from whose possession or premises the property was taken, if they are present, or in the  
21 presence of at least one credible person other than the applicant for the warrant or the person  
22 from whose possession or premises the property was taken, and shall be signed by the  
23 officer under the penalty of perjury pursuant to AS 09.63.020 or sworn to in front of a  
24 magistrate or judge, or a notary public. The magistrate or judge or the court to which the  
25 return is made shall upon request deliver a copy of the inventory to the person from whom  
26 or from whose premises the property was taken and to the applicant for the warrant.

27 \* **Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section  
28 to read:

29 APPLICABILITY. (a) Sections 3, 4, 7, and 17 of this Act apply to an offense  
30 occurring on or after the effective date of this Act. References to previous convictions under  
31 sec. 3 of this Act apply to convictions occurring on or after the effective date of this Act.

1 (b) Section 6 of this Act applies to an offense occurring before, on, or after the  
2 effective date of this Act.

3 (c) Sections 8, 9, 16, and 18 of this Act apply to search warrants applied for on or  
4 after the effective date of this Act, regardless of whether the offense occurred before, on, or  
5 after the effective date of this Act.

6 (d) Sections 10 - 12, 14, and 15 of this Act apply to procedures occurring after the  
7 effective date of this Act, regardless of whether the offense occurred before, on, or after the  
8 effective date of this Act.

9 (e) Section 13 of this Act applies to applications for criminal extraditions submitted  
10 on or after the effective date of this Act, regardless of whether the offense occurred before,  
11 on, or after the effective date of this Act.

12 (f) Section 5 of this Act applies to offenses occurring and actions arising on or after  
13 the effective date of this Act.

14 \* **Sec. 20.** This Act takes effect July 1, 2008.