

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 18, 2009

1:35 p.m.

MEMBERS PRESENT

Representative Jay Ramras, Chair
Representative Nancy Dahlstrom, Vice Chair
Representative John Coghill
Representative Carl Gatto
Representative Bob Lynn
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 13

"An Act relating to property crimes."

- HEARD AND HELD

HOUSE BILL NO. 95

"An Act relating to stays of execution on and the postjudgment interest rate on judgments greater than \$100,000 in favor of the state or a political subdivision of the state."

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: HB 13

SHORT TITLE: PROPERTY CRIMES

SPONSOR(S): REPRESENTATIVE(S) COGHILL

01/20/09	(H)	PREFILE RELEASED 1/9/09
01/20/09	(H)	READ THE FIRST TIME - REFERRALS
01/20/09	(H)	JUD, FIN
02/18/09	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

KAREN LIDSTER, Staff

Representative John Coghill
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 13 on behalf of the sponsor,
Representative Coghill.

ANNE CARPENETI, Assistant Attorney General
Legal Services Section
Criminal Division
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Responded to questions during discussion of
HB 13.

QUINLAN G. STEINER, Director
Central Office
Public Defender Agency (PDA)
Department of Administration (DOA)
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of
HB 13.

DOUG WOOLIVER, Administrative Attorney
Administrative Staff
Office of the Administrative Director
Alaska Court System (ACS)
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of
HB 13.

ACTION NARRATIVE

[1:35:47 PM](#)

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at 1:35 p.m. Representatives Ramras, Gatto, Lynn, Gruenberg, Dahlstrom, and Coghill were present at the call to order. Representative Holmes arrived as the meeting was in progress.

HB 13 - PROPERTY CRIMES

[1:37:33 PM](#)

CHAIR RAMRAS announced that the only order of business would be HOUSE BILL NO. 13, "An Act relating to property crimes."

1:37:40 PM

REPRESENTATIVE COGHILL, speaking as the sponsor of HB 13, explained that it proposes to raise the threshold amounts for [felony and misdemeanor property crimes].

1:38:38 PM

KAREN LIDSTER, Staff, Representative John Coghill, Alaska State Legislature, on behalf of Representative Coghill, sponsor, added that the purpose of HB 13 is to raise the threshold amounts that distinguish felony property crimes from misdemeanor property crimes, and further distinguish class A misdemeanor property crimes from class B misdemeanor property crimes. Alaska's criminal statutes differentiate between levels of property crimes based upon the value of the property that is either taken, altered, damaged, or destroyed, and the current statutory threshold amounts were set in 1978. However, because crimes against property are interrelated and the statutes were designed by the legislature to equally punish persons who cause equal monetary damage to their victims, HB 13 proposes to change the threshold amounts for property crimes so that they will be more in line with today's monetary value of various items.

MS. LIDSTER relayed that in researching other states, it was found that Arizona, Colorado, and Texas already have some threshold amounts equal to some of those proposed by HB 13. Currently, the threshold for a felony property crime is \$500 and warrants a class C felony charge. In response to a question, she relayed that the Department of Public Safety (DPS) has indicated that it has no position on the bill, acknowledges that the current threshold amounts are due to be increased, but does have some concerns.

REPRESENTATIVE GRUENBERG relayed that when he'd cosponsored similar legislation in the past, he'd received input from the chiefs of police of local law enforcement agencies indicating they were opposed to that legislation, and this caused him concern. He suggested that that issue be researched further.

REPRESENTATIVE HOLMES, characterizing the changes proposed by HB 13 as long overdue, asked how the new threshold amounts were arrived at.

MS. LIDSTER offered her recollection that via discussions about inflation, the proposed new amounts were agreed upon, though no specific formula was used.

REPRESENTATIVE COGHILL added that although the choice of HB 13's proposed amounts was somewhat arbitrary, the existing statutory amount of \$25,000 for certain of the property crimes listed in the bill was the result of recently passed legislation. He explained that originally he'd considered increasing all thresholds of \$1,500 to \$2,500, and increasing all thresholds of \$250 to \$500; however, when researching what a \$500 property crime could consist of, for example, it became apparent that perhaps there was room for debate with regard to what the new thresholds should be, and so he ultimately chose lower amounts for some of the property crimes listed in the bill. For example, because these days a person could spend \$500 on a bicycle, if it's stolen, then currently the thief would be subject to a felony charge. He said that although he may not yet have arrived at the right threshold amount, the current amounts, which in some cases are as low as \$50, are no longer acceptable.

REPRESENTATIVE COGHILL offered his understanding that oftentimes in Alaska misdemeanor crimes are not pursued by law enforcement, and are sometimes just used to place additional charges on an offender. He went on to say that although he'd been considering introducing this type of legislation for a number of years, other proposed changes to the criminal statutes took precedence. The lack of enforcement of misdemeanor crimes is a problem that's being highlighted by the introduction of HB 13, and more emphasis seems to be being placed on felony crimes and their penalties, but with the current low threshold amounts for felony property crimes, it's more likely that a person will be charged with a felony.

CHAIR RAMRAS - remarking on the burden a felony charge can place on a person, particularly a young person - asked what the proposed changes will mean for the DOL and the Alaska Court System (ACS) from a practical standpoint.

[1:52:09 PM](#)

ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL) - after noting that the DOL has worked with the sponsor on HB 13 - said that the DOL isn't taking a position on the bill, but acknowledged that it's been over 30 years since the current threshold amounts were set. Raising the threshold amounts for property crimes can be a difficult policy question to consider, particularly given that in Alaska, most domestic violence

assault crimes, for example, are resolved as class A misdemeanors, whereas stealing a bicycle that cost \$500 is currently a felony. She offered her understanding that even since the setting of the current thresholds for property crimes, the DOL's district attorneys exercise good, sound judgment and often do resolve cases at lower levels - even when the value of the item warrants a higher level charge - than those amounts" when it seems appropriate to do so. And although the proposed thresholds might seem arbitrary, thresholds must still be set. In response to a question, she surmised that perhaps the aforementioned concern of local law enforcement agencies is that there are insufficient resources for the prosecution of all cases, and so the least serious cases aren't getting addressed, and that raising the threshold amounts will create a bigger pool of class B misdemeanor cases, which, again, may not get addressed if there are insufficient resources.

[Chair Ramras turned the gavel over to Vice Chair Dahlstrom.]

REPRESENTATIVE COGHILL, in response to a question and comments, surmised that the DPS isn't going to take a position on HB 13, and that with the current \$500 threshold for a felony, although it might be easier to charge someone with a felony, it might also be harder to prosecute the person for a felony because he/she might plead the charge down to a misdemeanor. He said he is questioning why law enforcement isn't charging people for misdemeanor crimes regardless of which crimes prosecutors ultimately end up pursuing. Are law enforcement officers refusing to uphold the law simply because they know that the resources for prosecution are insufficient?

[1:58:09 PM](#)

MS. CARPENETI assured the committee that the DOL makes a valiant effort to prosecute all cases that have been referred by law enforcement - the DOL doesn't turn down any cases.

REPRESENTATIVE COGHILL acknowledged that point, but again remarked that it seems to be a decision being made by law enforcement officers to not charge people with misdemeanors. Under the current thresholds for property crimes, a person charged with a felony property crime for stealing a \$500 bicycle, for example, is facing the same penalties as someone charged with kidnapping, and this needs to change, he opined, because "they're not the same value anymore."

[Vice Chair Dahlstrom returned the gavel to Chair Ramras.]

CHAIR RAMRAS, indicating that he'd just spoken with a representative from the DPS, confirmed that the DPS is neutral on HB 13.

REPRESENTATIVE GRUENBERG again relayed that it was the chiefs of police of local law enforcement agencies that had expressed concern with the aforementioned similar legislation that he'd cosponsored.

[1:59:41 PM](#)

REPRESENTATIVE HOLMES asked whether the DOL keeps records regarding the different levels of property crimes, such as how many are felonies, how many are misdemeanors, how many are being pled [down], and how the property crime threshold amounts relate to what's actually being charged.

MS. CARPENETI said that the DOL does keep records of property crimes, though she is not sure how detailed they are. She offered to research that issue further and provide the resulting information to the committee. In response to questions, she explained that the court can order that restitution also be paid by the offender as part of the sentence, and that she doesn't think that district attorneys factor in the possible amount of any such restitution when deciding what level of crime to charge the person with. She offered to research that issue further as well.

REPRESENTATIVE COGHILL shared that he'd once had his bicycle stolen, but noted that these days there is just such a difference in the value of things, and so he just needed to start somewhere with regard to raising the threshold amounts, particularly given that felony charges and associated penalties are so serious these days.

REPRESENTATIVE HOLMES agreed.

CHAIR RAMRAS, to illustrate that there is often a relationship between misdemeanor crimes and felony crimes, shared that he'd once had his bicycle stolen by someone who then went on to commit an execution-style murder.

REPRESENTATIVE DAHLSTROM noted that a bicycle of lesser value might mean more to its owner than a bicycle of greater value might meant to its owner, depending on the owners' differing financial situations. However, the fact that the crime of

domestic violence assault is still often only charged as a misdemeanor makes a statement regarding how life, compared with property, is valued in today's society.

REPRESENTATIVE COGHILL relayed that the concept of raising the threshold amounts of property crimes was brought to his attention by a judge who'd pointed out the current disparity, and that that judge had suggested the aforementioned higher amounts he'd originally been thinking of including in the bill. It was out of concern that the value of certain kinds of property not be misjudged that he lowered the amounts to those currently proposed in the bill.

REPRESENTATIVE GRUENBERG concurred that the value of an item to it's owner is dependant on his/her financial situation, and expressed concern regarding the impact that HB 13 might have on his constituents since most of them are not well off financially; passage of HB 13 might result in the property crimes perpetrated against his constituents being put at the bottom of the list of the crimes to be prosecuted. In response to a question, he clarified that although he'd once cosponsored similar legislation, in addition to hearing opposition to it from local law enforcement agencies, he now also has a concern that the proposed changes could have an adverse impact on his constituency. He asked whether there is any information about where lower-level property crimes tend to occur.

[2:11:48 PM](#)

QUINLAN G. STEINER, Director, Central Office, Public Defender Agency (PDA), Department of Administration (DOA), said he is unable to venture an answer on that issue because of a lack of information. In response to another question, he surmised that if the changes proposed by HB 13 were to become law, a certain percentage of cases that were formerly prosecuted as felonies would instead be processed as misdemeanors, though he is unable to say exactly how many cases that would be because statistical information regarding the value of the property alleged to have been stolen is not tracked. Nonetheless, dealing with felonies is more time consuming than dealing with misdemeanors, and even when a felony ultimately gets plead down to a misdemeanor, it is still treated as a felony throughout the process.

CHAIR RAMRAS asked whether passage of HB 13 would result in an increased workload for the PDA.

MR. STEINER offered his understanding that in general it would decrease the PDA's workload. However, whether it really does decrease will be dependant upon the approach taken by the district attorney.

CHAIR RAMRAS asked what the cost difference is for defending a felony crime compared to defending a misdemeanor crime.

MR. STEINER said that misdemeanor crimes generally require fewer resources because the PDA assigns more misdemeanor cases to a [misdemeanor] attorney than it would assign felony cases to a "felony attorney." For example, under limits set by the American Bar Association (ABA), 400 cases can be handled by a misdemeanor attorney whereas only 150 cases can be handled by a felony attorney. Furthermore, because the consequences for felony crimes are high, that also tends to drive up costs such as those associated with pretrial litigation.

MR. STEINER, in response to a request, explained that aside from the amount of jail time assigned and the penalties handed down, one of the principal distinctions between a misdemeanor crime and a felony crime is that felons are placed on supervised probation whereas misdemeanants are placed on unsupervised probation, and being placed on supervised probation can result in a significant increase in the costs associated with the case.

[2:18:21 PM](#)

MS. CARPENETI added that there can be quite a number of collateral consequences associated with a felony conviction. For example, felons can't vote for a period of time, any subsequent felony conviction could result in a presumptive sentencing term being applied, and a lot of prospective employers often ask whether a candidate for employment has ever been convicted of a felony crime. Therefore, in addition to the sentencing, probation, and parole consequences, being convicted of a felony can make quite a bit of difference in a person's life in a number of important ways.

REPRESENTATIVE COGHILL concurred, and noted that one of his foster children was charged with a felony and was then precluded from applying to be a law enforcement officer even though he was never convicted and had since turned his life around. There is a significant benefit to holding people accountable, he opined, but there is a high cost to individuals who become felons.

REPRESENTATIVE GRUENBERG offered his understanding that there is no statutory provision allowing for the expungement of a person's record.

MS. CARPENETI clarified that there is a statutory procedure for sealing a record - the record would be set aside and would no longer be available on the Alaska Public Safety Information Network (APSIN) - and a court rule procedure for sealing a "court view record." Therefore, in the situation involving Representative Coghill's foster child, she added, since the person was only charged and not convicted, he could have pursued that procedure so that his record wouldn't have been available on the APSIN.

REPRESENTATIVE COGHILL acknowledged that point, but remarked that just being charged with a felony, let alone convicted, can have a significant impact on a person.

MS. CARPENETI, in response to a question, explained that the statute pertaining to sealing a record specifies for what purposes a record is and is not sealed. She also explained that a record is never really expunged - "you don't make a historical fact disappear"; instead, "you try and deal fairly with what the result of that [was] by sealing the record."

[2:26:23 PM](#)

DOUG WOOLIVER, Administrative Attorney, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), after relaying that the ACS doesn't take a position on HB 13, in response to a question, explained that superior court cases take more resources, and that the ACS assigns fewer cases to superior court judges - it's the district court that resolves cases very quickly, and so it has a much higher caseload. Costs per case are less for district court cases than they are for superior court cases. Research indicates that in 2008 there were 973 class C felony property crime cases that would have been affected by HB 13; however, what is not known is how many of those cases would have been impacted by the [proposed] \$1,500 threshold amount, particularly given that a class C felony property crime covers a range of value - from \$500 to \$25,000 - and so the property in question could have been a car or it could have been a bicycle.

MR. WOOLIVER relayed that in an effort to find out what types of cases were considered and how they were resolved, he sent out a survey to all superior and district court judges, and the

results from that survey indicate that the vast majority of those cases were resolved in district court as misdemeanors; they were either originally charged as misdemeanors, even though the value of the property was over the felony threshold, or were charged as felonies but were then plead down to misdemeanors. For the latter such cases, although never requiring the resources of a superior court judge, they do still require district attorney and public defender resources because once a felony charge is filed, felony attorneys are assigned. From the perspective of the ACS, however, what triggers the increased workload is whether a case is "touched" by a superior court judge, and, again, most of those cases were not.

CHAIR RAMRAS questioned whether passage of HB 13 would put more pressure on the district court.

MR. WOOLIVER said that would depend on the particular district court. For example, in Fairbanks, the district court is very, very busy, whereas in Anchorage, it's the superior that's overwhelmed. System-wide, therefore, it [would be] kind of a wash, but in individual communities it [could] make a difference.

CHAIR RAMRAS suggested that the Department of Corrections (DOC) be asked what impact the bill will have on it.

REPRESENTATIVE GRUENBERG mentioned that the bill has engendered an indeterminate fiscal note from the DOC.

[2:31:43 PM](#)

REPRESENTATIVE COGHILL remarked that \$50 [one of the lower current threshold amounts] in 1978 isn't worth the same as \$50 in 2008, so in order for the penalty to now fit the crime, the threshold amounts need to be adjusted, though what the new amounts should ultimately be is still up for discussion. He predicted that probation officers will also be impacted by passage of the bill.

REPRESENTATIVE HOLMES offered her belief that the current threshold amounts need to be changed, and relayed that she will be doing some research regarding what the new amounts might best be set at.

REPRESENTATIVE GRUENBERG surmised that perhaps there might be some victim advocacy groups willing to provide comments on the bill as well.

[2:34:04 PM](#)

MR. WOOLIVER, in conclusion, offered his belief that HB 13 will help more accurately reflect where the ACS's workload really is, particularly given that currently many cases filed as felonies actually end up being resolved as misdemeanors - thus making it appear that there are many more felony cases than there really are.

CHAIR RAMRAS relayed that HB 13 would be held over for the purpose of obtaining testimony from local law enforcement agencies, the DOC, and victim advocacy groups.

[2:35:32 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:35 p.m.