

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 8, 2019

1:34 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Gabrielle LeDoux, Vice Chair
Representative Chuck Kopp
Representative Louise Stutes
Representative Adam Wool
Representative Laddie Shaw
Representative David Eastman

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 98

"An Act relating to aggregation of crimes under theft in the second degree; relating to fraudulent use of an access device; and relating to the crime of possession of motor vehicle theft tools."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 98

SHORT TITLE: PROPERTY CRIME; MOTOR VEHICLE THEFT TOOLS

SPONSOR(S): REPRESENTATIVE(S) CLAMAN

03/15/19	(H)	READ THE FIRST TIME - REFERRALS
03/15/19	(H)	STA, JUD
04/02/19	(H)	STA AT 4:00 PM GRUENBERG 120
04/02/19	(H)	Heard & Held
04/02/19	(H)	MINUTE(STA)
04/04/19	(H)	STA AT 3:00 PM GRUENBERG 120
04/04/19	(H)	Moved CSHB 98(STA) Out of Committee
04/04/19	(H)	MINUTE(STA)
04/05/19	(H)	STA RPT CS(STA) 3DP 2NR
04/05/19	(H)	DP: STORY, KREISS-TOMKINS, FIELDS
04/05/19	(H)	NR: VANCE, WOOL
04/08/19	(H)	JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

REPRESENTATIVE MATT CLAMAN
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Introduced HB 98 as prime sponsor.

LIZZIE KUBITZ, Staff
Representative Matt Claman
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented a sectional analysis of HB 98.

MICHELE LOGAN, Deputy Detective
Anchorage Police Department
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 98.

ACTION NARRATIVE

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CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:34 p.m. Representatives Eastman, LeDoux, Stutes, Kopp, and Claman were present at the call to order. Representatives Shaw and Wool arrived as the meeting was in progress.

HB 98-PROPERTY CRIME; MOTOR VEHICLE THEFT TOOLS

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CHAIR CLAMAN announced that the only order of business would be HOUSE BILL NO. 98 "An Act relating to aggregation of crimes under theft in the second degree; relating to fraudulent use of an access device; and relating to the crime of possession of motor vehicle theft tools." [Before the committee was CSHB 98(STA), version 31-LS0626\U.]

CHAIR CLAMAN passed the gavel to Vice Chair LeDoux.

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CHAIR CLAMAN observed that Alaska is currently facing a number of public safety challenges, including an opioid epidemic, cuts

to public safety resources, and a down economy with rising unemployment rates. He opined that, given these challenges, it is important to utilize public safety resources wisely and to improve public safety. He said law enforcement officials in Alaska have reported increased difficulty when arresting and prosecuting serial theft offenders. He explained that HB 98, which he introduced after discussing theft crimes with law enforcement officials, would strengthen Alaska's laws related to theft and other offenses against property. He said it would also improve public safety by giving police officers and prosecutors additional tools for arresting and prosecuting criminals. He stated that the bill targets serial theft offenders. He added that HB 98 is supported by the National Insurance Crime Bureau, the Alaska Peace Officers Association, and the National Federation of Independent Business.

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LIZZIE KUBITZ, Staff, Representative Matt Claman, Alaska State Legislature, led a sectional analysis of HB 98. She paraphrased from the document "Sectional Analysis - Version U," included in the committee packet, which read as follows [original punctuation provided]:

Section 1

AS 11.46.130(a) - Theft in the second degree.

Allows prosecutors to aggregate crimes under theft in the second degree if they occur within 180 days, the amount is more than \$750 and less than \$25,000, and the property or services are taken from commercial establishments.

Section 2

AS 11.46.285 - Fraudulent use of an access device or identification document.

Amends AS 11.46.285—the statute related to fraudulent use of an access device—to include an identification document. This clarification addresses a gap in the statute identified by the Alaska Court of Appeals in *Kankanton v. State*, 342 P.3d (Alaska Ct. App. 2015).

Section 3

AS 11.46.370 - Possession of motor vehicle theft tools.

Amends AS 11.46 by adding a new section establishing the crime of Possession of motor vehicle theft tools as a class A misdemeanor. The new crime is similar to AS 11.46.315, Possession of burglary tools.

Section 4

Uncodified law

This section contains applicability provisions.

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REPRESENTATIVE KOPP said the current law for [theft in the fourth degree] stipulates that an offender who has two or three convictions can be charged with a higher class of crime, though that the law does not apply to commercial establishments. He noted that HB 98 appears to address retail theft. He asked Chair Claman to explain that.

CHAIR CLAMAN said he believes Representative Kopp is referring to "the aggregation statute" that allows the prosecution to aggregate multiple crimes if it can find a single course of conduct. He explained that HB 98 would eliminate the "single course of conduct" requirement, meaning the only remaining requirement for the aggregation of charges would be that the crimes be found to have occurred within a 180-day period. He said this would be limited to retail theft.

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REPRESENTATIVE EASTMAN asked what it means to aggregate cases.

MS. KUBITZ pointed to lines 15 through 18 on page 2 of Version U. She explained that, within the context of HB 98, aggregating means combining the value of the property or services taken from one or more persons. She said the combined amount would have to be more than \$750 and less than \$25,000.

REPRESENTATIVE EASTMAN asked whether aggregation would be discretionary or required.

CHAIR CLAMAN answered that aggregation would be at the prosecutor's discretion. He said this would be unchanged from the current statute relating to the "single course of conduct" requirement.

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REPRESENTATIVE EASTMAN noted that the presenters had mentioned something about a burglary statute. He asked them to repeat it.

MS. KUBITZ said section 3, which would create AS 11.46.370, is similar to AS 11.46.315, which makes it a crime to possess burglary tools.

REPRESENTATIVE EASTMAN said he is interested in section 3. He asked why possession of motor vehicle theft tools was included in the bill as a new crime as opposed to an aggravator "on already existing crimes."

CHAIR CLAMAN answered that this section was added primarily at the request of law enforcement officials who believe it would be useful. He noted that other states have similar laws. He described a scenario in which someone is caught having not yet stolen a car, but everything he/she is doing suggests he/she is in the process of stealing cars. He said section 3 would give law enforcement and prosecutors the ability to prosecute a person engaged in those actions.

REPRESENTATIVE EASTMAN asked whether possession of the tools in question would be categorically illegal, or if there would be exceptions.

CHAIR CLAMAN said the crime of possession of motor vehicle theft tools would require intent. That means, he explained, it would not apply to a locksmith who has tools to unlock cars or any other person who lawfully possesses those tools. He said no crime would exist unless it can be shown that an individual possesses the tools with intent to commit or assist in the commission of vehicle theft.

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REPRESENTATIVE EASTMAN asked how intent is normally established.

CHAIR CLAMAN gave an example of how intent is established for possession of burglary theft tools. He established a scenario in which a person calls the police to report a prowler in his/her backyard. The police arrive and find an individual wandering around the backyard searching for a window to break. The officers stop the individual before he/she enters the home and find that he/she is in possession of tools that would commonly be used to make the burglary happen. Chair Claman

explained that the individual in this situation could be charged with possession of burglary tools even though a burglary has not occurred. He said this example is analogous to an auto theft scenario in which a person is caught wandering around parking lots with a special key trying to unlock cars. The police, he said, would be able to charge such a person with possession of auto theft tools.

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REPRESENTATIVE EASTMAN asked a question about whether intent can be retrospectively established for a previous crime.

CHAIR CLAMAN said he is not sure he can answer that question. He said to convict a person of possession of motor vehicle theft tools would require the prosecution showing that the offender had the requisite intent at the time he/she possessed the tools.

REPRESENTATIVE EASTMAN said, "If I committed a crime previously, and I happen to have held on to these tools, but I don't have any current intent to use them because I already finished the crime, is it your intent that that be illegal under this language, or are we only focused on active intent at the time that we find that I have the tools."

CHAIR CLAMAN characterized that scenario as "a fairly odd hypothetical" because an individual who generally has tools relating to committing a crime would have those tools confiscated and forfeited as part of the crime. He said he would expect that someone arrested and successfully charged with possession of motor vehicle theft tools would no longer have the tools once the conviction was complete.

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VICE CHAIR LEDOUX asked why a person wandering around a parking lot trying to unlock doors would not be charged with attempted burglary. She commented that section 3 seems "somewhat broad" and could affect someone who happens to be in a parking lot with one of these tools in his/her pocket.

CHAIR CLAMAN said a person who is jimmying car locks could be charged with attempted vehicle theft, which is "one level lower" than the actual offense had he/she succeeded. He stated that possession of burglary tools is probably not among the most commonly charged crimes in statute and that there would likely be more attempted vehicle theft charges than possession of

vehicle theft tools charges. He noted that section 3 was drafted based on recommendations by police officials. He added that a similar charge is available to police and prosecutors in other states.

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The committee took a brief at-ease at 1:50 p.m.

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VICE CHAIR LEDOUX returned the gavel to Chair Claman.

CHAIR CLAMAN opened public testimony on HB 98. He noted that a pair of detectives from Anchorage were invited to testify but were unable to call in today. He said the committee would perhaps hear from law enforcement officials at a later meeting. After ascertaining that no one else wished to testify, he closed public testimony on HB 98.

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REPRESENTATIVE EASTMAN suggested that the new crime of possession of motor vehicle theft tools would take the place of the crime of theft when theft cannot be charged because the theft has not been completed. He said he understands why law enforcement would like to charge someone who has not yet completed that particular crime. He said it would make sense for possession of tools to be an aggravator of some kind when a person is charged for having completed a crime. He expressed reticence at charging a person for a new crime based on another crime he/she has not yet committed.

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REPRESENTATIVE KOPP said that he can see from experience that the bill would be useful for public safety. He observed that the crime of theft in the second degree is a class C felony when the offender has twice been convicted within the past five years of stealing, at a misdemeanor level, \$250 or more. He said he likes that HB 98 would target crime sprees by making it clear that the sum total of individual crimes can generate a felony. He said the bill addresses the reality of how serial thieves work. He noted that the prosecution would still have to prove that these retail thefts all occurred within the time period for it to be a felony. He stated that the bill addresses those who cause the most damage to retail businesses and assuages concerns

about misdemeanor thefts not being taken seriously. He said the bill would also help the criminal justice system quickly intervene and prevent further violence, theft, and substance abuse issues.

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REPRESENTATIVE SHAW expressed support for an intervention model of addressing criminal justice and "nipping the problem early." He said HB 98 would be beneficial.

REPRESENTATIVE KOPP added that the possession of motor vehicle tools itself would not be a crime. He stressed that a prosecutor would need to prove beyond a reasonable doubt that the tools were intended to commit a crime. He said he appreciates that HB 98 retains the language from the possession of burglary tools statute.

REPRESENTATIVE SHAW remarked that HB 98 is a very good tool to use.

CHAIR CLAMAN opined that it would be "extremely unlikely" that a person would be charged with possession of auto theft/burglary tools without evidence that he/she is actively engaged in committing a crime. He acknowledged that the legislature could make possession of motor vehicle theft tools an aggravating factor but remarked that it would be difficult because "when the conduct that is being charged in the felony is also part of the conduct that relates to the aggravator, you can't find the aggravator because it's already subsumed in the particular conduct." He said the resulting aggravator would be seldomly used. He noted that a person who is driving a stolen car could be charged with both auto theft and possession of auto theft tools.

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REPRESENTATIVE LEDOUX asked about the real-life application of section 3. She said she understands the parking lot scenario. She established a different scenario in which a person is suspected of auto theft, the police obtain a search warrant to search the person's residence, and the police find motor vehicle theft tools. She asked whether finding the tools in conjunction with the suspicion would be enough to charge the person under the proposed statute.

CHAIR CLAMAN acknowledged that Michele Logan from the Anchorage Police Department (APD) had called in. He deferred to her.

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MICHELE LOGAN, Deputy Detective, Anchorage Police Department, said she has worked with APD for 24 years, 17 of those spent working on financial and property crimes. After having Representative LeDoux repeat the question, Detective Logan answered that she believed finding the tools would be enough to charge the person because sufficient probable cause would have already been established when the search warrant was acquired. She said finding the tools would strengthen the case for vehicle theft. She explained that motor vehicle theft tools include shaved keys, also known as bump keys, which allow thieves to access locked vehicles. She described arrests in which the person arrested was in possession of "a plethora" of keys. She clarified that these are the kinds of tools targeted by HB 98. She also mentioned how a screwdriver can be used to access a car's ignition, but implied that the main focus is shaved keys. "If you arrest a person with 20 bump keys in their pocket," she said, "they're probably stealing vehicles, but maybe you don't have them on [a vehicle theft charge]." She spoke about rampant auto theft in Anchorage and said these types of tools lend themselves to that problem. She listed additional vehicle theft tools: jigglers keys, bump keys, and old or worn keys. She said it would be useful if people knew that possession of those items was a misdemeanor crime.

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REPRESENTATIVE LEDOUX asked if Detective Logan is saying that a charge can be brought against a person without proving intent to steal a car, and that just the possession of the tools would be a crime. She said it concerns her that Detective Logan appears to be saying there is no legitimate reason why someone might have those tools.

DETECTIVE LOGAN noted that it is already a crime to possess burglary tools or tools for counterfeiting credit cards. She said HB 98 would simply add a new crime for possessing tools to commit auto theft. She said she does not think it is a huge leap.

CHAIR CLAMAN noted that, in Detective Logan's description of a person in possession of 20 shaved keys, the police would not see those keys unless they have already contacted the person based

on suspicion. He clarified that this does not remove the need to find intent. He said he thinks Detective Logan's argument is that possession of 20 shaved keys may be enough in and of itself to convince a jury that there is intent, but that does not remove the need to prove it.

DETECTIVE LOGAN described it as "prima facie evidence."

REPRESENTATIVE LEDOUX asked for confirmation that Detective Logan is saying that the possession of the tools itself is an indication of intent.

DETECTIVE LOGAN said "Legislatively, you would make it a misdemeanor to possess those types of tools because that is what those particular types of tools are for." She added that people who possess those types of tools are probably involved in some type of vehicle theft.

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CHAIR CLAMAN asked how police would distinguish auto thieves from locksmiths or any other person who legitimately possesses tools to open locks.

DETECTIVE LOGAN answered that a locksmith would have a license.

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REPRESENTATIVE WOOL said he initially felt that the language about intent in section 3 was clear. He expressed concern with Detective Logan's statements regarding the tools being incriminating in and of themselves. He established a scenario in which a person is pulled over for speeding and the officer spots a shaved key on his/her keyring. He asked if that could qualify as intent to steal a car even if the person is driving his/her own legally owned car. He noted that he has had cars that he could only start with a screwdriver. He said he does not want a situation where someone is presumed guilty because he/she has a weird key.

DETECTIVE LOGAN said she does not think a person would be charged with having a key unless there are other circumstances. She gave an example of a hypothetical person booked at the police station after having been found sleeping in a stolen car, and that person is found to have a shaved key. She said possession of the key would be an additional crime that can be charged. She gave another hypothetical example of a person who

matches the description of a suspected prowler who could be charged should a shaved key be found on his/her person. She expressed the importance of establishing probable cause and described that process. She said police would not arrest someone for possessing motor vehicle theft tools without first establishing probable cause.

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REPRESENTATIVE EASTMAN noted that Chair Claman had previously mentioned that the crime of possession of motor vehicle theft tools would not come into play unless an individual has already been contacted by law enforcement. He opined that this is a slippery slope. He relayed how easy it is for a trained traffic officer to find some reason to pull over a vehicle. He asked whether Detective Logan believes a long-handled screwdriver is a motor vehicle theft tool.

DETECTIVE LOGAN said, "It is, especially when it is lying on the floorboard of a vehicle that has the steering column punched." She added that sometimes she sees screwdrivers in the ignition of a car. She said that, at that point, they do become motor vehicle theft tools.

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REPRESENTATIVE KOPP highlighted the words "with intent to use or permit use of the tool in commission of a burglary" in the language of the current statute relating to the crime of possession of burglary tools. He said the proposed statute for possession of motor vehicle theft tools is written identically to the burglary tools statute. He asked her to explain for the committee the differences between acting with reckless disregard, acting knowingly, and acting intentionally.

DETECTIVE LOGAN said if the police catch someone in the commission of a burglary or stop a person while investigating a burglary, and that person has the tools on his/her person, then that qualifies as probable cause. She described other kinds of burglary tools, including dynamite, nitroglycerin, torches, and electric arcs. She expressed the importance of the activity surrounding how a person is contacted by law enforcement. She offered a scenario in which a person is brought in for questioning as an auto theft suspect and the police find a mini prybar up his/her sleeve. She said possession of burglary tools is an additional charge that can be used if "you can't necessarily pin them on the burglary" because the individual did

not get into the targeted house and thus did not go through with the burglary. She noted that police would not be able to charge someone for simply carrying a prybar on the street. She said police would not arrest an individual for simply having a key in his/her pocket.

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REPRESENTATIVE KOPP asked, "If you encounter someone who possesses [motor vehicle theft or burglary tools], the possession alone is not a criminal offense unless you can show intent to use [them] to commit the crime. Is that correct?"

DETECTIVE LOGAN said that is correct.

REPRESENTATIVE SHAW reminded everyone that probable cause and intent attached to these tools - not just having the tools - is what makes the difference. He noted that without probable cause and without intent, it is a nonissue.

REPRESENTATIVE WOOL stated that he understands probable cause and understands the intent of the legislation. However, he said, the testimony he has heard gives him pause. He noted that screwdrivers are not listed in section 3 and restated that he has owned cars that he started with screwdrivers. He offered a couple hypotheticals in which a person is stopped for an unrelated crime and is found to have a motor vehicle theft tool on his/her person or in his/her vehicle. He said Ms. Logan's testimony implies that the presence of tools could be used to charge an additional crime.

DETECTIVE LOGAN said that is not what she meant. She clarified that the police will not arrest someone just because that person has an item in his/her pocket or in his/her car. She said there has to be a scenario in which the person is a suspect or "suspicious for some reason."

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REPRESENTATIVE WOOL noted that he is not asking about police pulling someone over just because that person has a tool. He clarified that, in his scenarios, the police stop the person for another crime, and in the course of that action find a motor vehicle theft tool, which results in a charge for that crime.

DETECTIVE LOGAN established a scenario in which the police find a bump key in the pocket of a driver pulled over for driving

under the influence (DUI) in a vehicle he/she owns or is permitted to drive. She said she does not think any officer would add the charge of possession of motor vehicle theft tools to the DUI charge. She said if the police interview the driver about the key and the driver confesses to having used it to steal a car, then the police "have a case." She said police allow people to go free with those kinds of tool every day. She compared it to when marijuana was categorically illegal and police officers let people go free when paraphernalia was found on their person. She opined that the proposed statute is not "muddied" and that law enforcement officers would understand it.

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REPRESENTATIVE LEDOUX said she thinks the proposed statute is fairly muddied. She expressed concern with the statute relating to possession of burglary tools, which includes items such as dynamite. She stated that people can possess dynamite "because they want to blow up something which is perfectly okay to blow up." She said Detective Logan's testimony implies that the decision whether or not to arrest a person for possessing these tools is at the discretion of law enforcement and based on an officer's assessment of the person. She said she finds that concerning. She established a scenario in which police officers are investigating a potential car thief prowling around a property and spot a man who is a block from that property.

CHAIR CLAMAN fleshed out Representative LeDoux's scenario and finished asking her question. He said the man in the scenario is in possession of 20 keys that look like car theft keys. He asked if the police could charge that person with possession of motor vehicle theft tools.

DETECTIVE LOGAN answered that the officer could charge that person if the officer can establish probable cause. She said probable cause can be established through an interview with the person and/or a survey of that person's criminal history. She repeated that the officer needs probable cause and stated that probable cause is "the protection for the citizen."

CHAIR CLAMAN noted that probable cause is enshrined in both the state and federal constitutions.

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REPRESENTATIVE LEDOUX asked whether the person who is a block away from the suspicious activity is obligated to consent to an interview and/or search by police.

CHAIR CLAMAN commented that there is a well-established difference between a police officer's ability to question a person and an officer's ability to frisk or take a person into custody.

DETECTIVE LOGAN said there is bountiful precedent for officers stopping someone for questioning. She noted that if the person does not want to answer an officer's question, that person is welcome to refuse and keep on walking. She said if officers are investigating a call and/or see a person who matches a description of a suspect, they can stop the person to ask him/her questions. At that point, she added, the officers have the right to protect themselves by patting down the person to ensure he/she is not carrying a weapon. She said police are required to go through an investigative process. She described the process of interviewing a person. She said police do not abuse the process to establish probable cause.

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REPRESENTATIVE EASTMAN asked how broadly the phrase "commission of a crime" is interpreted. He asked, "Does that start when I leave my house to go steal a car or does that start when I break the window?"

DETECTIVE LOGAN said she does not want to claim to know the caselaw for every situation. She said some overt act is required for "intent to steal a vehicle" to be established. She noted that most of the people APD arrests for vehicle theft are caught in the car. She said that a person who is thinking about or talking about stealing a car - or who has departed his/her residence planning to steal a car - has not done enough to merit intervention. She said police cannot intervene until an overt act has been committed. She defined "probable cause" as a situation in which "a reasonable person" would determine that [a crime is probably being committed].

REPRESENTATIVE EASTMAN said that raises the question of why a new crime is necessary if police are already dealing with and catching people in the commission of vehicle theft. He noted that several of the questions asked involve people who are not caught in the car but are caught in some stage of committing the crime. He established a scenario in which a motor vehicle theft

tool is brought into a parent's house by a child, and the parent knows that the child is doing illegal things. He asked at what point could the parent be charged with permitting the use of the tool for motor vehicle theft.

DETECTIVE LOGAN stated that simple possession without intent would not be charged. She added that police officers often find people with illegal items and do not charge those people. She said section 3 would be a deterrent against the "epidemic of vehicle theft." She gave an example of a situation in which there are multiple people in a stolen car but the only person who the police can charge with stealing the vehicle is the driver. But, she said, if the person in the passenger seat has a pocket full of shaved keys, police could then charge that person with possession of motor vehicle theft tools. She offered other examples and provided further details about the investigatory process. She compared the process of charging class A misdemeanor possession of motor vehicle theft tools and charging felony motor vehicle theft.

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REPRESENTATIVE SHAW asked whether a person can be stopped if there is reasonable cause, if constitutional provisions are followed, and if the police officer acts with common sense.

DETECTIVE LOGAN answered yes.

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CHAIR CLAMAN drew attention to lines 16 through 18 on page 3. He noted that the Version U of the bill does not include language about electronic keys or electronic boxes that emulate the signals from key fobs. He asked whether Detective Logan feels it would be beneficial to add language that would include electronic unlock devices under the definition of "motor vehicle theft tool."

DETECTIVE LOGAN answered yes. She described examples of those devices being used to steal vehicles in Anchorage.

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REPRESENTATIVE EASTMAN drew attention to line 17 on page 3. He asked whether an amendment would be necessary to include electronic devices, as the current language covers any "similar device adapted or designed for use in committing vehicle theft."

CHAIR CLAMAN said that is the question to be evaluated. He noted that the key phrase in the current language is "similar device," and the question is whether the word "similar" narrows what that device can be.

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REPRESENTATIVE WOOL mused that anyone who steals a car probably has a tool to do so. He asked if that means the misdemeanor charge for possession of motor vehicle tools would just be an additional charge on top of felony motor vehicle theft.

CHAIR CLAMAN said that is an interesting question. He asked Detective Logan if it is common for the prosecution to levy the additional charge of possession of burglary tools on top of a charge for burglary.

DETECTIVE LOGAN said that the charge is often just for burglary, but the prosecution would probably add the additional charge if the individual is apprehended with a bag full of what are defined as burglary tools. She said the same thing would apply to motor vehicle theft. She discussed the way a screwdriver can be modified to be a motor vehicle theft tool, but the totality of circumstances would be the determining factor for charging the crime. She described the process of charging misdemeanors versus felonies and explained that charging a misdemeanor along with a felony can be beneficial.

CHAIR CLAMAN noted that screwdrivers are not in the current proposed statute. He said there would be opportunities to further discuss the topic of screwdrivers.

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CHAIR CLAMAN referenced section 2, which relates to fraudulent use of an access device or identification document. He said it is his understanding that Detective Logan recommends lowering the property value to qualify as a felony from "\$750 or more but less than \$25,000." He asked her to explain the analysis behind that suggestion and what lower amount she feels would be appropriate.

DETECTIVE LOGAN said she testified in 2005 on House Bill 131 [Passed in the Twenty-Fourth Alaska State Legislature], which related to the fraudulent use of an access device. She said that before 2005, the felony threshold followed the theft

statutes, so "a felony was \$500." She said identity theft became a prolific problem around 2005, so House Bill 131 lowered the felony threshold for fraudulent use of an access device to \$50. She said Senate Bill 91 [passed in the Twenty-Ninth Alaska State Legislature] made the felony threshold equivalent to theft statutes, which means felony use of an access device currently requires a value of \$750. She noted that credit card thieves do not often spend upwards to \$750 in a single purchase or over multiple purchases on a stolen card. She said a credit card theft victim would think the person who stole his/her card should be guilty of a felony offense, as a stolen credit card opens up the possibility of identity theft in addition to monetary theft. She said House Bill 131 made it so if a credit card thief completed a transaction for \$50, he/she would be guilty of a class C felony. She described what typically happens when a person steals a credit card and relayed the kinds of transactions thieves commonly make to test a stolen card, such as a fuel purchase at a gas station. She said that, at some point, the victim will turn off the credit card, likely before the thief crosses the felony threshold by amassing \$750 in charges. She opined that stealing a credit card and using it for an amount over \$50 should be a felony. She noted that stealing and forging a check has always been a class C felony, even when it is only for \$10. But, she said, if a person steals a credit card and uses it, that person is not guilty of a felony until \$750 has been spent. She added that stealing a credit card has additional consequences such as affecting the victim's credit score. She opined that it should be a felony offense.

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REPRESENTATIVE WOOL questioned whether "a \$10 check" should be a felony. He observed that a credit card thief who uses a stolen card at a gas station would not do much harm to the victim's credit score. He noted that the implications of having a felony on one's record can be significant.

DETECTIVE LOGAN remarked that the theft of a credit card often results in considerable inconvenience and frustration for the victim. She opined that punishing the crime with a misdemeanor charge would be like "a slap on the wrist."

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REPRESENTATIVE EASTMAN said he would like to hear from and ask questions to a representative from the Department of Law (DOL).

CHAIR CLAMAN said there is no one available from DOL today. He said a DOL representative would be available at the next bill hearing.

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REPRESENTATIVE LEDOUX said it does not appear that HB 98 would change the \$750 threshold.

CHAIR CLAMAN said the only change in section 2 would be the addition of "identification document" to AS 11.46.285. He said this change is in response to the Alaska Court of Appeals decision in Kankanton v. State.

REPRESENTATIVE LEDOUX said, "So all of this discussion as to whether or not you should be charged with a crime..."

CHAIR CLAMAN said that, because AS 11.46.285 would be amended by HB 89, the detectives suggested the committee consider lowering the threshold for a felony to a lower amount. He noted that the detectives' recommendation is \$50.

REPRESENTATIVE LEDOUX asked for confirmation that such a change is not currently reflected in the bill before the committee.

CHAIR CLAMAN confirmed it.

[2:49:24 PM](#)

REPRESENTATIVE EASTMAN asked what items are captured under the term "identification document."

CHAIR CLAMAN recommended that Representative Eastman read Kankanton v. State, which discussed the distinction between access devices and identification documents.

[2:50:25 PM](#)

REPRESENTATIVE EASTMAN opined that the legislature "could solve a lot of these issues by simply increasing the penalties for things like vehicle theft rather than coming up with a new crime to try and catch people who have or haven't committed the crime of vehicle theft." He expressed concern that someone like Representative Wool who drives a car with a screwdriver could be misidentified as a potential vehicle thief.

[HB 98 was held for further review.]

2:51:24 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:51 p.m.