

**ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE**

April 2, 2019

5:46 p.m.

MEMBERS PRESENT

Representative Zack Fields, Co-Chair
Representative Jonathan Kreiss-Tomkins, Co-Chair
Representative Gabrielle LeDoux
Representative Andi Story
Representative Adam Wool
Representative Laddie Shaw

MEMBERS ABSENT

Representative Sarah Vance

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

HOUSE BILL NO. 96

"An Act relating to Alaska Pioneers' Home and Alaska Veterans' Home rates and services."

- MOVED CSHB 96(STA) OUT OF COMMITTEE

HOUSE BILL NO. 10

"An Act relating to misconduct involving a controlled substance; providing for substitution of judgment; and relating to sentencing."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 115

"An Act relating to absentee voting; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

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

BILL: HB 96

SHORT TITLE: PIONEERS' HOME AND VETERANS' HOME RATES

SPONSOR(S): REPRESENTATIVE(S) FIELDS

03/15/19 (H) READ THE FIRST TIME - REFERRALS
03/15/19 (H) STA, HSS
03/26/19 (H) STA AT 3:00 PM GRUENBERG 120
03/26/19 (H) Heard & Held
03/26/19 (H) MINUTE(STA)
03/28/19 (H) STA AT 3:00 PM GRUENBERG 120
03/28/19 (H) Heard & Held
03/28/19 (H) MINUTE(STA)
04/02/19 (H) STA AT 4:00 PM GRUENBERG 120

WITNESS REGISTER

REPRESENTATIVE MATT CLAMAN

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented HB 98, as prime sponsor.

LIZZIE KUBITZ, Staff

Representative Matt Claman

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Provided a sectional analysis on behalf of Representative Claman, prime sponsor of HB 98.

MARGARET BERGMAN

Anchorage Police Department (APD)

Anchorage, Alaska

POSITION STATEMENT: Provided information during the hearing on HB 98.

CLINTON LASLEY, Director

Division of Alaska Pioneer Homes (DAPH)

Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 96, Version U.

ACTION NARRATIVE

[5:46:28 PM](#)

CO-CHAIR JONATHAN KREISS-TOMKINS called the House State Affairs Standing Committee meeting to order at 5:46 p.m. Representatives LeDoux, Story, Wool, Fields, and Kreiss-Tomkins were present at the call to order. Representative Shaw arrived as the meeting was in progress.

HB 98-PROPERTY CRIME; MOTOR VEHICLE THEFT TOOLS

[5:47:05 PM](#)

CO-CHAIR KREISS-TOMKINS announced that the first 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."

[5:47:36 PM](#)

REPRESENTATIVE MATT CLAMAN, Alaska State Legislature, as prime sponsor of HB 98, relayed that Alaska is currently facing many public safety challenges - a devastating opioid epidemic, cuts to public safety resources, and a down economy with a rising unemployment rate. The state works every day to use its public safety resources wisely to improve public safety despite financial challenges. He said that law enforcement officials in Alaska have reported increased difficulty when arresting and prosecuting serial theft offenders. After discussions with law enforcement officials, he introduced HB 98 to strengthen Alaska's laws relating to theft and other offences against property and to improve public safety by giving police officers and prosecutors additional tools for arresting and prosecuting criminals.

REPRESENTATIVE CLAMAN continued by saying that HB 98 effectively targets serial offenders and is supported by the National Insurance Crime Bureau (NICB) and the Alaska Peace Officers Association (APOA).

[5:49:19 PM](#)

CO-CHAIR FIELDS moved to adopt the sponsor substitute (SS) for HB 98, [Version 31-LS0626\M, Radford, 3/19/19] as the working document. There being no objection, Version M was before the committee. [It was ascertained during the hearing on HB 98 that since SSHB had not been introduced on the House floor, HB 98, Version A, was before the committee.]

[5:49:29 PM](#)

LIZZIE KUBITZ, Staff, Representative Matt Claman, Alaska State Legislature, provided a sectional analysis for HB 98, Version M, on behalf of Representative Claman, prime sponsor, which read as follows:

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.

MS. KUBITZ mentioned that a copy of the Kankanton v. State court case was provided in the committee packet.

[5:51:41 PM](#)

REPRESENTATIVE WOOL asked for the definition of "aggregate" in the legal context in Section 1.

MS. KUBITZ answered that Section 1 addresses repeat offenders within the 180-day period. For people who rob from a commercial establishment, but the robbery does not meet the \$750 threshold, their crimes may be aggregated for prosecution.

REPRESENTATIVE WOOL asked whether the value of the items stolen would be aggregated in order to meet the \$750 threshold.

MS. KUBITZ responded that the amount would be the combined value of those items. She cited page 2, lines 15-18, of Version M, which read:

(8) the combined value of the property or services taken from one or more persons or commercial establishments within a period of 180 days, adjusted for inflation as provided in AS 11.46.982, is \$750 or more but less than \$25,000.

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REPRESENTATIVE STORY noted that the fiscal note (FN) from the Department of Administration (DOA) is indeterminant and offered that with the high volume of theft, she would expect a FN greater than zero.

REPRESENTATIVE CLAMAN answered that departments frequently take the position that they can't determine the cost. He posed the question, Do three theft offenses require more work or less work than three offenses consolidated into a single offense? He maintained that the department cannot say.

REPRESENTATIVE STORY expressed her concern that the Public Defender Agency (PDA) is short-staffed; therefore, issues may not be addressed timely.

REPRESENTATIVE WOOL asked whether the implication of the proposed legislation is that aggregating the total amount of theft over time, increases the severity of the crime, makes the offense "jailable," and serves as a deterrent.

REPRESENTATIVE CLAMAN replied that it serves as a tool for prosecutors and law enforcement to aggregate crimes if they choose to do so.

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The committee took an at-ease from 5:56 p.m. to 5:57 p.m.

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CO-CHAIR KREISS-TOMKINS stated that the motion to adopt the SS for HB 98 is moot because SSHB 98 has not been introduced on the House floor; therefore, the working document before the committee is the original version of HB 98. A committee substitute (CS) for HB 98 is forthcoming.

[5:58:21 PM](#)

The committee took an at-ease from 5:58 p.m. to 5:59 p.m.

REPRESENTATIVE CLAMAN clarified for the committee that the only difference between the two versions is Section 4 - the applicability provisions; the substance of the proposed legislation will remain the same [in the forthcoming CS].

[6:00:43 PM](#)

MARGARET BERGMAN, Anchorage Police Department (APD), paraphrased from a prepared statement as follows [original punctuation provided]:

Good Afternoon, I am Margaret Bergman, a detective with the Anchorage Police Department. Thank you for the invitation to speak on behalf of House Bill 98. I have worked with the Anchorage Police Department since 2000. I would like to address the three proposed changes.

First, regarding the addition to the Theft in the Second Degree statute AS11.46.130(a)(8), regarding combining the value of property or services taken from one or more person or commercial establishments within a period of 180 days. I have been involved in the Alaska Organized Retail Crime Alliance and work with Loss Prevention. Alaska does not have Organized Retail Crime statutes. I have worked with a

Washington police agency regarding their ORC laws and Alliance with loss prevention. Organized Retail theft is considered a gateway crime that often leads to major crime rings that use the illicit proceeds to fund other crimes. Addicts are given shopping lists (which we often find), in exchange for drugs. The thefts occur at large box stores, residences, and include stolen vehicles. The shoplifting thefts are misdemeanor level crimes and with identification of the suspects, are charged as such to the Municipality. The repeat suspects appear to be undeterred with the misdemeanor charges. With the change to allow for combining the values of property or services in the last 180 days, this will allow the police to charge a felony. The goal is to deter future crimes by the suspect and reducing their criminal enterprise and thus increasing the safety of Alaskan communities.

Second, regarding the addition to the Fraudulent Use of an Access Device "Or identification document" AS 11.46.285 and Theft in the Second Degree AS 11.46.130(a)(7) property is an access device "or identification document".

In 2015, *Kankanton v State of Alaska*, the Court of Appeals held that a driver's license was not an access device within meaning of theft statute under rule of lenity. According to the Court's opinion, the statutes defining "access device" and "identification document" were enacted as a part of a larger bill addressing the problem of identity theft. As part of the same crime bill, the legislature amended other sections of the criminal code to bring it up-to-date with the more technologically sophisticated means through which people improperly access the finances and financial credit of others. The Court noted a driver's license is specifically included in the definition of "identification document" but is not specifically listed as an "access device".

In 2005, House Bill 131 recognized identity theft is on the increase in Alaska and the country. The changes would bring penalties for such crimes closer in line with federal criminal laws. HB 131 increased the penalty from a Class A Misdemeanor to a class C Felony for: 1) Theft of an access device, such as a credit card or bank account number, 2) the crime of

fraudulent means of an access device if the value of the property or services obtained is \$50 or more, and 3) the crime of obtaining an access device or identification document by fraudulent means.

Senate Bill 91 in essence decriminalized the felony for Fraudulent Use of and Access Device which was made to curb identity theft through means of an access device or identification document. The Access Devices or identification documents stolen during a burglary, vehicle theft, theft or vehicle tampering and the furtherance of those crimes by using the access device or the information from the access device or identification document to commit fraud and theft crimes is a misdemeanor. A stolen credit card or a check is rarely, if at all, used to purchase large items (felony level). In my experience, they are used to purchase groceries, gas, and other items from stores. Often times, the stolen information from identification documents is entered on a stolen check and then used to commit fraud. This crime now has two victims of identity theft. Returning to HB131 limits of \$50 or more will provide the police with the ability to charge and deter the continuation of this crime and re-victimization.

I have worked numerous financial crimes in the past few years that I requested assistance for prosecution from the federal government. Theft of mail, burglaries, vehicle tamperings, and thefts (of purses and such) have the suspects attempting to collect Personal Identifiable Information (PII) and account information in order to conduct fraud and identity theft. Through my investigations, I have discovered the suspects save the victims' PII and will use it later (often times when the victim are [sic] unaware). The suspects gain access to financial information of the victims' with the use of their PII which they obtained with identification documents, not just access devices.

Just for reference, the Federal definition of "access device" means "any card, plate, code, account number, serial number, mobile identification number, personal identification number, or other telecommunications service, equipment, or instrument identifier, or other means of account access that can be used, alone or in

conjunction with another access device, to obtain money, goods, services, or any other thing of value, or that can be used to initiate a transfer of funds (other than a transfer originated solely [sic] by paper instrument)."

I would like to mention that individuals now store bank information and other PII on their cell phones as well, and a discussion regarding how this fits into the access device definition is worthwhile.

Regarding the addition of Possession of motor vehicle theft tools, AS 11.46.370 to law. Stolen vehicles are a constant reality and problem to the community. Alaska has laws regarding possessing burglary tools, but nothing regarding possessing motor vehicle theft tools. I have seen shaved keys, "bump keys", old or worn keys that are not shaved or altered but will start a vehicle, and jigglers on suspects. Often times, we will see these on individuals reported to the police by community members as being suspicious in a parking lot or neighborhood walking around cars. These more than likely lead to vehicle tampering. We also recover them on the suspects in possession of a stolen vehicle. I would like to note that law enforcement has received information from other states and insurance groups regarding suspects using electronic technology to access newer vehicles that have key fobs. Limiting the definition to only physical keys and not providing for these electronic devices used may pose a problem since vehicles are increasingly keyless.

Lastly, I would also like to mention that the State of Alaska does not have a Conspiracy Statute that covers property crimes. This is a problem when we are investigating "crews" that are stealing mail, ATMs, etc, burglarizing businesses and residences, and as a whole working together to commit property crimes as a group, we do not have a crime to cover everyone in the "crew".

We need the statutes and definitions to not be ambiguous. I have found the suspects have no concern over the impact to the victims or the community as a whole. I support the changes in this and it will assist the Anchorage Police Department and I believe

other Municipalities and the State of Alaska in the continued effort to keep their communities safe.

Thank you for your time.

[6:08:22 PM](#)

REPRESENTATIVE WOOL asked whether the access device or identification document must be used in a certain kind of crime. He asked about someone using another's driver's license to get into a bar.

MS. BERGMAN answered that if the access device or identification document is stolen, it is a crime to possess it.

REPRESENTATIVE WOOL asked whether it is currently a crime.

MS. BERGMAN replied, "No." She said that currently it is just an access device. Kankanton v. State revealed that when the statutes were enacted in 2000, the intent was ambiguous regarding an identification document being considered an "access device." She related from personal experience that bank statements with account numbers have been used to create checks used for forgery and fraud. A person who possesses the stolen property, typically from someone's mail, can obtain the PII number, create his/her own checks and identification (ID), and commit additional crimes.

REPRESENTATIVE WOOL referred to the addicts with shopping lists stealing from stores so they can obtain drugs. The misdemeanor has not been a deterrent; however, aggregating the charges would make it a felony. He asked whether, in her opinion, addicts would be deterred by the felony charge or, as addicts, they only respond to drugs.

MS. BERGMAN answered that it is a tough question, and the behavior of the addicts depends on how far into addiction they are. She stated that detectives find criminals with shopping lists; when interviewed, the criminals describe the enterprise of obtaining drugs; they earn 50 cents on the dollar for brand new, in-the-box items, and they receive the earnings as a credit towards drugs. She said that her goal is to 1) stop the crime, and the criminal justice system provides consequences for that purpose, and 2) stop addicts from using drugs. She expressed her belief that the only way to stop addicts from using drugs is through assistance; and that involves putting them in a jail.

She said that stopping the victimization of the commercial business and the burglaries is the most important mission. She offered that the effect that being charged with a felony would have depends on the person. She has seen both results - someone becoming drug free and someone who continues to use. She stated that Alaska does not have a conspiracy law for property crimes. Her goal is to identify the leaders of the drug enterprise; however, sometimes it is not possible without the assistance of the people being arrested.

[6:12:41 PM](#)

CO-CHAIR KREISS-TOMKINS asked whether there are other items in criminal law in which having certain items on one's person is a crime.

MS. BERGMAN answered that she is most familiar with the area of burglary tools. She mentioned that possessing drug paraphernalia used to be a crime but is no longer. She is unaware of other items that are comparable in criminal law.

CO-CHAIR KREISS-TOMKINS announced that HB 98 would be held over.

HB 96-PIONEERS' HOME AND VETERANS' HOME RATES

[6:15:05 PM](#)

CO-CHAIR KREISS-TOMKINS announced that the final order of business would be HOUSE BILL NO. 96, "An Act relating to Alaska Pioneers' Home and Alaska Veterans' Home rates and services."

[Before the committee, adopted as a work draft on 3/28/19, was the committee substitute (CS) for HB 96, Version 31-LS0646\U, Marx, 3/27/19, referred to as "Version U."]

[6:15:35 PM](#)

CO-CHAIR FIELDS thanked the various contributors to the proposed legislation and noted the updated zero fiscal note (FN).

REPRESENTATIVE WOOL expressed his understanding that the rate increase proposed under Version U would bring the rates in line with inflation and counteract the higher rate increase proposed by the [Governor Michael J. Dunleavy] administration. He asked whether the rates would revert to what they were prior to the proposed rate increase, if HB 96 did not pass.

[6:18:18 PM](#)

CLINTON LASLEY, Director, Division of Alaska Pioneer Homes (DAPH), answered that the rates currently proposed by the administration are in the regulatory process; therefore, they will be posted for 60 days for public testimony, and the commissioner of the Department of Health and Social Services (DHSS) will make a final decision on the rates based on the information gathered. He stated that if Version U does not pass, that regulatory process would proceed, and a determination made.

REPRESENTATIVE WOOL asked if the rates under Version U are lower or higher than the proposed rates currently in the regulatory process.

MR. LASLEY responded that the rates under Version U are lower; the administration's proposed rates are reflective of the true cost of providing services. He maintained that the rates proposed under Version U are less than what it costs to provide services.

REPRESENTATIVE WOOL asked for confirmation that the rates proposed under Version U are between the current rates and those proposed by the administration.

MR. LASLEY responded, "That's correct."

[6:20:29 PM](#)

REPRESENTATIVE STORY relayed that she has conflicting thoughts about Version U; she hesitates to put rates into policy as it is not something legislators do and impedes flexibility. She expressed her concern with the huge jump in rates for Alaska Pioneer Homes (APH) and the impact to seniors and families. She offered that incremental rate increases are better for planning.

REPRESENTATIVE WOOL expressed that he also has difficulties with Version U and agrees that legislators setting rates is micromanagement. He made an analogy with the Alaska Marine Highway System (AMHS): it is a heavily subsidized service that many Alaskans use; there are probably people who could afford to pay the true cost of riding the ferry; it costs \$10,000 to travel by ferry from Bellingham to Kodiak with a car; it is a question of the level of subsidy. He suggested that Version U "strikes a middle ground." He mentioned that the issue involves

many factors - the appropriate level of rates and subsidy, depletion of one's resources, and medical billing.

[6:25:04 PM](#)

REPRESENTATIVE LEDOUX expressed her concerns with Version U: some people can pay; some can pay what they are able; and no one will be evicted. She asked, "At the end of one's life, should the inheritance go to the family members ... or should people pay what they can?"

CO-CHAIR KREISS-TOMKINS stated that the effect of what the administration is proposing is what many conservatives like to call a "death tax"; the assets of anyone in APH would be liquidated much quicker and would go to the state.

[6:27:10 PM](#)

REPRESENTATIVE SHAW moved to report the CS for HB 96, Version 31-LS0646\U, Marx, 3/27/19, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 96(STA) was reported from the House State Affairs Standing Committee.

[6:28:12 PM](#)

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 6:28 p.m.