ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE
February 28, 2025
1:31 p.m.

MEMBERS PRESENT

Senator Matt Claman, Chair
Senator Jesse Kiehl, Vice Chair
Senator Gary Stevens
Senator Robert Myers

MEMBERS ABSENT

Senator Löki Tobin

COMMITTEE CALENDAR

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 100
SHORT TITLE: THEFT: ORGANIZED; MED. RECORDS; MAIL
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/14/25	(S)	READ THE FIRST TIME - REFERRALS
02/14/25	(S)	JUD, FIN
02/28/25	(S)	JUD AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

JOHN SKIDMORE, Deputy Attorney General
Criminal Division
Department of Law
POSITION STATEMENT: Introduced SB 100 on behalf of the administration.

ACTION NARRATIVE

1:31:02 PM
CHAIR CLAMAN called the Senate Judiciary Standing Committee meeting to order at 1:31 p.m. Present at the call to order were Senators Myers, Kiehl, Stevens, and Chair Claman.

SB 100-THEFT: ORGANIZED; MED. RECORDS; MAIL

1:31:34 PM
CHAIR CLAMAN announced the consideration of SENATE BILL NO. 100 "An Act relating to organized theft; relating to theft of medical records and medical information; relating to mail theft; and providing for an effective date."

CHAIR CLAMAN said this is the first hearing of SB 100 in the Senate Judiciary Committee. He invited Mr. Skidmore to put himself on record and begin his presentation.

1:32:21 PM
JOHN SKIDMORE, Deputy Attorney General, Criminal Division, Department of Law, said he supervises state prosecutors statewide. He explained that he advises both the administration and the legislature on criminal justice legislation and is introducing SB 100 in that capacity, on behalf of the administration. The introduction of the bill is paraphrased below:

> SB 100 is about organized retail theft. This is the type of theft in which there is a coordinated effort that occurs amongst multiple people to steal merchandise. It is subsequently fenced or sold in some capacity for dollars for the organization or the group engaged in the theft itself. They typically sell those items in online auction locations, flea markets, other retailers, and fraudulent returns back to the stores from which they stole them. They change barcodes in the store itself or "smash and grab," which is sometimes sensationalized in news media coverage. They also conceal the merchandise and just walk out, or simply walk in, grab the item, and walk out without any attempts to conceal it. These are all ways in which they attempt to get money or attempt to make money from those thefts.
>
> I can tell you that, in 2023, the estimate is that this type of theft resulted in $121 billion in profits for those engaged in the theft. That's billion with a "B." That's the amount of theft that is occurring to retailers nationwide, both box stores and small businesses. In fact, when small businesses have been surveyed, the results indicate that 85 percent of small businesses are hit and impacted by organized retail theft. Sixty-five percent of those that are

impacted experience losses averaging $1,000 each and every month.

1:34:27 PM
MR. SKIDMORE continued the introduction of SB 100:

This partly explains the reason for small business closures. They simply cannot sustain those types of losses. Each and every day, there are over 500,000 incidents of theft in our country, resulting in approximately $45 million in losses each day. Unfortunately, the numbers associated with this are increasing. I know there are crime rates that indicate theft is going down, that property offenses are down; however, organized retail theft is increasing. It is estimated that in 2025, the current calendar year, instead of $121 billion, it will be at $145 billion. That is approximately a 10- to 20-percent increase that has occurred every year for the last five years for this type of crime.

1:35:28 PM
MR. SKIDMORE continued the introduction of SB 100:

While I've provided you with national statistics, I would be remiss if I didn't talk to you about the Alaskan statistics. Here in Alaska, we have approximately $202 million each and every year that is stolen and lost from stores, as well as fraudulent returns of approximately $220 million. Stores estimate that they lose approximately $422 million each and every year in Alaska. That's a significant dollar figure given the population size that we support here in the state. I've given you a lot of statistics that talk about property; however, organized theft is not simply a property crime.

If you talk to various box stores or businesses, and you ask about their loss prevention officers, you would hear that approximately 76 percent of loss prevention staff have been injured within the last year while attempting to stop someone engaging in this type of theft. That is a 35 percent increase in the violent or aggressive behavior exhibited by those who are taking the merchandise. This is not just about property. It is also about the stores and their

employees trying to stop people from taking all of that merchandise and getting injured in the process.

1:36:54 PM
MR. SKIDMORE continued the introduction of SB 100:

This next point is not one that I would suggest is a reason for the committee to take action necessarily. However, I would be remiss if I didn't comment on the fact that so many Alaskans seem frustrated about those glass doors behind which retailers have started to put a significant amount of merchandise to try to combat organized retail theft. That is a sign, a symptom of the problems that exist within the state when we see our stores having to engage in that conduct. It costs them money to put those security measures in place, but that's okay. The stores won't be out that money. They're just going to pass it on to each and every one of us as consumers. That's the reason you should care, not the inconvenience, but because of the higher prices that our citizens will have to pay as a result of this organized theft. I gave you some national statistics, and I gave you some Alaskan statistics.

1:37:55 PM
MR. SKIDMORE continued the introduction of SB 100:

I can tell you that states all across the country are looking at this issue and trying to take efforts to combat it. To date, we at the Department of Law have been able to identify 32 other states that have already implemented or passed laws trying to address organized theft. For the most part, these types of laws focus on the idea of aggregating the value of stolen property over a certain period of time. That's an effort that I'm proud to tell you: you all passed legislation back in 2019 to address aggregation. You have already taken that step. However, there are other steps that we can take as well. Aggregation is currently found in AS 11.46.980(e) and can occur between $750 and $25,000 within a six-month period. The significance of the $750 and the $25,000 is that they are the thresholds, the bottom and the upper threshold, for theft in the second degree, which is a Class C felony in our state. That aggregation has a time limit of within the last six months.

1:39:07 PM
MR. SKIDMORE continued the introduction of SB 100:

What SB 100 does is it creates a new category of crime called organized theft. In the state of Alaska, most of our theft statutes simply look at the value of the property or the type of property that was taken. For example, in a Theft II, the item would have to be valued above $750 or could involve the theft of a firearm or an access device. An access device is defined in statute and is like a credit card or other item that has a unique code, granting access to a particular account. Those types of theft are theft in the second degree.

The organized theft that this bill proposes isn't about a single instance of theft. Organized theft is a pattern of behavior. For that reason, the crime targets incidents that happen two or more times and must have been at a felony level offense. Organized theft is not about a single individual engaged in the activity. It must involve multiple individuals, which is why, in Section 1 of the bill, higher levels of organized theft require three or more people to have been involved. Does our state have something called principal and accomplice liability, i.e., multiple people working together? Yes, that is part of our statutes. However, what separates this is that in order to qualify for this particular offense, you are required to have three people. So, there isn't a principal and an accomplice per se, but rather, at least three people must have been involved for it to qualify at this level. Those additional requirements are significant because what the bill proposes is to take organized theft and classify it as a Class A felony. There are no property crimes or theft crimes at a Class A felony. The highest level of theft is theft in the first degree, which involves amounts exceeding $25,000, and that is a Class B felony. What this does is it elevates it above that. Why? Because, while we know crime rates have been falling, organized theft is on the rise. It is impacting businesses so severely that it is driving up costs for consumers, and there is a relationship between that type of theft and violent behavior where other people are harmed, i.e., those loss prevention officers. So, that is really what is focused on in the organized theft.

1:41:42 PM
MR. SKIDMORE continued the introduction of SB 100:

> The second section of the bill talks about the theft of medical records or information. This is not about organized theft, but it is about trying to protect citizens' privacy and prevent them from being targeted by things such as identity theft. If you look at theft in the second degree, currently, it is a Class C felony if someone steals an identification document or an access device. That's the type of information or the type of material that can allow someone to steal your identity. What is not included in it are your medical records. We all know, having been to the doctor and seen the records they generate about each and every one of us, those records contain personalized information, including your date of birth, sometimes your Social Security number, and other vital details that can be used to engage in identity theft. But above and beyond that, it contains your medical records. The type of information that federal law protects is our medical records. There's a law called HIPAA that states our medical providers aren't supposed to discuss our medical treatment with anyone else. Yet, our medical records themselves, within the state of Alaska, wouldn't be classified as having a particular dollar value, and so there really isn't an appropriate crime associated with them. However, the theft of medical records should be classified at a higher level due to the sensitive nature of the information within them.

1:43:09 PM
MR. SKIDMORE continued the introduction of SB 100:

> Last but not least is Section 3, which is mail theft. Mail theft is a concept that is brought to us by the Anchorage Police Department. They came and talked to us about the idea that a significant amount of mail theft is occurring in the Anchorage area. Do I think it is only in Anchorage? Absolutely not. This is probably an issue that's affecting the entire state. While theft of mail is a federal crime, I hate to burst anyone's bubble, but the U.S. Attorney's Office doesn't typically prosecute crimes unless they reach a certain level of seriousness or value. For the average

person, when something is stolen from your mailbox, I'm afraid the U.S. Attorney's Office doesn't have the time or resources to get involved in those things.

Do I think that every time someone steals a Cabela's catalog out of your mailbox, they should be charged with a Class A misdemeanor for mail theft? Probably not. However, mail does contain significant types of information and materials that are of value. If we find individuals engaged in a series of mail thefts, that is something we ought to take action against. Whether it is a campaign flyer, a Cabela's catalog, another type of material, such as a letter from your grandmother, a birthday card, a holiday greeting, whatever it might be, those are the types of things that we really shouldn't be saying there isn't any real recourse for the individuals who took those items from us. They remain important, and there ought to be something in law that allows us to do this. I can tell you that if the U.S. Attorney's Office decided that it wanted to get involved, the good news is that we would coordinate with that office. If the U.S. Attorney's Office truly thought the case warranted their attention, it's not something that we would be prosecuting. However, if it's not something they're interested in, while I can't guarantee that we will prosecute every instance of it, it makes sense to have something on the books that allows us to take action in the appropriate cases.

That, in substance, is what is within the bill in front of you. I'm happy to take any questions from members of the committee.

1:45:15 PM
SENATOR STEVENS shared a brief story. Last summer, while his wife went shopping at JCPenney in Anchorage, he waited outside in a nearby coffee shop from where he could see the store entrance. Suddenly, two young adults ran out carrying armfuls of merchandise. No one pursued them, and they disappeared with what he estimated to be hundreds of dollars' worth of coats and other items. He asked what SB 100 would do to address situations like that.

1:45:46 PM
MR. SKIDMORE replied that, in that instance, the question would be whether those individuals had engaged in more than one theft.

1:45:54 PM
SENATOR STEVENS remarked that he doubted it was their first time and believed they knew what they were doing.

MR. SKIDMORE said he shared that doubt too, but emphasized that, under the hypothetical, he could not assume or prove multiple incidents without further investigation. If the incident involved only that single occurrence, SB 100 would not apply. However, if the investigation revealed that the same individuals were involved in multiple thefts, the law could apply provided at least three people were involved. He explained that the bill requires a group of three or more participants, such as individuals engaged in fencing or other aspects of the operation. Two people running out of a store would not meet the threshold for organized retail theft, though their conduct would still qualify as theft under existing law. He said the intent of SB 100 is to target groups of three or more who engage in repeated thefts, so in answer to the question, it would depend on what else the investigation revealed.

1:46:54 PM
SENATOR STEVENS surmised that video proof might show multiple incidents and said the public bears the cost when such thefts occur.

1:47:12 PM
SENATOR MYERS asked about the mail section of SB 100, noting that mail theft is currently classified as theft in the third degree. He asked how the proposed changes, particularly the contents of the mail, its value, or whether it contains an access device, would affect that classification.

MR. SKIDMORE replied that if the item stolen were, for example, a check, the value would be based on the amount written on the check. If that amount exceeded $750, the offense would be prosecuted as a Class C felony. He clarified that it is not about the fact they stole mail, rather it is about the fact they stole an item of much more value.

MR. SKIDMORE explained that SB 100 categorizes mail theft as a Class A misdemeanor without regard to dollar value, because some mail may contain items that have significant personal value but no clear monetary value. However, if the mail contains items of identifiable value, that value would be used to determine whether more serious charges are appropriate.

MR. SKIDMORE reiterated that some items, such as identification documents or access devices, may not have a direct monetary value but still qualify for higher-level charges. He said, ultimately, it depends upon the contents to determine the charge.

1:48:34 PM
SENATOR KIEHL continued the discussion on mail theft, asking what the comparable federal threshold would be if the U.S. Attorney's Office were to take interest in such a case.

MR. SKIDMORE replied that he did not know the threshold the U.S. Attorney's Office uses. He stated that, based on prior discussions regarding other theft cases of significantly higher value, the federal office typically does not pursue $750 or even several thousand dollar cases. He said that he was unfamiliar with their statutes on those thresholds and did not know their policy.

1:49:11 PM
SENATOR KIEHL asked permission of the chair to request that the Department collect information on the comparable federal thresholds and penalties and submit that information to the committee.

MR. SKIDMORE replied that he would be happy to conduct that research and reach out to the U.S. Attorney's Office to determine what information, if any, they would be willing to share.

1:49:40 PM
SENATOR KIEHL asked about the definition of "medical information" and "medical records," noting that he did not see either term defined in Title 11. He asked how those terms are defined.

MR. SKIDMORE confirmed that neither term is defined in statute. He explained that the Department would rely on the common understanding of each term. "Medical records" refer to materials containing information about a person's medical condition or treatment received, as opposed to billing documents. "Medical information" encompasses those records and includes billing or other related materials; the intent is to capture both those documents and communications between medical providers and patients.

1:50:31 PM

SENATOR KIEHL acknowledged the intent behind defining provider-patient communications but noted that "medical information," if interpreted too broadly, could include something as minor as over-the-counter heartburn medication. He said that such examples illustrate why the statute should be carefully limited so that minor personal details are not inadvertently subject to criminal prosecution.

MR. SKIDMORE acknowledged the concern, reiterating there is no definition at this time and the Department would consult dictionary definitions for guidance. He stated that if the committee has concerns or prefers a more targeted approach, members could consider adding specific definitions.

1:51:16 PM
SENATOR MYERS asked how theft of medical records is currently classified under statute.

MR. SKIDMORE replied that, absent a specific monetary value that could be assigned to them, such theft would constitute theft in the fourth degree, a Class B misdemeanor.

1:51:48 PM
SENATOR MYERS asked how easily law enforcement can identify and apprehend individuals stealing mail, especially in rural areas without surveillance.

MR. SKIDMORE responded that, in some areas, such as Chugiak, residents have installed trail cameras to monitor community mailboxes when thefts occur. In other cases, investigators may identify suspects by finding significant amounts of mail addressed to multiple individuals in the possession of someone who is not a mail carrier. He said investigative methods vary, but the idea of the legislation is to ensure that, when sufficient evidence exists, prosecutors have a statute available to pursue charges. He acknowledged that some investigations would remain challenging. Passing a law will not immediately stop theft; however, it will allow prosecutors to act when evidence supports a case.

1:53:53 PM
SENATOR KIEHL asked what affect the "consolidation of value" theft legislation, enacted in 2019, had on the kinds of theft crimes discussed in this committee.

MR. SKIDMORE replied that many of the 32 other states that enacted similar laws created aggregation statutes to strengthen

enforcement, but Alaska had already done so. He said the 2019 amendment originated from the chair of this committee, and it proved helpful in addressing organized theft. However, he did not have data available on its direct effect.

1:55:01 PM
SENATOR KIEHL said he would be interested in reviewing data to determine whether the 2019 legislation had worked, and whether there is a prospect SB 100 will work.

SENATOR KIEHL sought clarification on whether the same three individuals must commit multiple offenses together, or whether a person who participates in different groups of three could still qualify under SB 100.

MR. SKIDMORE explained that the individual charged with organized theft would likely be the person involved in three or more coordinated thefts, even if others in those incidents differed. Those additional participants could be charged as principals or accomplices, but not with organized theft unless they were also involved in multiple related offenses. He expressed his belief that if investigators could establish individuals in different groups overlapped across incidents, and were working in coordination, all could be prosecuted together. It depends on the evidence gathered during the investigation and whether it demonstrated a pattern of organized, coordinated activity.

1:56:51 PM
SENATOR KIEHL questioned whether SB 100 is written effectively for organized theft, or if it merely creates a Class A felony for someone who commits theft a few times rather than only once.

MR. SKIDMORE addressed the group aspect of organized theft. He also spoke about mens rea, the mental intent required to commit theft.

1:58:57 PM
SENATOR MYERS continued the discussion on organized theft, noting that loss prevention employees are often injured during such theft incidents. He said that many larger corporations now instruct their staff not to intervene when theft occurs. He drew from his own experience in retail, stating employees are typically told not to confront or detain thieves, but instead to contact law enforcement. He asked how much of an impediment this policy is to finding and prosecuting thieves.

MR. SKIDMORE replied that the loss prevention efforts stores take to stop someone, do not necessarily give prosecutors the information they are most interested in. What matters most to prosecutors is the evidence available for investigation, such as surveillance footage or witness contact with the suspects. He said multiple investigative techniques are used to track offenders. He emphasized that while not every theft can be prosecuted, having a clear statute in place allows prosecution of the crime when evidence supports it. Ultimately, for prosecutors, what matters is collectible evidence.

2:01:09 PM
SENATOR STEVENS asked for clarification about the three-person requirement for the theft to qualify as organized. He asked whether that could include a fence or pawn shop operator, meaning there could be two individuals committing the theft and a third person responsible for selling or converting the stolen goods.

MR. SKIDMORE confirmed that is exactly the intent of the legislation.

SENATOR STEVENS said that if he were a store employee, he would not want to chase after criminals, emphasizing that injuries can occur. He added that it is not fair to expect a retail clerk to act as a law enforcement officer.

MR. SKIDMORE said that it is up to each business to determine. He said prosecutors have pursued robbery charges in cases where force was used to retain stolen property after an encounter with loss prevention staff. Such cases are far more serious than theft alone, though often difficult to prove, and they can result in significant injuries to those employees.

2:02:25 PM
CHAIR CLAMAN noted that, under existing law, three individuals acting jointly who steal $5,000 worth of property across multiple incidents would face second degree theft, Class C felony charges. SB 100 proposes that same conduct would qualify for Class A felony penalties because those individuals acted together. He questioned why SB 100 does not differentiate by the value of property stolen, noting that a group who steals $100,000 is much different than a group who steals $5,000. He asked why Section 1 does not distinguish between those scenarios.

MR. SKIDMORE replied that differences in the total value of property stolen would be addressed at sentencing, which allows for a broad range of penalties. He explained that the concept of SB 100 is to target individuals committing multiple felony-level thefts, not misdemeanor thefts. The proposal is aimed at repeat, organized theft rather than isolated or minor incidents.

2:04:43 PM
CHAIR CLAMAN noted that the bill requires multiple felony incidents to reach the Class A threshold.

MR. SKIDMORE agreed, stating that the legislation focuses on "repeated felony behavior." He said statistics suggest only about two percent of individuals engaged in this conduct are ever caught, underscoring the need for stronger deterrence. He emphasized that the bill is not intended to punish minor thefts, such as stealing a candy bar or sandwich, but rather organized, repeated felony theft involving multiple people.

2:05:59 PM
CHAIR CLAMAN raised the question of sentencing, asking for clarification on Class C, B, and A felonies and when jail time becomes mandatory.

MR. SKIDMORE clarified Class C, B, and A felony sentencing:

Class C Felony

- For first-time offenders, meaning they have not committed a previous felony in the last ten years.
- The presumptive range is zero to two years in prison.
- Though the statutory maximum is five years, courts cannot impose more than two years without finding an aggravating factor.

Class B Felony

- Theft in the first degree.
- It has a threshold of $25,000.
- Alaska Statutes currently set the threshold for presumptive sentencing, not mandatory minimums.
- The presumptive range is one to three years for $25,000 or more.
- The sentence may go above three years with aggravating factors.
- The sentence may go below one year with mitigating factors.
- Statutory maximum of ten years.

Class A Felony

- First time offender presumptive range is four to seven years.
- The sentence may go above seven years with aggravating factors.
- The sentence may go below four years with mitigating factors.
- Statutory maximum of 20 years.

2:07:53 PM
CHAIR CLAMAN asked whether a person convicted of a Class A felony could ever receive a sentence below two years with mitigating factors.

MR. SKIDMORE said the sentence could not be reduced below two years. He stated, with some uncertainty, that the threshold is two years. If the threshold is under two years, the sentence can go all the way down to zero. He clarified that a Class B felony can be mitigated down to zero because its lower-end presumptive range is one year.

2:08:33 PM
CHAIR CLAMAN sought confirmation that a Class B felony could be mitigated below two years down to zero, but the Class A felony could not.

MR. SKIDMORE replied correct, a Class A felony cannot drop below two years. He explained that the lower end of a Class A felony's presumptive range is four years, which is above the two-year mark. He expressed his belief that mitigating factors could only reduce the sentence by 50 percent and offered to verify the precise statutory language for the committee.

2:08:50 PM
CHAIR CLAMAN requested that he provide the committee with that information.

2:08:54 PM
SENATOR MYERS expressed concern that only about 2 percent of retail theft cases are prosecuted. This reflects how widespread the problem is and how offenders are rarely caught. He questioned how much of a deterrent the proposed legislation could be if such a small percentage of offenders are prosecuted.

MR. SKIDMORE replied that the two percent figure comes from national studies, not Alaska specifically. He acknowledged that not every instance of theft is detected or prosecuted but explained that one way to address significant crime problems is to increase penalties for those who are caught. The goal is to

create a deterrent. He noted that there is academic debate over whether stronger penalties reduce crime, with differing opinions on their effectiveness. He said, nonetheless, the Department views the bill as a necessary step toward addressing a growing problem. He welcomed any committee input or alternative ideas for reducing organized theft, which he emphasized affects everyone.

2:10:51 PM
SENATOR KIEHL expressed his belief that the court system has a fiscal note and asked whether the Department of Law has one.

MR. SKIDMORE replied that the Department of Law has a zero fiscal note.

SENATOR KIEHL sought confirmation that the fence could be included as one of the three.

MR. SKIDMORE answered in the affirmative.

CHAIR CLAMAN explained that the fence is the person that sells the stolen goods later.

SENATOR KIEHL further explained that the fence is the person that gives cash or drugs in exchange for the stolen goods.

2:11:50 PM
SENATOR KIEHL said if this proposed law gets used, it will get used a huge amount. He explained that if a person with prior theft convictions, acting in coordination with a group of at least three individuals on three different incidents, steals property valued at $251, that person could be charged with a Class A felony. He surmised that this bill's structure could result in a substantial number of repeat Class A felony prosecutions. He noted that such cases would demand significant prosecutorial resources, given that a Class A felony is among Alaska's most serious offenses. He asked whether the Department intends to actively use this proposed law.

MR. SKIDMORE replied that the Department plans to use it. He addressed the math that showed the potential for a huge increase in the number of repeat Class A felony prosecutions. He explained that once a person is convicted using prior offenses to reach the felony threshold, those prior offenses cannot be reused to establish future charges for the same conduct. Double jeopardy protects defendants from that. He explained that it would therefore take more than three or four incidents to reach

the Class A felony threshold. The bill requires at least two separate felony-level theft offenses to reach that level. He suggested that the committee could amend the bill to address concerns.

2:14:10 PM
CHAIR CLAMAN cited AS 11.46.130(a)(6), which defines theft in the second degree as occurring when "the value of the property is $250 or more but less than $750 and, within the preceding five years, the person has been convicted and sentenced on two or more separate occasions in this or another jurisdiction." He stated that during discussions of this provision over the past decade, he did not recall any suggestion that the same prior convictions, if committed in the preceding five years, were excluded from the count in future cases. He observed that the enhanced classification appears to arise from subsection (a)(6) and said he does not see how double jeopardy would apply in this context.

MR. SKIDMORE replied that he was not aware of any case law that directly addresses this issue. However, when offenses are "stacked" in this manner, it could present potential challenges in the future. He conjectured that simply having four prior offenses and then a fifth would not necessarily result in two separate felony charges.

2:15:30 PM
CHAIR CLAMAN said he did not believe that would create two felonies either. He explained that if a person has three prior convictions, those priors are not being punished again but rather used as the basis for an enhanced sentence. Once a person has three priors within the last five years, any subsequent theft involving more than $250 would constitute a felony because of that prior record.

MR. SKIDMORE calculated that with three priors, the next offense, the fourth, would elevate the charge to a felony. To obtain a second felony, a fifth theft would be required.

CHAIR CLAMAN sought confirmation that the first four prior convictions count as predicates for the fifth offense, which would elevate the charge to a felony.

MR. SKIDMORE said he understood the argument.

CHAIR CLAMAN asked if he agreed with it.

MR. SKIDMORE agreed that is a way it could be done, cautioning that stacking prior convictions could invite double jeopardy challenges.

CHAIR CLAMAN sought confirmation that the prosecution could argue prior felonies constitute a defendant's status, not a new penalty for the prior offenses. The prosecution's position would be that they do not have to start counting again.

MR. SKIDMORE replied he does not think that is something that has been litigated.

2:16:44 PM
MR. SKIDMORE referred to the question about fiscal notes, stating that the conduct addressed in the bill is already illegal. If the Department is already prosecuting a theft, changing the offense level does not alter the resources or effort required for prosecution. He envisioned that the Department of Corrections, rather than the Department of Law, might have a fiscal impact depending on whether the change results in significantly longer jail sentences. He reiterated that the investigative and prosecutorial effort does not change whether the offense is charged as a Class B misdemeanor, a Class A misdemeanor, a Class C felony, or a Class B felony.

2:17:35 PM
SENATOR KIEHL remarked it is new testimony, from the Department, that Class A felonies do not require more resources than Class C felonies.

MR. SKIDMORE clarified that the increased severity of unclassified or Class A felonies, such as homicide or sexual assault, typically correlates with greater prosecutorial effort and expense. The complexity demands of those cases require more evidence, witnesses, time, effort, and money. However, in cases of theft where the conduct is already criminalized, the investigation remains consistent regardless of classification, and it is not more difficult to prosecute. He acknowledged that serious offenses generally require more resources; however, that analogy does not apply to reclassifying theft offenses.

2:18:37 PM
SENATOR MYERS recalled Department testimony which indicated that as penalties or offense levels increase, the likelihood that the Criminal Division would prosecute those cases also increased compared to lower-level crimes. He sought confirmation that even

if the overall number of crimes remains the same, the number of prosecutions would rise based on that prioritization.

MR. SKIDMORE replied that perspective is correct from the standpoint the Department prioritizes higher-level crimes over lower-level ones when resources are limited. He said the Department cannot pursue every case referred to it, noting that has always been the case and likely will remain so.

MR. SKIDMORE said if the question pertains to prioritizing a theft crime at a higher level because there is a more serious concept associated with it, the answer is yes, the Criminal Division might accept that case. He explained that lower-level cases do not carry the same significance in terms of the State's goals for society and the victims. He confirmed that the fiscal impact remains a zero, but SB 100 could cause a shift in priorities in terms of how the Department reviews some of the cases.

2:20:44 PM
CHAIR CLAMAN referenced existing sentencing aggravators and presented a scenario involving coordinated group thefts conducted over multiple occasions with an aggregate property value of $5,000. He explained this would qualify as a felony. He asked whether any aggravating factors could increase the sentences under these specific circumstances, as opposed to aggravating factors for a single individual who committed theft of the same value.

MR. SKIDMORE stated that two aggravators come to mind but said he would need to review the statutes to confirm their specific elements. He believes some aggravators can allow higher sentences; however, they cannot be stacked on top of an offense when the aggravating factor relies on the same factual conduct as the elements of the offense itself. For instance, prior theft convictions cannot be used simultaneously to both elevate an offense level and to serve as an aggravator. He answered that there may potentially be aggravators that apply; however, the effect would not carry the same impact as SB 100.

2:23:29 PM
CHAIR CLAMAN asked for a follow up on potential aggravating factors that could apply in that scenario, noting he found a couple that apply to group crimes. He said AS 12.55.155(b)(3) applies when a defendant is the leader of a group of three or more persons involved in the offense and subsection (b)(14) applies to a group of five or more. He suggested an alternative

to a new Class A felony might be to create an aggravating factor that addresses offenders who work together in coordinated thefts. Such an approach could preserve sentencing flexibility without overly elevating the offense level.

MR. SKIDMORE said he would go through all the aggravators and provide a complete response.

2:25:08 PM
CHAIR CLAMAN raised a question regarding the scope of medical records. He referenced the standard HIPAA acknowledgment form that patients routinely sign when visiting medical providers. He suggested that, technically, such a form could be considered a medical record. He offered a personal example, explaining that his late mother, who had epilepsy, might not have cared about the privacy of a signed HIPAA form but would likely have felt differently about the disclosure of her medical history itself. He said this illustrates the wide range of documents that could fall under the term "medical records," some of which contain highly sensitive information and others that do not. He asked, given the range of records that would qualify under SB 100, why the bill does not make more of distinction among documents.

MR. SKIDMORE replied that SB 100 could absolutely include that type of distinction. He clarified that the Department's intent was to address records containing private medical details, such as diagnoses, treatments, and related information, rather than general administrative forms like HIPAA. He reiterated that including a more specific definition could help narrow the scope and makes sense if the committee is interested in that.

2:27:27 PM
SENATOR MYERS referred to testimony on aggregation legislation that Alaska had enacted and that 30-plus states had enacted similar legislation. He asked how many states have adopted comparable laws addressing organized theft.

MR. SKIDMORE replied that he did not have information on how many states have enacted organized theft statutes similar to SB 100. He stated that while various states and Congress have introduced legislation to increase penalties and address organized theft, he was not aware of any state that had drafted language identical to Alaska's proposal. He explained that numerous efforts are underway nationwide, at the state and federal levels, to combat organized retail theft.

2:28:34 PM

SENATOR KIEHL requested that, as the Department researches states that have enacted organized theft legislation, he would also identify the level of offense assigned to those crimes.

MR. SKIDMORE replied that to the extent possible, he would report those classifications. He cautioned that states vary widely in how they define and grade offenses. For example, New York has seven felony levels. He said the Department would share information where possible but did not want to overpromise, noting that the amount of available data is extensive.

2:29:38 PM
CHAIR CLAMAN remarked that the presenter, as expected, had managed the discussion thoroughly and without needing any help.

MR. SKIDMORE replied that his colleague had handed him a statute that corrected his testimony on sentencing. He explained that if the low end of the [presumptive] sentence is four years or less, the court may reduce the term all the way down to zero. However, if it exceeds four years, the sentence can only be reduced by 50 percent. He acknowledged his earlier misstatement and the corrected the threshold for the record. He concluded by saying that the Department would follow up with responses to the committee's remaining questions.

2:30:23 PM
CHAIR CLAMAN held SB 100 in committee.

2:30:32 PM
There being no further business to come before the committee, Chair Claman adjourned the Senate Judiciary Standing Committee meeting at 2:30 p.m.