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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 31, 1984

The Honorable Joe Hayes
Speaker of the House
Pouch V
Juneau, AK 99811

Dear Representative Hayes:

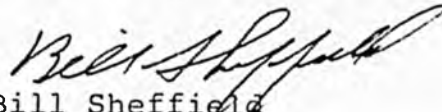
Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that will authorize a court to order the forfeiture to the state of a deadly weapon possessed or used by a defendant during the commission of a crime. As used in the bill, "deadly weapon" means any firearm (including a pistol, revolver, rifle, or shotgun) or anything designed for and capable of causing death or serious physical injury, including a knife, an axe, a club, metal knuckles, or an explosive.

Although current law authorizes the forfeiture of weapons used to commit fish and game offenses (AS 16.05.195) or offenses involving controlled substances (AS 17.30.110), there is no statutory provision that expressly allows a court to order, as part of a defendant's sentence, the forfeiture of a weapon used to commit crimes such as assault, robbery, or murder. AS 11.61.200 prohibits a felon, during the five years immediately following his "unconditional discharge" (i.e., release from custody or parole or probation) for a felony, from knowingly possessing "a firearm capable of being concealed on his person," and AS 12.55.080 gives a court broad powers to determine and impose reasonable probation conditions (such as no possession of firearms during the period of probation); however, neither of these statutes specifically authorizes a court to order the forfeiture of a weapon used to commit a crime.

To address this surprising omission in existing law, this bill adds a new paragraph to the general sentencing provisions in AS 12.55.015(a) to authorize a court to order the forfeiture of a weapon as part of a defendant's sentence following conviction. Forfeiture is not required in every case, but may be imposed at the court's discretion.

It is important that the elected officials in this state do as much as we can to decrease the number of violent crimes committed against innocent citizens. This bill will allow a court to remove a weapon used to commit a crime from the hands of the convicted criminal, and will prevent the convicted person from using that weapon to commit another crime in the future. I urge your prompt action on this bill.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Sheffield".

Bill Sheffield
Governor

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

POUCH N
JUNEAU, ALASKA 99811
PHONE: 465-4322

OFFICE OF THE COMMISSIONER

February 9, 1984

The Honorable Charlie Bussell, Chairman
House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

RE: Disposal of
Stolen Property
(Weapons)

Dear Chairman Bussell:

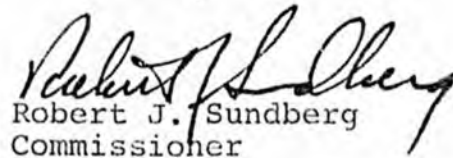
It has always been the policy of the Department of Public Safety that every effort will be made to return stolen property to its rightful owner.

If stolen property has been used in the commission of a crime, the weapon or property is returned to the rightful owner once the case has been adjudicated. That is, if the owner has reported the property stolen, or the Department, through its records or other means, can locate the respective owner.

Property that cannot be traced back to its rightful owner is held for a period of time until a Court order is issued disposing of same.

Customarily, the victim of theft reports the item or items to law enforcement, who in turn enters it into the computer system. This computer system is used as a tracking point in identifying stolen property and its rightful owner. It is important, of course, to be able to identify the stolen property specifically by a serial number or other specific identifier.

Sincerely,


Robert J. Sundberg
Commissioner

cc: Lisa Nelson
Assistant Attorney General
Department of Law

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 557
 Title: "...forfeiture of weapons used to commit a crime..."
 Sponsor: Governor
 Requestor: House Judiciary
 Date of Request: 2-6-84

FISCAL DETAIL

Agency Affected: Public Safety
 Program Category Affected: Administration of Justice
 BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis No fiscal impact anticipated.

Prepared By: Francis C. Allan *F.C.A. MCK* Phone: 269-5691
 Division: Alaska State Troopers Date: 1-4-84

Approved by Commissioner: R. J. Sundberg *[Signature]* Date: 2-9-84
 Agency: Public Safety

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

Revision Date: _____

REQUEST
 Bill/Resolution No.: _____
 Title: "An Act relating to forfeiture of weapons used to commit a crime."
 Sponsor: Rules by req. of the Gov.
 Requestor: Office of the Governor
 Date of Request: December 22, 1983

FISCAL DETAIL
 Agency Affected: Department of Law
 Program Category Affected: Administration of Justice
 BRU, Program or Subprogram(s) Affected: Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard I. Pogue Director Phone: 465-3672
 Division: Administrative Services Division Date: 12/22/83
 Approved by Commissioner: Richard I. Pogue / Norman C. Gotsch Date: 12/22/83
 Agency: Department of Law

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

12/22/83

ANALYSIS

This bill amends AS 12.55.015(a) to give the court the discretionary power to order the forfeiture of a weapon as part of a defendant's sentence following conviction. Although prosecutors will have the added responsibility of advocating forfeiture, when appropriate, this advocacy duty can be accomplished without additional expense.

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER

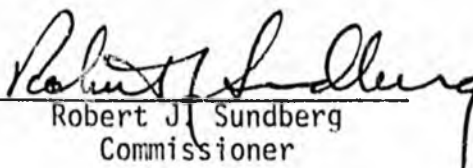
Support

HOUSE BILL 557

This legislation adds a new paragraph to the general sentencing provisions statute which would authorize a court to order the forfeiture, as part of a defendant's sentence upon conviction, of a deadly weapon which was possessed or used by a defendant during the commission of a crime.

It is common to encounter persons who are convicted of violent crimes repeating similar offenses. By being able to hinder such individuals from obtaining the "tools" to commit such crimes an added degree of safety for the public can thus be provided.

Law enforcement agencies often spend a considerable effort returning knives, clubs, axes, etc. from evidence storage back to individuals who have committed violent crimes. Certainly this effort can be better expended if the weapons can be disposed of at the discretion of the State.


Robert J. Sundberg
Commissioner

incorporated into the criminal code as this section. *Nell v. State*, Ct. App. Op. No. 77 (File No. 5565), 642 P.2d 1361 (1982).

Legislative intent reflected. — The presumptive sentencing provisions contained in AS 12.55.125 and 12.55.155 reflect the legislature's intent to assure predictability and uniformity in sentencing by the use of fixed and relatively inflexible sentences, statutorily prescribed, for persons convicted of second or subsequent felony offenses. *Juneby v. State*, Ct. App. Op. No. 72 (File No. 5606), 641 P.2d 823 (1982), modified on other grounds and aff'd on rehearing, Ct. App. Op. No. 259 (File No. 5606), P.2d (1983).

The comprehensive and highly regimented provisions of the presumptive sentencing statute were enacted to assure that sentencing would become a predictable process and that disparity in sentencing between similarly situated offenders would be eliminated. *Lucquent v. State*, Ct. App. Op. No. 85 (File No. 5741), 644 P.2d 856 (1982).

Criteria enumerated in this section must be given primary significance in the sentencing of first offenders under the Alaska Revised Criminal Code. *Kimbrell v. State*, Ct. App. Op. No. 101 (File No. 5944), P.2d (1982).

Adjustment of presumptive sentence. — When applied to the adjustment of a presumptive sentence, the *State v. Chaney*, 477 P.2d 441 (Alaska (1970)), analysis, as stated in AS 12.55.005, should not be broadened into a consideration of all circumstances of the offense, as if the sentence were being imposed anew, without regard for the presumptive term. Instead, consideration of the Chaney criteria should focus specifically on the aggravating and mitigating conduct in the particular case. The presumptive term should remain as the starting point of the analysis, and the Chaney criteria should

be employed for the limited purpose of determining the extent to which the totality of the aggravating and mitigating factors will justify deviation from the presumptive term. *Juneby v. State*, Ct. App. Op. No. 72 (File No. 5606), 641 P.2d 823 (1982), aff'd, Ct. App. Op. No. 259 (File No. 5606), 665 P.2d 30 (1983).

Nature of offense is relevant factor in sentencing. — Throughout the supreme court's review of sentences, the degree of physical or psychological violence involved in the offense has been an important factor. *Kelly v. State*, Sup. Ct. Op. No. 2268 (File Nos. 4097, 4529), 622 P.2d 432 (1981).

In attempting to eliminate consideration of the nature of the offense from its consideration of relevant factors at sentencing, the superior court was clearly mistaken and the sentences in the case had to be reversed. *Kelly v. State*, Sup. Ct. Op. No. 2268 (File Nos. 4097, 4529), 622 P.2d 432 (1981).

Applied in *Hartley v. State*, Ct. App. Op. No. 153 (File No. 5737), P.2d (1982); *Peetook v. State*, Ct. App. Op. No. 178 (File No. 6630), P.2d (1982); *Weston v. State*, Ct. App. Op. No. 183 (File No. 5734), P.2d (1982); *Tazruk v. State*, Ct. App. Op. No. 195 (File No. 6954), P.2d (1982).

Quoted in *Kelly v. State*, Ct. App. Op. No. 251 (File No. 6311), P.2d (1983).

Stated in *Erhart v. State*, Ct. App. Op. No. 185 (File No. 6244), P.2d (1982); *State v. Rastopsoff*, Ct. App. Op. No. 228 (File No. 6295), P.2d (1983).

Cited in *Nukapigak v. State*, Ct. App. Op. No. 90 (File No. 5820), 645 P.2d 215 (1982); *Howard v. State*, Ct. App. Op. No. 260 (File Nos. 6027, 6123), P.2d (1983); *Martin v. State*, Ct. App. Op. No. 261 (File No. 6665), P.2d (1983).

Sec. 12.55.015. Authorized sentences. (a) Except as limited by AS 12.55.125 — 12.55.175, the court, in imposing sentence on a defendant convicted of an offense, may singly or in combination

(1) impose a fine when authorized by law and as provided in AS 12.55.035;

(2) order the defendant to be placed on probation under conditions specified by the court which may include provision for active supervision;

(3) impose a definite term of periodic imprisonment;

(4) impose a definite term of continuous imprisonment;

(5) order the defendant to make restitution as provided in AS 12.55.045;

(6) order the defendant to carry out a continuous or periodic program of community work as provided in AS 12.55.055;

(7) suspend execution of all or a portion of the sentence imposed as provided in AS 12.55.080;

(8) suspend imposition of sentence as provided in AS 12.55.085.

(b) The court, in exercising sentencing discretion as provided in this chapter, shall impose a sentence involving imprisonment when

(1) the defendant deserves to be imprisoned, considering the seriousness of his present offense and his prior criminal history, and imprisonment is equitable considering sentences imposed for other offenses and other defendants under similar circumstances;

(2) imprisonment is necessary to protect the public from further harm by the defendant; or

(3) sentences of lesser severity have been repeatedly imposed for substantially similar offenses in the past and have proven ineffective in deterring the defendant from further criminal conduct.

(c) In addition to the penalties authorized by this section, the court may invoke any authority conferred by law to order a forfeiture of property, suspend or revoke a license, remove a person from office, or impose any other civil penalty.

(d) A court, in imposing sentence on a defendant convicted of misconduct involving a controlled substance in the first, second, third, fourth, fifth, or sixth degree, may, in addition to any mandatory minimum sentence required by law, order the defendant to participate in a program for treatment of drug abusers if the court determines that the defendant is a drug abuser. Participation in such a program may be imposed as a condition of probation, a condition of suspended execution of sentence, or a condition of suspended imposition of sentence. Nothing in this subsection shall be construed to reduce any mandatory minimum sentence. (§ 12 ch 166 SLA 1978; am § 37 ch 102 SLA 1980; am § 3 ch 45 SLA 1982).

Cross references. — As to offenses relating to controlled substances, see AS 11.71.010 — 11.71.080.

Effect of amendments. — The 1982 amendment, effective January 1, 1983, added subsection (d).

Editor's notes. — For declaration of legislative purpose, see § 1, ch. 45, SLA 1982 in the 1982 Temporary and Special Acts and Resolves.

NOTES TO DECISIONS

Applied in *Austin v. State*, Ct. App. Op. No. 18 (File No. 5341), 627 P.2d 657 (1981).
 Cited in *Whittlesey v. State*, Sup. Ct. Op. No. 2231 (File No. 5155), 626 P.2d 1066 (1980); *Juneby v. State*, Ct. App. Op. No. 72 (File No. 5606), 641 P.2d 823 (1982); *Lacquement v. State*, Ct. App. Op. No. 85 (File No. 5741), 644 P.2d 856 (1982).
 Quoted in *Leuch v. State*, Sup. Ct. Op. No. 2419 (File No. 5255), 633 P.2d 1006 (1981).
 Stated in *Kimbrell v. State*, Ct. App. Op. No. 101 (File No. 5944), P.2d (1982); *Erhart v. State*, Ct. App. Op. No.

Sec. 12.55.025. Sentencing procedures. (a) When imposing a sentence of imprisonment exceeding 90 days or upon a conviction of a violation of AS 04, a regulation adopted under AS 04, or an ordinance adopted in conformity with AS 04.21.010, the court, shall prepare, as a part of the record, a sentencing report which includes the following:

- (1) a verbatim record of the sentencing hearing and any other in-court sentencing procedures;
- (2) findings on material issues of fact and on factual questions required to be determined as a prerequisite to the selection of the sentence imposed;
- (3) a clear statement of the terms of the sentence imposed; and
- (4) recommendations as to the place of confinement or the manner of treatment.

(b) The sentencing report required under (a) of this section shall be furnished within 30 days after imposition of sentence to the Department of Law, the defendant, the division of corrections, the state Board of Parole if the defendant will be eligible for parole, and to the Alcoholic Beverage Control Board if the defendant is to be sentenced for a conviction of a violation of AS 04, a regulation adopted under AS 04, or an ordinance adopted under AS 04.21.010.

(c) Except as provided in (d) and (e) of this section, when a defendant is sentenced to imprisonment, his term of confinement commences on the date of imposition of sentence. A defendant shall receive credit for time spent in custody pending trial, sentencing, or appeal, if the detention was in connection with the offense for which sentence was imposed. A defendant may not receive credit for more than the actual time he spent in custody pending trial, sentencing, or appeal. The time during which a defendant is voluntarily absent from official detention after he has been sentenced may not be credited toward service of his sentence.

(d) A sentence of imprisonment shall be stayed if an appeal is taken and the defendant is admitted to bail. If an appeal is taken and the defendant is not admitted to bail, the Department of Health and Social Services shall designate the facility in which the defendant shall be detained pending appeal or admission to bail.