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May, 1986

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Jeanie Henry

House Judiciary 1-25-85

1:30 pm

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

JAN 24 1985

REQUEST

Bill/Resolution No.: HB 27  
 Title: Failure to Adequately  
Maintain Animals  
 Sponsor: Rep. M.M. Miller  
 Requestor: H. Judiciary  
 Date of Request: 1-23-85

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 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-

<b>CAPITAL</b>						
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<b>REVENUE</b>						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Paul Conger Phone: 465-4338  
 Division: Administrative Services Date: 1-23-85

Approved by Commissioner: *[Signature]* Date: 1/23/85  
 Agency: J.L. Public Safety

Distribution (by Agency preparing fiscal note):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

7/1/84

STATE OF ALASKA 1985-LEGISLATIVE SESSION  
FISCAL NOTE

JAN 21 1985

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: HB 27  
 Title: "An Act relating to failure to adequately maintain animals..."  
 Sponsor: Repr. M. M. Miller  
 Requestor: House Judiciary  
 Date of Request: 1/16/85

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 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
<b>CAPITAL</b>						
<b>REVENUE</b>						

FUNDING: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

POSITIONS:

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

This bill amends AS 11.61.140(2) to provide that a person commits the crime of cruelty to animals if the person recklessly neglects to provide a confined animal with a sufficient quantity of good and wholesome food and water. Although enactment of this bill may result in some additional prosecutions, the Department of Law does not believe that their number will have a significant fiscal impact.

Prepared By: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Date: 1/22/85  
 Approved by Commissioner: Richard I. Pegues / for Date: 1/22/85  
 Agency: Norman C. Gorsuch  
Department of Law

- Distribution (by Agency preparing fiscal note):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

DEPARTMENT OF LAW PROPOSED CS FOR SECTION 2 OF HB 27

Sec. 2. AS 12.55.015 is amended by adding a new subsection to read:

(e) A court, in imposing sentence on a defendant convicted of cruelty to animals or promoting an exhibition of fighting animals, may, in addition to any other sentence allowed by law, order the defendant to forfeit any rights in the animal and to make restitution, as allowed under AS 12.55.045, for the reasonable costs incurred before conviction by a person or agency caring for the animal. When a court orders a defendant's rights in an animal to be forfeited, the court may further order that those rights be given over to an appropriate person or agency demonstrating a willingness to accept and care for the animal or to the state or an appropriate animal care agency for further disposition in accordance with accepted practices for humane treatment of animals. This subsection does not limit the right of the person or agency to whom the defendant's rights are granted to resell or otherwise make disposition of the animal. A transfer of rights under this subsection constitutes a transfer of ownership.

§ 12.55.005

§ 12.55.010

CODE OF CRIMINAL PROCEDURE

§ 12.55.015

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655 P.2d 788 (1982); Graybill v. State, Ct. App. Op. No. 300 (File Nos. 674-6746), 672 P.2d 138 (1983); Clemans v. State, Ct. App. Op. No. 358 (File No. 7584), P.2d (1984).  
Quoted in Kelly v. State, Ct. App. Op. No. 251 (File No. 6311), 663 P.2d 967 (1983).  
Stated in Erhart v. State, Ct. App. Op. No. 185 (File No. 6244), 656 P.2d 1199 (1982); State v. Rastopsoff, Ct. App. Op. No. 228 (File No. 6295), 659 P.2d 630 (1983).

Cited in Nukapigak v. State, Ct. App. Op. No. 90 (File No. 5820), 645 P.2d 275 (1982); Howard v. State, Ct. App. Op. No. 260 (File Nos. 6027, 6123), 664 P.2d 603 (1983); Martin v. State, Ct. App. Op. No. 261 (File No. 6665), 664 P.2d 612 (1983); Heathcock v. State, Ct. App. Op. No. 293 (File No. 6803), 670 P.2d 1155 (1983); Pickens v. State, Ct. App. Op. No. 332 (File No. 6829), 675 P.2d 665 (1984).

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*Sec. 12.55.010. Imprisonment on judgment for payment of fine. [Repealed, § 21 ch 166 SLA 1978. For present provisions, see AS 12.55.035(a).]*

**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 the present offense and the defendant's 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.

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37), 653 P.2d 1052  
Ct. App. Op. No.  
P.2d 1308 (1982);  
Op. No. 183 (File  
(1982); Tazruk v.  
35 (File No. 6954).

(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.** — For offenses relating to controlled substances, see AS 11.71.010 — 11.71.080.

**Effect of amendments.** — The 1980 amendment rewrote paragraph (3) of subsection (b).

The 1982 amendment, added subsection (d).

**Legislative history reports.** — For report on ch. 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, (May 29, 1980) or 1980 House Journal Supplement, No. 79, (May 29, 1980).

#### NOTES TO DECISIONS

There is no authority which would sanction the expansion of the superior court's jurisdiction to pass sentence into a realm of review and modification which is statutorily vested in either the supreme court or the executive branch of government. Therefore, the superior court lacks jurisdiction to review its own sentence, after it has entered a judgment on the matter, more than 60 days after it has imposed sentence. *Davenport v. State*, Sup. Ct. Op. No. 1212 (File No. 2202), 543 P.2d 1204 (1975); *Szeratics v. State*, Sup. Ct. Op. No. 1525 (File No. 3390), 572 P.2d 63 (1977).

**Test to be used in determining whether multiple offenses can be punished separately.** — See *State v. Occhipinti*, Sup. Ct. Op. No. 1405 (File No. 3084), 562 P.2d 348 (1977).

**Separate sentences were called for where defendant's conduct in kidnapping and raping his victim and assaulting her**

with a deadly weapon constituted the commission of three distinct offenses, each of which violated a different societal interest. *State v. Occhipinti*, Sup. Ct. Op. No. 1405 (File No. 3084), 562 P.2d 348 (1977).

**Applied in** *Austin v. State*, Ct. App. Op. No. 18 (File No. 5341), 627 P.2d 657 (1981).

**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), 647 P.2d 618 (1982); *Erhart v. State*, Ct. App. Op. No. 185 (File No. 6244), 656 P.2d 1199 (1982).

**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).

*Sec. 12.55.020. Enforcing judgment to pay money. [Repealed, § 21 ch 166 SLA 1978. For present provisions, see AS 12.55.025(f), AS 12.55.035(a), (d) and AS 12.55.051.]*

**Sec. 12.55.022. Victim impact statement.** As part of the presentence report prepared on each felony offender, the probation officer shall prepare a victim impact statement reporting the following information:

Fdwads  
1/21/85 ✓

Original sponsors: M.M.Miller, Goll,  
Grussendorf and Duncan

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IN THE HOUSE

BY THE JUDICIARY COMMITTEE

( FOR HOUSE BILL NO. 27 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: An Act relating to failure to adequately maintain animals, forfeiture of inadequately maintained animals, and protection from liability for persons aiding such animals."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

\* Section 1. AS 11.61.140(a) is amended to read:

(a) A person commits the crime of cruelty to animals if the person

(1) intentionally inflicts severe and prolonged physical pain or suffering on an animal;

(2) recklessly neglects an animal and, as a result of that neglect, causes the death of the animal or causes severe pain or suffering to the animal; [OR]

(3) kills an animal by the use of a decompression chamber;

or

(4) recklessly neglects to provide an animal with a sufficient quantity of good and wholesome food and water.

\* Sec. 2. AS 11.61 is amended by adding a new section to read:

Sec. 11.61.148. FORFEITURE OF ANIMALS. (a) In addition to any other sentence it may impose, a court may require a defendant convicted under AS 11.61.140 - 11.61.145 to forfeit any rights in the animal and to repay the reasonable costs incurred before judgment by a person or agency caring for the animal.

(b) When a court orders a defendant's rights in an animal to be

1 forfeited, the court may further order that those rights be given over  
 2 to an appropriate person or agency demonstrating a willingness to  
 3 accept and care for the animal or to the state or an appropriate  
 4 animal care agency for further disposition in accordance with accepted  
 5 practices for humane treatment of animals. This subsection does not  
 6 limit the right of the person or agency to whom the defendant's rights  
 7 are granted to resell or otherwise make disposition of the animal. A  
 8 transfer of rights under this subsection constitutes a transfer of  
 9 ownership.

10 \* Sec. 3. AS 09.65 is amended by adding a new section to read:

11 Sec. 09.65.093. LIABILITY FOR VOLUNTARY CARE OF ANIMALS. (a)

12 When an animal is not provided with a sufficient quantity of good and  
 13 wholesome food and water for more than 24 consecutive hours any person  
 14 may enter another's property, other than a dwelling, to supply food  
 15 and water to the animal.

16 (b) A person is not liable for civil damages as a result of  
 17 entering another's property, other than a dwelling, to supply food and  
 18 water under this section. The person is entitled to reimbursement  
 19 from the animal's owner for the reasonable cost of the food, water,  
 20 and service provided. The owner's failure to reimburse the provider  
 21 subjects the animal involved to attachment and sale upon execution  
 22 following judgment.

23 (c) This section does not preclude liability for civil damages  
 24 as a result of gross negligence or reckless or intentional misconduct.  
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John L. GRAYBILL, Appellant,

v.

STATE of Alaska, Appellee.

No. 2386.

Supreme Court of Alaska.

Jan. 23, 1970.

Avrum M. Gross, Atty. Gen., Juneau, Joseph D. Balfe, Dist. Atty., Stephen G. Dunning, Asst. Dist. Atty., Anchorage, for appellee.

Before BOOCHEVER, Chief Justice, and RABINOWITZ, CONNOR, ERWIN and BURKE, Justices.

Defendant was convicted in the Superior Court, Third Judicial District, Anchorage, C. J. Occhipinti, J., of possession and attempted transportation of bear hide by airplane, and he appealed. The Supreme Court, Connor, J., held that superior court had authority to order forfeiture of aircraft used in violation of game laws.

Affirmed.

#### 1. Forfeitures ⇨ 1

Forfeiture is civil remedy unless otherwise provided by statute. AS 16.05.190, 16.05.195(a).

#### 2. Forfeitures ⇨ 3

Superior Court had authority in prosecution of defendant for attempted transportation of bear hide by airplane to order forfeiture of aircraft. AS 16.05.190, 16.05.190, 16.05.920.

McRoy J. Barker, Robertson, Monagle, Castaugh & Bradley, Anchorage, for appellant.

<sup>1</sup> The airplane was referred to in the complaint as a "Piper Aircraft No. N3373B."

<sup>2</sup> AS 16.05.920 provides in part:

"(a) Unless permitted by this chapter or by regulation made under this chapter, it is unlawful for a person to take, possess, transport, sell, offer to sell, purchase, or offer to purchase fish, game or marine aquatic plants, or any part of fish, game or aquatic plants, or a nest or egg of fish or game."

<sup>3</sup> This was the sentence imposed by the trial court in open court. We note, however, that in the judgment and order of probation of

<sup>4</sup> August 1972 and the amended judgment and order of probation of 14 February 1973 refer to conviction on only the possession count, and impose revocation of the hunting license and forfeiture of the aircraft as special conditions of probation. The record shows that

### OPINION

CONNOR, Justice.

This appeal questions the procedure by which an aircraft was ordered forfeited because it was used in violation of the game laws.

Appellant Graybill was charged on two counts: (I) possession and (II) attempted transportation of a bear hide by airplane<sup>1</sup> when not permitted to do so by applicable regulations, in violation of AS 16.05.920.<sup>2</sup> After a jury trial, Graybill was convicted on both counts. On Count I (possession) he was given a six-month suspended sentence. On Count II (attempted transportation) he was sentenced to a one-year revocation of his hunting license and forfeiture of his aircraft.<sup>3</sup>

Following his conviction, Graybill appealed to this court, urging that the superior court lacked the authority in a criminal proceeding to order a forfeiture of the aircraft.<sup>4</sup> We dismissed the appeal as

the jury returned a guilty verdict as to both counts, and Graybill does not dispute conviction for both possession and attempted transportation. The trial judge carefully considered the form by which he imposed sentence in court. We must remand the case to allow entry of judgment, pursuant to Alaska R. Crim.P. 36 concerning clerical mistakes, in accordance with the sentence actually imposed in open court. Therefore, we do not reach the issue of whether forfeiture of an aircraft could validly be imposed as a special condition of probation.

<sup>4</sup> In superior court Graybill challenged the modification of his probation order to include specifications as to which aircraft was to be forfeited. His argument there was that AS 16.05.900 provides for penalties of up to \$1,000 fine and six months imprisonment, but

untimely,<sup>6</sup> and suggested that Graybill proceed under Alaska R.Crim.P. 35(b) for post-conviction relief. He did so, but the state prevailed in superior court by way of summary disposition pursuant to Alaska R.Crim.P. 35(g)(3). From that summary disposition Graybill brings this second appeal.

Graybill's appeal rests upon his reading of the forfeiture section of AS 16.05.190, which in relevant part states:

"[A]ircraft . . . seized under the provisions of this chapter . . . , unless forfeited by order of the court, shall be returned . . . ."

While he does not deny that aircraft can be forfeited under the statute, Graybill contends that the proviso "unless forfeited by court order" refers to an order rendered pursuant to a civil proceeding in rem against the aircraft, and does not include sentences imposed upon offenders as part of criminal proceedings.

Graybill relies on *United States v. Poliastrine*, 8 Alaska Rpts. 104 (D.Ak.1929),

that section does not provide for forfeiture of the aircraft. Forfeiture is provided for in AS 16.05.100, which provides:

"Guns, traps, nets, fishing tackle, boats, aircraft, automobiles or other vehicles, sleds, and other paraphernalia used in or in aid of a violation of this chapter, or rule or regulation of the department may be seized under a valid search, and all fish and game, or parts of fish and game, or nests or eggs of birds, taken, transported, or possessed contrary to the provisions of this chapter, or rule or regulation of the department shall be seized by any person designated in § 150 of this chapter. Upon conviction of the offender or upon judgment of the court having jurisdiction that the item was taken, transported, or possessed in violation of this chapter or rule or regulation of the department, all fish and game, or parts of them are forfeited to the state and shall be disposed of as directed by the court. . . . Guns, traps, nets, fishing tackle, boats, aircraft, or other vehicles, sleds, and other paraphernalia seized under the provisions of this chapter, or rule or regulation of the department, unless forfeited by order of the court, shall be returned, after completion of the case and payment of the fine, if any."

5. *Graybill v. State*, 522 P.2d 539 (Alaska 1974).

which interpreted the territorial predecessor to AS 16.05.190.<sup>6</sup> The court there said:

". . . [N]o criminal court has the jurisdiction upon conviction of an offender for violation of the act to enter a decree of forfeiture, where a forfeiture is not prescribed as part of the penalty, but such procedure can be had legally only after a full hearing upon motion and opportunity to defend." 8 Alaska at (6).

Since the penalty provision, AS 16.05.900,<sup>7</sup> applicable to the statute under which he was convicted, AS 16.05.920(a),<sup>8</sup> does not mention forfeiture as part of the prescribed penalty, Graybill argues that the state must file a separate action in rem. See *United States v. \$3,236*, 167 F.Supp. 495, 498 (D.Alaska 1958) (*dictum*).<sup>9</sup>

[1,2] Under the territorial statute, the United States Attorney was required to institute an in rem action for forfeiture of seized property.<sup>10</sup> In 1959 the Alaska legislature enacted a statute substantially sim-

6. 48 U.S.C. § 102 *et seq.*

7. AS 16.05.900(n) provided in part:

"A person who violates §§ 830, 840-895, or 920 of this chapter or any rule or regulation promulgated under this chapter is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not more than \$1,000 or by imprisonment for not more than six months, or by both . . . ."

8. See note 2, *supra*.

9. Graybill also relies on *Rubino v. State*, 301 P.2d 940 (Alaska 1964). That case is not helpful here, for there forfeiture was disallowed because the state had failed to seize Rubino's nets at the time of his arrest. Here Graybill's airplane was seized when he was arrested.

10. 48 U.S.C. § 201 provides in part:

"It shall be the duty of the United States attorney for the division . . . in which any . . . aircraft . . . has been seized because used in the transportation of any wild animal, game fish, wild bird, or part thereof, or any nest or egg of such bird, illegally bought, sold, or possessed contrary to the provisions of [this title], to institute an action in rem against it for the forfeiture thereof to the United States in any case in which the disposition of such article is not involved in a criminal prosecution."

ilar to the law applied to Graybill.<sup>11</sup> The territorial law providing for forfeiture exclusively by mandatory in rem action was specifically repealed.<sup>12</sup> Thus Graybill's reliance on Alaska territorial cases is misplaced. [While we agree that forfeiture is a civil remedy unless otherwise provided by statute, we believe that AS 16.05.190 as it applied to Graybill did so provide.]

AS 16.05.190<sup>13</sup> distinguishes between mandatory forfeiture of contraband (fish, game, birds) upon conviction, and discretionary forfeiture of paraphernalia (guns, traps, aircraft, etc.). Such paraphernalia "unless forfeited by order of the court, shall be returned, after completion of the case and payment of the fine, if any." Since the "case" and "fine" referred to in this section concern criminal proceedings, we find it reasonable to interpret an "order of the court" as likewise referring to orders rendered subsequent to a criminal conviction, as well as those following a separate civil action. The distinction which the legislature sought to draw between contraband and paraphernalia is between mandatory and discretionary forfeiture, not between requiring criminal or civ-

il forfeiture proceedings as Graybill contends.<sup>14</sup>

[It is commonly understood that forfeitures, even when civil in form, are basically criminal in nature.<sup>15</sup>] At least one other state has held that a statute providing for forfeitures authorized either criminal or civil proceedings.<sup>16</sup> No case from any other jurisdiction has been cited to us which requires a separate in rem proceeding to effect a valid forfeiture, absent a specific statutory provision similar to that provided under Alaska territorial law.<sup>17</sup> Furthermore, we do not understand how such a separate civil proceeding, if judicially implied, could benefit Graybill.<sup>18</sup> Any arguments available to him to prevent forfeiture could have been presented in the context of his criminal trial and sentencing.<sup>19</sup> Thus we find that it was not necessary for the state to institute a separate civil in rem proceeding against Graybill's aircraft. The order of the trial judge is affirmed and the case remanded for entry of judgment in accordance with the sentence imposed.<sup>20</sup>

Affirmed.

Act No. 78 of 1946), a construction not present in the Alaska statute. The court stated in dictum that the language "may be forfeited by order of the court" referred to an order following a criminal proceeding under the Louisiana statute. 36 So.2d at 2-3. That statute has since been codified into two sections, 50 La.Rev.Stat. §§ 507, 508.

17. Appellant cites *People ex rel. Hanrahan v. One 1965 Oldsmobile*, 52 Ill.2d 37, 284 N.E.2d 646 (1972); *State v. Kaufman*, 201 N.W.2d 722 (Iowa 1972) (see Iowa Code Ann. § 751.10.3); *Commonwealth v. One 1970 2 Dr. H. T. Lincoln Automobile*, 212 Va. 597, 186 S.E.2d 270 (1972); *Vasile v. District of Columbia*, 206 A.2d 443 (D.C.App. 1972); *Gatewood v. State*, 264 Md. 301, 285 A.2d 623 (1972). In each of these cases a statute explicitly required separate forfeiture proceedings.

18. This is especially true in light of the doctrine of collateral estoppel, which would prevent retrial of the crucial issues.

19. Indeed, Graybill's counsel requested, and the court granted, the return of certain items (two pair of snowshoes, a shotgun, two pairs of coveralls, and snowpack boots) which were not properly forfeitable under the statute.

20. See note 3, *supra*.

11. Ch. 94 SLA 1950 § 23.

12. Ch. 94 SLA 1950 Art. IV, § 1; see Annot., ACLA 104b 639-10-1 (Cum.Supp.1f 18, Supp. 1959); ACLA 639-6-16.

13. Quoted note 4, *supra*.

14. Since Graybill's conviction, the legislature has clarified the statute with the enactment of the present AS 10.05.195(a), which explicitly provides for forfeiture alternatively through civil or criminal proceedings.)

15. *Boyd v. United States*, 116 U.S. 616, 634, 6 S.Ct. 524, 29 L.Ed. 746 (1886); *Compton v. United States*, 377 F.2d 408, 411 (8th Cir. 1967). Their purpose is to penalize commission of offenses, *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693, 700, 85 S.Ct. 1246, 14 L.Ed.2d 170 (1965); *United States v. One 1960 Ford Four-Door Galaxie Sedan*, 202 F.Supp. 841, 843 (E.D.Tenn.1962), and to deter future infractions. *People v. Reulman*, 62 Cal.2d 92, 41 Cal.Rptr. 290, 293 (1964).

16. *Department of Wildlife & Fisheries v. The Trawler I-Mivore*, 213 La. 956, 36 So.2d 1 (1948), holding forfeiture of a fishing trawler in a civil proceeding proper, despite the fact that it was not preceded by a criminal trial. The court relied on the separate sections of La.Act No. 143 of 1942 § 17 (as amended by

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Oregon Revised Statutes  
167.860

In addition to any other sentence it may impose, a court may require a defendant convicted under RS 11.61.140-145 to forfeit any rights of the defendant in the animal and to repay the reasonable costs incurred by any person or agency ~~prior to judgment~~ <sup>per. to judgment</sup> caring for the animal.

O.R.S.

167.862

When ~~the~~ <sup>a</sup> court orders ~~the~~ <sup>a</sup> defendant's rights in an animal to be forfeited, the court may further order that those rights be given over to an appropriate person or agency demonstrating a willingness to accept and care for the animal or to the state or an appropriate animal care agency for further disposition, in accordance with accepted practices for humane treatment of animals. This subsection shall not ~~constitute any limitation~~ constitute any limitations upon the right of the person or agency to whom rights are granted to recall or otherwise make disposition of the animal. A transfer of rights under this subsection constitutes a transfer of ownership.

Decomp  
Cahil ~~§1~~  
Code  
Penal 597(e)

A person commits the crime of confinement without food and water if the person confines any animal without a ~~sufficient~~ quantity of good and wholesome food and water, to maintain the animal in good health. sufficient

AS.4.

In case any ~~domestic~~ animal is at any time so ~~is~~ confined and continues to be without ~~proper~~ necessary food and water for more than 12 consecutive hours, it is lawful for any person, from time to time as necessary, to enter ~~into~~ ~~and upon~~ the place of confinement and to supply it with necessary food and water so long as it remains ~~so~~ confined. The ~~person~~ person is not liable for the entry and may collect the reasonable cost of the food, water and service provided from the owner of the animal. The animal is subject to enforcement of a money judgment for the ~~reasonable~~ cost.

RCWA  
9.08.010

A person commits the crime of allowing dangerous animals at large if the person recklessly allows a dangerous animal ~~to~~ to escape or run at large ~~in any place~~ so as to endanger the safety of any person

Oregon  
167.860

deprives such animal of <sup>necessary & adequate</sup> food and <sup>sufficient for good health,</sup> water <sup>for more than</sup> 24 hours

11.61.145 (b)

If there is probable cause to believe that subsection ( ) is being violated and a search warrant has been issued, a peace officer may ~~enter the premises where the animal is being kept~~ and enter the premises where the animal is being kept and impound it.

If after reasonable search the owner or person having custody of the animal cannot be found and notified of the impoundment, notice shall be posted on the premises. & a copy shall be sent ~~by certified mail~~ by ~~see~~ within 72 hours after the impoundment by certified mail to the address at which the animal was impounded.

Revised Code of  
Washington Annotated

## Confinement without food and water

16.52.100

A person commits the crime of confinement without food and water if the person

recklessly neglects to provide  
imprisons or confines any domestic animal without providing the animal sufficient food and water to promote good health.

In case any domestic animal ~~is~~ is imprisoned or confined for more than <sup>12</sup> ~~24~~ ~~hours~~ consecutive hours without sufficient food and water to promote good health, it is lawful for any person, from time to time as necessary, to supply food and water.

The person shall not be liable for entering <sup>the owner's</sup> ~~another's~~ property to supply food and water and shall be entitled to reimbursement from the owner for ~~for~~ the reasonable cost of the food ~~and~~, water, and the service provided.

The owner's failure to reimburse the provider shall subject the animal involved to attachment and sale upon execution ~~and~~ following ~~upon~~ a judgment.

~~The investigating officer may remove the animal to protective custody~~

# STATE OF ALASKA THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800

## LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

December 19, 1984

SUBJECT: Inadequately maintained animals  
(Work Order No. 14-0220)

TO: Representative M. Mike Miller

FROM: George Edwards *GE*  
Legislative Counsel

In response to your request we have prepared legislation requiring that confined animals receive sufficient food and water, that animals treated cruelly may be forfeited and that voluntary providers may not ordinarily be held liable for trespass.

AS 11.61.140 (a)(4) includes within the offense of cruelty to animals the reckless failure to feed and water. It is a class A misdemeanor.

AS 11.61.148 is a new section which provides for the forfeiture of abused animals and gives the court a simple practical means of permanently transferring the animal to more suitable owners or to state authorities.

AS 09.65.093 is another new section which authorizes an interested person to voluntarily feed a neglected animal and to collect back from the owner. It further shields the person from civil liability for reasonable conduct in entering onto another's property to aid the animal. The remaining question we have about the bill is whether the volunteer should be protected only when acting out of doors or whether it is your intent that the person should be shielded when actually entering the dwelling of another to care for an animal.

It is certainly foreseeable that a starving animal could be locked in a dwelling and in need of immediate care. However, permitting a citizen to ignore legal remedies and perhaps break into the dwelling may be inviting litigation if

Representative M. Mike Miller  
December 19, 1984  
Page 2

not disaster. As a practical matter, the presence of a suffering or poorly fed animal should provide sufficient probable cause to believe a crime is being committed to permit a magistrate to issue a search warrant for entry by the authorities. So unless there is something we've missed here, the limitation on entry probably should remain.

GWE:ojb  
J10/048