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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

13130

January 30, 1989

The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill regarding penalties for repeat theft offenses.

This bill corrects a number of inequities in the law governing repeat theft offenses, which passed the legislature last year as CSHB 461(Jud) and was signed into law as ch. 133, SLA 1988. For example, under that current law, a person previously convicted twice of misdemeanor concealment of merchandise, who is again charged with concealment of merchandise, is treated much more harshly than if the person had previously been convicted twice of felony theft. Similarly, a person convicted twice of misdemeanor theft, who is again charged with theft, is treated much more harshly than if the person had previously been convicted twice of felony concealment of merchandise.

In order to justify the increased penalties provided by ch. 133, SLA 1988, the law must be fairly and equitably structured. The attached bill provides that structure.

I urge your favorable action on this bill.

Sincerely,

Steve Cowper
Governor

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

STEVE COWPER, GOVERNOR

REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

April 29, 1989

The Honorable Jan Faiks
Alaska State Senator
P.O. Box V
Juneau, Alaska 99811

Dear Senator Faiks:


On Monday, May 1, 1989, the House will consider CSHB 130(Jud), a bill that makes technical amendments to the theft statutes. The amendments are necessary to correct constitutional problems in existing law created as a result of legislation that passed both houses unanimously last year. Because the Department of Law has serious concerns about the constitutionality of our existing theft statutes, we are hoping that CSHB 130 (Jud) will pass this year.

Any assistance you can provide in scheduling a Judiciary Committee hearing on this legislation at the earliest possible opportunity would be very much appreciated. Our concern about adoption of CSHB 130(Jud) is shared by representatives of the Anchorage Police Department who have been in frequent contact with me about the pressing need for this legislation.

For your information, I have provided you with copies of back up material prepared during the House hearings on CSHB 130 (Jud). Please let me know if you have any additional questions.

Very truly yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: 
Laurie H. Otto
Assistant Attorney General

ENHANCED CLASSIFICATION OF REPEAT THEFT OFFENSES
Comparison of Existing Law and CSHB 130 (Jud)

EXISTING STATUTE

CSHB 130

AS 11.46.220 - Concealment of Merchandise (A misdemeanor)
Enhance Charge from B misdemeanor to A misdemeanor

IF

this offense is concealment of merchandise (B misdemeanor)

AND

the defendant has 2 prior convictions for:

No	Theft 1st (B felony)	Yes
No	Theft 2d (C felony)	Yes
No	Theft 3d (A misd.)	Yes
No	Theft 4th (B misd.)	Yes
Yes	Con. mer. (C felony)	Yes
Yes	Con. mer. (A misd.)	Yes
Yes	Con. mer. (B misd.)	Yes

AS 11.46.220 - Concealment of Merchandise (C felony)
Enhance Charge from A misdemeanor to C felony

IF

this offense is concealment of merchandise (A misdemeanor)

AND

the defendant has 2 prior convictions for:

No	Theft 1st (B felony)	Yes
No	Theft 2d (C felony)	Yes
	Theft 3d (A misd.)	
No	- >\$50/<\$500	Yes
No	- credit card	Yes
No	- 3 B misd. theft	No
Yes	Con. mer. (C felony) Con.	Yes
	mer. (A misd.)	
Yes	- >50/\$500	Yes
Yes	- 3 B misd. theft	No

AS 11.46.140 - Theft 3d (A misdemeanor)
Enhance Charge from B misdemeanor to A misdemeanor
IF
this offense is theft 4th (B misdemeanor)
AND
the defendant has 2 prior convictions for:

Yes	Theft 1st (B felony)	Yes
Yes	Theft 2d (C felony)	Yes
Yes	Theft 3d (A misd.)	Yes
Yes	Theft 4th (B misd.)	Yes
No	Con. mer. (C felony)	Yes
No	Con. mer. (A misd.)	Yes
No	Con. mer. (B misd.)	Yes

AS 11.46.130 - Theft 2d (C felony)
Enhance Charge from A misdemeanor to C felony
IF
this offense is theft 3d (A misdemeanor)
AND
the defendant has 2 prior convictions for:

No	Theft 1st (B felony)	Yes
Yes	Theft 2d (C felony)	Yes
	Theft 3d (A misd.)	
Yes	- >\$50/<\$500	Yes
Yes	- credit card	Yes
No	- 3 B misd. theft	No
No	Con. mer. (C felony)	Yes
	Con. mer. (A misd.)	
No	- >\$50/<\$500	Yes
No	- 3 B misd. theft	No

*AS 11.46.120 - Theft 1st (B felony)
Enhance Charge from C felony to B felony
IF
this offense is theft 2d (C felony)
AND
the defendant has 2 prior convictions for:*

Yes	Theft 1st (B felony)	No
Yes	Theft 2d (C felony)	No
No	Con. mer. (C felony)	No

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

STEVE COWPER, GOVERNOR

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April 25, 1989

The Honorable Max Gruenberg
Alaska State Representative
P.O. Box V
Juneau, Alaska 99811

Dear Representative Gruenberg:

The Judiciary Committee substitute for HB 130 corrects problems in the theft statutes that were unintentionally created last year by passage of CSHB461(Jud), yet retains and strengthens the enhanced penalty structure that was created last year. Although the attached chart sets out the effect of the changes, it may be useful to provide you with the background of this measure.

Last session, members of the Anchorage Police Department expressed their frustration with the low penalties imposed on defendants convicted of misdemeanor thefts, even where a defendant had a significant record of theft convictions. Testimony was given in support of the bill by an Anchorage police officer who stated that he had been investigating misdemeanor thefts for over a year, and had discovered that the same people were being repeatedly arrested for theft offenses. The officer felt this was because the penalties provided for theft were inadequate and suggested that enhancing the classification for repeat theft offenses would work to deter thefts.

The legislature responded to the concerns raised by the Anchorage police and unanimously passed CSHB461(Jud). Unfortunately, the statute contained a number of internal contradictions that were not discovered during the committee hearings. After passage, the Department of Law carefully examined the statute and discovered that a person with a more serious criminal history of theft may be charged and sentenced more leniently than someone who had committed less serious thefts.

For instance, under AS 11.46.130(a)(4), a person can be convicted of second degree theft (C felony), if the person commits third degree theft and has two prior convictions for third degree theft (A misdemeanor). But, an offender who commits the exact same A misdemeanor theft offense and has two prior convictions for first degree theft (B felony) may not be convicted of second degree

theft. This disparate treatment of offenders who commit the same crime raises serious equal protection concerns.

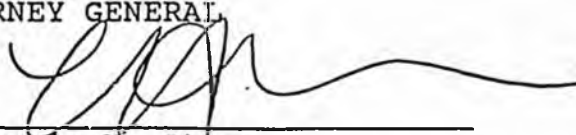
The aggravated concealment of merchandise provisions are also problematic. The statute aggravates a third misdemeanor concealment of merchandise to a felony. However, a person with a worse history of theft who then commits the exact same concealment offense is guilty only of a misdemeanor. For example, a person previously convicted of a felony theft of jewelry (that is, someone who completes the theft offenses) can only be charged with a misdemeanor for a subsequent misdemeanor concealment charge. However, a more inept thief who is repeatedly caught before getting the property out of the store is liable for felony penalties. This scheme may very well be unconstitutional as a violation of equal protection (treating similarly situated persons differently) or due process (being somewhat irrational).

The final problem relates to the effect of the legislation on offenses that are subject to presumptive sentencing. Under existing law, certain felony theft offenses are enhanced from a C felony to a B felony. However, since "all felonies are subject to presumptive sentencing, the enhanced classification for selected felonies has an effect that was unintended by the sponsors of last year's legislation. For example, under current law, a third conviction for a C felony theft offense would be enhanced to a B felony and the presumptive sentence would be six years. However, an offender with two prior convictions for first degree robbery (an A felony) or two prior convictions for first degree burglary (a B felony), who was convicted of C felony theft would not be subject to the enhanced classification law, and would receive a presumptive three year sentence.

All of the problems noted above have been corrected in CSHB 130(Jud). These changes are supported by the Anchorage Police Department, and have been reviewed and approved by Speaker Cotten. Thank you for the opportunity to explain this piece of corrective legislation.

Very truly yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: 
Laurie H. Otto
Assistant Attorney General

FISCAL NOTE

REQUEST:

Revision Date: _____	Agency Affected: <u>Department of Law</u>
Title: <u>"An Act relating to penalties for repeat theft offenders."</u>	BRU: <u>Prosecution</u>
Sponsor: <u>Rules Committee</u>	Components: <u>All</u>
Requestor: <u>Governor</u>	

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

This bill makes needed correction to the increased penalty provisions for repeat theft offenders, which passed the legislature last year as CSHB 461 (Jud). Because the changes proposed in the bill are remedial in nature, the bill will not have a fiscal impact on the Department of Law.

Prepared by: Richard L. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: November 16, 1988
 Approved by Commissioner: Grace Berg Squaible, Atty. General Date: November 16, 1988
 Agency: Department of Law

Distribution (by preparer): • 5/4/89 talked to D. Pegues - Jud CS makes no change in fiscal impact.
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

CFrasca

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to penalties for repeat theft offenses."
 Sponsor: Rules Committee
 Requestor: Governor

Agency Affected: Dept. of Administration
 BRU: Public Defender Agency
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See attached analysis.

Prepared by: John Salem, Act. Public Defender
 Division: Public Defender Agency

Phone: 279-7541
 Date: Dec. 19, 1988

Approved by Commissioner: John M. Andrews
 Agency: Administration

Date: 12/22/88

Distribution (by preparer):

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

BILL VERSION: HB 130
PUBLISH DATE: HOUSE 1/30/89

FISCAL NOTE

REVISION:

Revision Date: _____
Title: "An Act relating to penalties for repeat theft offenses."
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Administration
BRU: Office of Public Advocacy
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE						
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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						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Brant McGee, Public Advocate
Division: Office of Public Advocacy

Phone: 274-1684
Date: Dec. 22, 1988

Approved by Commissioner: John Andrews
Agency: Department of Administration

Date: 12/23/88

Distribution (by preparer):

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