

SB

5

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 1/26/99

FURTHER: Finance

Date of 5-Day Notice: 1/28/99
 (in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: _____

Judiciary Committee considered

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 5

"An Act relating to the crime of misprision of felony."

and recommends:

be replaced with _____ CS SB 5 (Jud)

adopt previous _____ CS _____

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to the _____ Committee

Senate Bill:
 same title
 new title
 House Bill:
 same title
 technical title
 new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
CHAIR:		CHAIR: <i>[Signature]</i>			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. CSSSSB 5 (JUD)

Revision Date/Time (Note if correction)	Dept. Affected
Title	BRU
of felony.	Component
Sponsor	Component Serial No.
Requester	

An Act relating to the crime of misprison of felony.
 Senator Pearce
 Senate Judiciary Committee

Law
 Criminal Division; Civil Division
 1st-4th Judicial Districts; Criminal Appeals/Special Lit; Human Services
 2198/99/2261/79/01/03/08

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*****	*****	*****	*****	*****	*****

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	*****	*****	*****	*****	*****	*****

Estimate of any current year (FY99) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

CSSSSB 5 (JUD) would make it a class A misdemeanor to witness the commission of an unclassified felony against a person or arson in the 1st degree, or having knowledge of the actual commission of an unclassified felony against a person or arson in the 1st degree by another, and not reporting it to law enforcement.

The Department of Law has no way to estimate how many cases this new offense might generate. Anytime a new crime is created, there is a cost for prosecution. How much that is, however, depends on the volume of new cases. Until some experience is gained, the department cannot estimate the fiscal impact of this bill.

Prepared by Joan M. Kasson
 Division Attorney General's Office

Approved by Commissioner Bruce M. Bolger, Attorney General
 Agency Department of Law

Phone 465-5370
 Date/Time 3/5/99, 8:56 AM
 Date 3/5/99

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. CS SSSB 5 (JUD)

Revision Date/Time (Note if correction)	<u>3/4/99</u>	Dept. Affected	<u>Department of Corrections</u>
Title	<u>An Act relating to the crime of misprision of felony.</u>	BRU	<u>Administration and Operations</u>
Sponsor	<u>Senator Pearce</u>	Component	<u>All</u>
Requester	<u>Senate Judiciary Committee</u>	Component Serial No.	<u>#0694</u>

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	***	***	***	***	***	***

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	***	***	***	***	***	***

Estimate of any current year (FY99) cost: ***

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SSSB 5 would make witnessing the commission of a felony or having knowledge of the actual commission of a felony by another person a crime punishable as an A misdemeanor (up to 1 year incarceration) if not reported immediately.

Based on discussions with the Department of Law, we were unable to estimate the impact for the Department of Corrections. DOC will have to evaluate the costs after time has passed and the number of cases per year are determined and the sentences evaluated. Therefore, DOC is submitting an indeterminate fiscal at this time.

Prepared by	<u>Bruce Richards</u>	Phone	<u>465-3307</u>
Division	<u>Commissioner's Office</u>	Date/Time	<u>3/4/99 1:31 PM</u>
Approved by	<u>Commissioner Margaret M. Pugh</u>	Date	<u>3/4/99</u>
Agency	<u>Department of Corrections</u>		

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1-LS0057M
Luckhaupt
2/12/99

PEARCE
2/12/99

adopted
2/24/99
3-0

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 5()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR PEARCE

A BILL

FOR AN ACT ENTITLED

Amendments
→ adopt # 1
→ W/D #2
→ more amend #3, Helford
CS draft for specific
language vs. class.

1 "An Act relating to the crime of misprision of felony."

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

#1 Conceptual
#2
#3
#4
#5
#6
#7
#8

3 Section 1. AS 11.56 is amended by adding a new section to read:

Sec. 11.56.765. Misprision of felony. (a) A person commits the crime of misprision of felony if the person witnesses the commission ~~of a crime~~ *other than a victim* by another of arson in the first degree or a crime under AS 11.41 defined as an unclassified, class A, or class B felony or has knowledge of the actual commission by another of arson in the first degree or a crime under AS 11.41 defined as an unclassified, class A, or class B felony and does not in a timely manner report that crime to a peace officer or law enforcement agency.

(b) In a prosecution under this section,

(1) it is an affirmative defense that the defendant did not report in a timely manner because the defendant reasonably believed that ~~the~~ would have exposed the defendant to a substantial risk of physical injury;

(2) the state does not have to prove that the defendant knew the

1 classification or degree of the crime not reported or that the crime was defined under
2 AS 11.41.

3 (c) Misprision of felony is a

4 (1) class A misdemeanor if the crime not reported is arson in the first
5 degree or an unclassified felony offense under AS 11.41; or

6 (2) class B misdemeanor if the crime not reported is a class A or a
7 ~~class B felony~~ offense under AS 11.41.

Handwritten mark: a stylized signature or initials followed by an arrow pointing to the right.

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SSSB 5

Revision Date: 1/27/99
 Title: "An Act relating to the crime of misprision of felony."
 Sponsor: Senator Pearce
 Requestor: (S) JUD

Department Affected: Administration
 BRU: Legal and Advocacy Services
 Component: Public Defender Agency
 COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES	**	**	**	**	**	**
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	**	**	**	**	**	**
CAPITAL EXPENDITURES	**	**	**	**	**	**
CHANGE IN REVENUES ()	**	**	**	**	**	**

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts	**	**	**	**	**	**
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	**	**	**	**	**	**

Estimate of any current year (FY 98) cost: \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill creates a new crime if a person witnesses or has knowledge of a felony and does not immediately report that crime to the police. The crime is a C felony if the crime not reported is an unclassified, A, or B felony crime against a person; otherwise it is an A misdemeanor.

It is impossible to predict the numbers of cases that may arise under this scheme. Turning every citizen who may be an inadvertent witness into a potential felon may have huge consequences.

Challenges based upon constitutional rights of privacy and protections against self-incrimination are certain. Problems of proof concerning what "knowledge" the accused possessed, what level of crime existed, and the interplay of evidentiary privileges all pose serious challenges to enforcement.

Prepared by: Barbara Brink, Director
 Division: Public Defender Agency

Phone: (907) 264-4414
 Date: _____

Approved by Commissioner: Bob Poe
 Agency: Department of Administration

Date: 2/3/99

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SSSB 5

Revision Date/Time (Note if correction) _____ Dept. Affected Administration _____
 Title "An Act relating to the cr crime of mis prison BRU Legal and Advocacy Services
 of felony..... Component Office of Public Advocacy
 Sponsor Senator Pearce
 Requester (S) JUD Component Serial No. 43

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services
Travel
Contractual
Supplies
Equipment
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING
CAPITAL EXPENDITURES
CHANGE IN REVENUES ()

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	..	..	..	..	..	..
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	..	..	..	..	..	..

Estimate of any current year (FY99) cost: \$ _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The Office of Public Advocacy is currently unable to provide precise cost data.

Prepared by Brant McGee, Public Advocate Phone 269-3500
 Division Office of Public Advocacy Date/Time _____
 Approved by Commissioner Robert Poe Jr. Date 2/3/99
 Agency Administration

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SSSB5

Revision Date _____ Dept. Affected Alaska Court System
 Title Misprision of Felony BRU Alaska Court System
 Component Trial Courts
 Sponsor Sen. Pearce
 Requester Senate Judiciary Component Serial No. 769

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY99) cost: None

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

Under SSSB 5, a person commits the crime of misprision of a felony if he or she witnesses or has knowledge of the commission of a felony and fails to report the crime immediately. Depending on the severity of the felony witnessed or learned of, misprision of a felony is either a class C felony or a class A misdemeanor. The impact this legislation will have on the court system will depend on the extent to which people are actually charged under the law. Prosecutors could either charge this offense routinely or rarely. The crime would rarely be charged if it were primarily used as a law enforcement tool designed to get people to report crimes or to participate in criminal investigations. Because the Department of Law has not estimated a specific impact, this fiscal note is indeterminate. However, should the impact prove significant, the court system may return to the legislature for additional funding.

Prepared by: Doug Wooliver, Administrative Attorney Phone: 264-8265
 Agency: Alaska Court System Date/Time: 2/2/99 2:41 PM
 Approved by: Stephanie J. Cole, Administrative Director Date: 2/2/99
 Agency: Alaska Court System

FISCAL NOTE

**STATE OF ALASKA
1999 LEGISLATIVE SESSION**

BILL NO. SSSB 5

Revision Date/Time (Note if correction)	Dept. Affected	Law
Title <u>An Act relating to the crime of misprison</u>	BRU	Criminal Division; Civil Division
of felony.	Component	1st-4th Judicial Districts; Criminal
Sponsor <u>Senator Pearce</u>		Appeals/Special Lit; Human Services
Requester <u>Senate Judiciary Committee</u>	Component Serial No.	<u>2198/99/2261/79/01/03/08</u>

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*****	*****	*****	*****	*****	*****

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	*****	*****	*****	*****	*****	*****

Estimate of any current year (FY99) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SSSB 5 would make witnessing the commission of a felony or having knowledge of the actual commission of a felony by another, and not reporting it to law enforcement, itself a crime.

The Department of Law has no way to estimate how many cases this new offense might generate. Anytime a new crime is created, there is a cost for prosecution. How much that is, however, depends on the volume of new cases. Clearly, the broader definition of "misprison" in this bill would generate more cases than would another version introduced in the house (HB 34), however, until some experience is gained, the department cannot estimate the fiscal impact of either bill.

Prepared by Joan M. Kasson *Joan M. Kasson*
 Division Attorney General's Office
 Approved by Commissioner Bruce M. Batelbo *Bruce M. Batelbo*
 Agency Department of Law

Phone 465-5370
 Date/Time 2/2/99, 11:38 AM
 Date 2/2/99

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SSSB 5

Revision Date/Time (Note if correction) _____ Dept. Affected Department of Corrections
 Title An Act relating to the crime of misprision of BRU Administration and Operations
felony. Component All
 Sponsor Senator Pearce
 Requester Senate Judiciary Committee Component Serial No. #0694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	***	***	***	***	***	***

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	***	***	***	***	***	***

Estimate of any current year (FY99) cost: ***

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SSSB 5 would make witnessing the commission of a felony or having knowledge of the actual commission of a felony by another person a crime punishable as a C felony (up to 5 years incarceration) or an A misdemeanor (up to 1 year incarceration) if not reported immediately.

Based on discussions with the Department of Law, we were unable to estimate the impact for the Department of Corrections. While quite certain there will be an impact, DOC will have to evaluate the costs after some time has passed and the number of cases per year and their sentences can be evaluated. Therefore, DOC is submitting an indeterminate fiscal at this time.

Prepared by Bruce Richards Phone 465-3307
 Division Commissioner's Office Date/Time 2/2/99 3:59 PM
 Approved by Commissioner Margaret M. Pugh Date 2/2/99
 Agency Department of Corrections

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1-LS0057AN ✓
Luckhaupt
2/24/99

*adopted
moved
3-3-99*

*Taylor
2/25/99*

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 5(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

**Offered:
Referred:**

Sponsor(s): SENATOR PEARCE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the crime of misprision or felony."**

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

3 *** Section 1.** AS 11.56 is amended by adding a new section to read:

4 **Sec. 11.56.765. Misprision of felony.** (a) A person, other than the victim,
5 commits the crime of misprision of felony if the person witnesses the commission by
6 another of murder in the first degree, murder in the second degree, kidnapping, sexual
7 assault in the first degree, sexual abuse of a minor in the first degree, or arson in the
8 first degree or has knowledge of the actual commission by another of murder in the
9 first degree, murder in the second degree, kidnapping, sexual assault in the first degree,
10 sexual abuse of a minor in the first degree, or arson in the first degree and does not
11 in a timely manner report that crime to a peace officer or law enforcement agency.

12 (b) In a prosecution under this section,

13 (1) it is an affirmative defense that the defendant did not report in a
14 timely manner because the defendant reasonably believed that doing so would have
15 exposed the defendant to a substantial risk of physical injury;

L

- 1 (2) the state does not have to prove that the defendant knew the degree
- 2 of the crime not reported.
- 3 (c) Misprision of felony is a class A misdemeanor.

ALASKA PUBLIC DEFENDER AGENCY

900 West Fifth Avenue, Suite 200
Anchorage, Alaska 99501

Tel: (907) 264-4400
Direct line: 264-4412
Fax: (907) 269-5476
e-mail: Blair_Mccune@admin.state.ak.us

FAX

TO: Sen. Drue Pearce
Fax No.: 465-3872

Sen. Robin Taylor
Fax No.: 465-3922

FROM: Blair McCune, Deputy Public Defender 

RE: SB 5 - Misprison of Felony

DATE: February 10, 1999

=====

I wanted to send down some more information about this bill. I sent some materials down just before the last hearing. (I'm sorry I did not send this material directly to Sen. Pearce in advance of the last hearing. I was really busy and have to admit that I only did the research the morning of the hearing.)

As I said last time, I think that a problem with the bill will be how it interacts with the privilege against self-incrimination. (5th Amendment, U.S. Constitution; Art. I, § 9, Alaska Constitution) A defendant who has any "reasonable possibility" of being criminally responsible for the felony has a privilege to refuse to report as required by the bill. It seems unfair that someone in cahoots with the felon has a privilege to refuse to report, but someone who has nothing to do with it can get into trouble.

There was also some discussion about what current statutes might cover failing to report a felony. The statute that comes to my mind is Hindering Prosecution, AS 11.56.770. I have attached a copy. I think that is a broad statute that covers a lot of activity. Also, Alaska's accomplice, solicitation, and conspiracy statutes are broadly written. People who associate themselves with

criminal activity can be (and are) convicted under these statutes. AS 11.16.110 (Accomplice statute -- Legal accountability based on conduct of another); AS 11.31.110 (Solicitation); and AS 11.31.120 (Conspiracy).

Because of these statutes, I do not think an Alaska prosecutor would necessarily throw up her hands like the Nevada prosecutor did in the recent case involving the murder of the 7 year old girl. As I understand it from the press reports, the young man who knew about the child being killed helped the other young man drive back to California. "Rendering assistance" in this way could easily violate Alaska's Hindering Prosecution statute.

I believe that there was a similar case recently in Alaska in which the Dept. of Law did find a way of prosecuting individuals who were only peripherally involved in a serious crime. The Public Defender Agency represented the young man who was convicted of murder in shooting the school principal and another student in Bethel. We did not represent the other young men, but I understand from reading the newspapers that two young men were prosecuted on the theory that they aided or encouraged or conspired with the defendant in the murder case even though they did not directly participate in the shooting.

Finally, Sen. Taylor noted a passage from the materials I sent down about the difference between the moral and criminal laws that cover situations like this. That reminded me of a famous law review article by Justice Oliver Wendell Holmes on this subject just over 100 years ago. Justice Holmes made the following observation about what he saw as the limitations of the law:

I do not say that there is not a wider point of view from which the distinction between law and morals becomes of secondary or no importance ... But ... If you want to know the law and nothing else, you must look at it as a bad man, who cares only for the material consequences which such knowledge enables him to predict, not as a good one, who finds his reasons for conduct, whether inside the law or outside of it, in the vaguer sanctions of conscience.

Oliver W. Holmes, The Path of the Law, 10 Harv. L. Rev. 457, 459 (1897)

I think, in the 100 years since this article was written, rightly or wrongly, we've moved quite a ways away from Justice Holmes' theory of the law.

Citation/Title

AK ST § 11.56.770, Hindering prosecution in the first degree

4313 Alaska Stat. § 11.56.770

WEST'S ALASKA STATUTES
TITLE 11. CRIMINAL LAW
CHAPTER 56. OFFENSES AGAINST PUBLIC ADMINISTRATION
ARTICLE 5. OBSTRUCTION OF PUBLIC ADMINISTRATION

Current through 1998 2nd Reg. Sess. and 1st Sp. Sess.

§ 11.56.770. Hindering prosecution in the first degree

(a) A person commits the crime of hindering prosecution in the first degree if the person renders assistance to a person who has committed a crime punishable as a felony with intent to

(1) hinder the apprehension, prosecution, conviction, or punishment of that person; or

(2) assist that person in profiting or benefiting from the commission of the crime.

(b) For purposes of this section, a person "renders assistance" to another if the person

(1) harbors or conceals the other person;

(2) warns the other person of impending discovery or apprehension;

(3) provides or aids in providing the other person with money, transportation, a dangerous instrument, a disguise, or other means of avoiding discovery or apprehension;

(4) prevents or obstructs, by means of force, threat, or deception, anyone from performing an act which might aid in the discovery or apprehension of the other person;

(5) suppresses by an act of concealment, alteration, or destruction physical evidence which might aid in the discovery or apprehension of the other person; or

(6) aids the other person in securing or protecting the proceeds of the crime.

(c) Hindering prosecution in the first degree is a class C felony.

Search this disc for cases citing this section.

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99501-0106 Phone (907) 277-0515 Fax (907) 272-5355



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Pres. Aleutian Islands Chapter

Senator Pearce
Alaska State Legislature
State Capital
Juneau, Alaska 99801-1182

February 19, 1999

RECEIVED

FEB 22 1999

Ans'd.....

Dear Senator Pearce,

At a recent meeting of the APOA Board of Directors, we unanimously agreed to endorse SB 5.

Please contact us if there is anything we can do to assist you with this bill as it proceeds through the legislative process. You may contact us at the APOA office in Anchorage at 277-0515.

Thank you for sponsoring this legislation.

Sincerely,

John Charbonneau

State President

Alaska Peace Officers Association

SUBSTANTIVE CRIMINAL LAW

Criminal Practice Series

By

WAYNE R. LaFAVE

David C. Baum Professor of Law and
Professor in the Center for Advanced Study,
University of Illinois

and

AUSTIN W. SCOTT, JR.

Late Professor of Law,
University of Colorado

Volume 2

Sections 6.1 to End

APPENDICES—TABLES—INDEX

ST. PAUL, MINN.
WEST PUBLISHING CO.
1986

information in certain circumstances.⁶⁶ Some other states include aid in the nature of securing the proceeds of the crime,⁶⁷ while several other states instead follow the Model Penal Code approach⁶⁸ by making activity of that general type the separate offense of aiding consummation of crime.⁶⁹

The great majority of these statutes do not give special attention to aid given to a family member. Some, however, recognize an exception in the case of aid given to a relative.⁷⁰ A few others strike a compromise by providing that the fact the person aided was a relative reduces the grade of the aider's offense.⁷¹



WESTLAW REFERENCES

110K82

➔ (b) **Misprision of Felony.**⁷² Misprision of felony consisted of a failure to report or prosecute a known felon.⁷³ It was sometimes said also to include a failure to prevent the commission of a felony,⁷⁴

§ 710-1028; Mc.Rev.Stat. Ann. tit. 17-A, § 763; Vernon's Ann. Mo. Stat. § 575.030; Mont. Code Ann. 45-7-303; Neb. Rev. Stat. § 28-204; N.H. Rev. Stat. Ann. 642:3; N.J. Stat. Ann. 2C:29-3; N.Y.—McKinney's Penal Law § 205.60; Or. Rev. Stat. 162.325; Utah Code Ann. 1963, 76-8-306; West's Rev. Code Wash. Ann. 9A.76.050; Wyo. Stat. 1977, § 6-5-201.

60. Ark. Stats. § 41-2805; Iowa Code Ann. § 719.3; Neb. Rev. Stat. § 28-204; N.J. Stat. Ann. 2C:29-3; N.D. Cent. Code 12.1-08-03; Pa. Cons. Stat. Ann. tit. 18, § 5105.

67. Alaska Stat. 11.56.770; Conn. Gen. Stat. Ann. § 53a-165; Del. Code tit. 11, § 1244; Mc.Rev. Stat. Ann. tit. 17-A, § 763; N.J. Stat. Ann. 2C:29-3; N.Y.—McKinney's Penal Law § 205.60; Or. Rev. Stat. 162.325.

68. Model Penal Code § 242.4.

69. Ariz. Rev. Stat. § 13-2408; Ark. Stats. § 41-2806; Hawaii Rev. Stat. § 710-1018; Neb. Rev. Stat. § 28-205; N.H. Rev. Stat. Ann. 642:4; N.D. Cent. Code 12.1-08-04; Pa. Cons. Stat. Ann. tit. 18, § 5107.

70. Ala. Code 1975, § 13A-10-44 (spouse, parent, child, sibling); West's Fla. Stat. Ann. § 777.03 (spouse, parent, child, sibling, grandparent, grandchild); West's Ann. Ind. Code 35-44-3-2 (spouse, parent, child); Iowa Code Ann. § 703.3 (spouse); Minn. Stat. Ann. § 609.495 (spouse, parent, child); N.M. Stat. Ann. 1978, § 80-22-4 (spouse, parent, child, sibling, grandparent, grandchild); Va. Code 1950, § 18.2-19 (spouse, parent, child, sibling, grandparent, grandchild); Wis. Stat. Ann. 940.47 (spouse, parent, child, sibling, grandparent,

grandchild); Wyo. Stat. 1977, § 6-5-201 (misdemeanor aid only; parent, child, spouse, sibling, grandparent, grandchild).

71. Ark. Stats. § 41-2805 (spouse, parent, child, sibling); N.J. Stat. Ann. 2C:29-3 (spouse, parent, child); West's Rev. Code Wash. Ann. 9A.76.080 (spouse, parent, child, sibling, grandparent, grandchild); Wyo. Stat. 1977, § 6-5-201 (felony; parent, child, spouse, sibling, grandparent, grandchild).

72. See Allen, *Misprision*, 76 L.Q. Rev. 40 (1962); Glazebrook, *Misprision of Felony—Shadow or Phantom?*, 8 Am. J. Legal Hist. 189, 293 (1964); Glazebrook, *How Long Then is the Arm of the Law to Be?*, 25 Mod. L. Rev. 301 (1962); Goldberg, *Misprision of Felony: An Old Concept in New Context*, 52 A.B.A.J. 148 (1966); Howard, *Misprisions, Compoundings and Compromises*, 1959 Crim. L. Rev. 750 (1959); Yahuda, *Misprision of Felony*, 106 Sol. J. 124 (1962); Comment, 28 U. Fla. L. Rev. 199 (1975).

73. 1 J. Bishop, *Criminal Law* § 717 (9th ed. 1923). *Popo v. State*, 38 Md. App. 520, 382 A.2d 880 (1978), affirmed in part, reversed in part 284 Md. 309, 390 A.2d 1054 (1979), states that for a misprision conviction the necessary elements are: (1) knowledge of the felony; (2) a reasonable opportunity to disclose without risk of harm; and (3) concealment of the felony, but that prior conviction of the felon is unnecessary.

74. 1 J. Bishop, *Criminal Law* § 717 (9th ed. 1923).

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although this view appears to be erroneous.⁷⁵ One was not guilty of this common law misdemeanor if he was accountable for the felony as either a principal or accessory before the fact.⁷⁶

It is doubtful whether this offense ever had a meaningful existence beyond the textbook writers.⁷⁷ The offense was said to be "practically obsolete" in England almost a century ago,⁷⁸ and the few prosecutions in that country in recent years have been limited to the most extreme situations.⁷⁹ Doubt has been expressed as to whether this offense was ever inherited by the United States as a part of the common law.⁸⁰ While "it may be the duty of a citizen to accuse every offender, and to proclaim every offense which comes to his knowledge, . . . the law which would punish him in every case for not performing this duty is too harsh for man."⁸¹

In virtually all of the modern recodifications, a misprision statute has not been included.⁸² There is a misprision of felony statute in the United States Code,⁸³ but it is not a true misprision statute in that it requires an act of concealment in addition to failure to disclose.⁸⁴ Even this statute has fallen into disuse,⁸⁵ and would be eliminated from the

75. G. Williams, *Criminal Law: The General Part* 422 (2d ed. 1961).

76. 1 J. Bishop, *Criminal Law* § 717 (9th ed. 1923). Cf. *State v. Caroon*, 274 S.C. 316, 262 S.E.2d 918 (1980) (no self-incrimination defense to misprision charge unless defendant was an accessory to or principal in the felony concealed).

77. Glazebrook, *supra* note 72.

78. 2 J. Stephen, *History of the Criminal Law of England* 238 (1883).

79. E.g., *Sykes v. Director of Public Prosecutions*, [1961] 3 All E.R. 93, involving the failure to disclose knowledge of the theft of pistols, submachine guns and ammunition.

80. *Marbury v. Brooks*, 20 U.S. 558, 5 L.Ed. 522 (1822) (dictum); *Holland v. State*, 302 So.2d 808 (Fla.App.1974); *Pope v. State*, 284 Md. 309, 396 A.2d 1954 (1979); *People v. Lefkowitz*, 294 Mich. 263, 293 N.W. 642 (1940); 54 *Harv.L.Rev.* 506 (1941). But see *State v. Carson*, 274 S.C. 316, 262 S.E.2d 918 (1980) (common law offense of misprision of felony exists in the state).

81. *Marbury v. Brooks*, 20 U.S. 556, 5 L.Ed. 522 (1822).

82. The exception is S.D.Cod.Laws 22-11-12, making it an offense where one, "having knowledge which is not privileged, of the commission of a felony, conceals the same, or does not immediately disclose such felony, with the name of the perpetrator thereof."

83. 18 U.S.C.A. § 4.

84. *United States v. Ciambro*, 750 F.2d 1416 (9th Cir.1984) (thus this crime not committed by defendant when he disclosed some knowledge about counterfeiting operation, but withheld additional information because the government would not pay him for the information); *United States v. Davila*, 698 F.2d 715 (5th Cir. 1983); *United States v. Johnson*, 546 F.2d 1226 (6th Cir.1977).

In *United States v. Daddano*, 432 F.2d 1119 (7th Cir.1970), the court thus rejected the defendants' contention that the statute could not be applied to them because it would compel them to be witnesses against themselves in that if they reported their information about the bank robbery they could reason that the information could lead to their own conviction of being accessories after the fact.

Compare *United States v. Kub*, 641 F.2d 672 (7th Cir.1976), holding that defendants who knowingly received stolen money following its concealment could not be charged under the misprision statute for failure to disclose the underlying robbery, as the object of the Fifth Amendment privilege against self-incrimination is that a person "not be compelled to give information which might tend to show he himself has committed a crime."

85. 1 National Comm'n on Reform of Federal Criminal Laws, Working Papers 530 n. 5 (1970).

proposed new federal criminal code in favor of the more common hindering of law enforcement offense.⁸⁶



WESTLAW REFERENCES

misprison +2 felon*

(c) **Compounding Crime.** Compounding crime consists of the receipt of some property or other consideration in return for an agreement not to prosecute or inform on one who has committed a crime.⁸⁷ There are three elements to this offense at common law and under the typical compounding statute: (1) the agreement not to prosecute; (2) knowledge of the actual commission of a crime; and (3) the receipt of some consideration.

The agreement is essential.⁸⁸ Thus, if a criminal returns or gives property to the victim or another merely in the hope that the other person will not commence prosecution, there is no compounding.⁸⁹ Modern statutes vary as to what kind of agreement is necessary. An agreement not to seek or initiate prosecution will usually suffice,⁹⁰ but some of the statutes in the modern recodifications recognize other possibilities as well. Among them are agreements to abandon a prosecution,⁹¹ to refrain from aiding a prosecution,⁹² to withhold evidence⁹³ or procure the absence of witnesses,⁹⁴ to conceal the offense,⁹⁵ or to not report the crime.⁹⁶

86. National Comm'n on Reform of Federal Criminal Law, Final Report—Proposed New Federal Criminal Code § 1303 (1971).

87. 4 W. Blackstone, supra note 1, at 133.

88. *Austin v. Feron*, 289 Ill.App. 528, 7 N.E.2d 476 (1937).

89. *Fidelity & Deposit Co. v. Grand National Bank*, 69 F.2d 177 (8th Cir.1934).

90. Ala.Code 1975, § 13A-10-7; Alaska Stat. 11.56.790; Ariz.Rev.Stat. § 13-2405; Del.Code tit. 11, § 1246; West's Fla.Stat. Ann. § 843.14; Ga.Code § 28-2804; Hawaii Rev.Stat. § 710-1013; Ill.—S.H.A. ch. 38, § 32-1; Iowa Code Ann. § 720.1; Kan. Stat. Ann. 21-3807; Ky.Rev.Stat. 519.030; Vernon's Ann.Mo.Stat. § 575.020; Mont. Code Ann. 45-7-306; Neb.Rev.Stat. § 28-301; N.H.Rev.Stat. Ann. 642:5; N.J.Stat. Ann. 2C:29-4; N.M.Stat. Ann.1978, § 30-22-6; N.Y.—McKinney's Penal Law § 216.45; S.D.Cod.Laws 22-11-10; Va. Code 1950, § 18.2-462; West's Rev.Code Wash. Ann. 9A.78.100; Wis.Stat. Ann. 846.57; Wyo.Stat.1977, § 6-5-203.

91. Del.Code tit. 11, § 1246; Ohio Rev. Code § 2921.21; Vernon's Tax.Code Ann., Penal Code § 38.06.

92. Alaska Stat. 11.56.790; Ga.Code § 28-2604; Ill.—S.H.A. ch. 38, § 32-1; Iowa Code Ann. § 720.1; Kan.Stat. Ann. 21-3807; Vernon's Ann.Mo.Stat. § 575.020; Wis.Stat. Ann. 846.57.

93. Alaska Stat. 11.56.790; West's Fla. Stat. Ann. § 843.14; Iowa Code Ann. § 720.1; Vernon's Ann.Mo.Stat. § 575.020; N.M.Stat. Ann.1978, § 30-22-6; Va.Code 1950, § 18.2-462; Wyo.Stat.1977, § 6-5-203.

94. Wyo.Stat.1977, § 6-5-203.

95. West's Fla.Stat. Ann. § 843.14; Iowa Code Ann. § 720.1; Vernon's Ann.Mo.Stat. § 575.020; N.M.Stat. Ann.1978, § 30-22-6; Va.Code 1950, § 18.2-462; Wyo.Stat.1977, § 6-5-203.

96. Ala.Code 1975, § 13A-10-7; Ariz.Rev.Stat. § 13-2405; Ark.Stats. § 41-2807; Hawaii Rev.Stat. § 710-1013; Mont.Code Ann. 45-7-305; Neb.Rev.Stat. § 28-301; N.J.Stat. Ann. 2C:29-4; Or.Rev.Stat. 162.335; Pa.Cons.Stat. Ann. tit. 18, § 5108; S.D.Cod.Laws 22-11-10.



Official Business

Alaska State Legislature

State Capitol
Juneau, AK 99801-1182

Sponsor Statement

SB 5

“An Act relating to the crime of misprision of felony.”

A person commits the crime of “misprision” if he/she witnesses or has knowledge of a felony crime committed against another person, and fails to immediately report it to a peace officer or law enforcement agency. This is sometimes known as the “Good Samaritan Law.”

This bill was drafted in response to the Las Vegas incident: A 7 year old girl was raped and murdered in a casino restroom. A college student witnessed his friend committing the crime, but he walked away and did not report it. He was not charged with any crime because Nevada does not have a “Good Samaritan Law.”

Senate Bill 5 will make it a class C felony if the crime not reported is a violent felony, as described in AS 11.41, or arson in the first degree. It will be considered a class A misdemeanor if the crime not reported is a felony offense other than the previously mentioned felonies.

OCT 28 1998

105TH CONGRESS
2D SESSION

H. R. 4531

To amend the Child Abuse Prevention and Treatment Act to require States receiving funds under section 106 of such Act to have in effect a State law providing for a criminal penalty on an individual who fails to report witnessing another individual engaging in sexual abuse of a child.

RECEIVED
JAN 27 1999

Ans'd.....

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 9, 1998

Mr. LAMPSON (for himself, Mr. SANDLIN, and Mr. CRAMER) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To amend the Child Abuse Prevention and Treatment Act to require States receiving funds under section 106 of such Act to have in effect a State law providing for a criminal penalty on an individual who fails to report witnessing another individual engaging in sexual abuse of a child.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Sherrice Iverson Act".

1 SEC. 2. REQUIREMENT ON STATES RECEIVING GRANTS FOR
2 CHILD ABUSE AND NEGLECT PREVENTION
3 AND TREATMENT PROGRAMS.

4 (a) IN GENERAL.—Section 106(b)(2) of the Child
5 Abuse Prevention and Treatment Act (42 U.S.C.
6 5106a(b)(2)) is amended—

7 (1) in subparagraph (C), by striking “and” at
8 the end;

9 (2) in subparagraph (D), by striking the period
10 at the end and inserting “; and”; and

11 (3) by adding at the end the following:

12 “(E) an assurance in the form of a certifi-
13 cation by the chief executive officer of the State
14 that the State has in effect and is enforcing a
15 State law providing for a criminal penalty on an
16 individual 18 years of age or older who fails to
17 report to a State or local law enforcement offi-
18 cial that the individual has witnessed another
19 individual in the State engaging in sexual abuse
20 of a child.”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 subsection (a) shall take effect on December 31, 2004.

○

Teen gets life for murdering girl, 7, in casino

By TIM DAHLBERG

The Associated Press

LAS VEGAS — A former honor student avoided the death penalty by pleading guilty Tuesday to molesting and strangling a 7-year-old girl in a casino toilet stall.

Under a plea bargain, Jeremy Strohmeyer, 19, will go to prison for the rest of his life for the 1997 slaying of Sherrice Iverson.

The Long Beach, Calif., teen-ager agreed to the plea bargain hours before he was to go on trial, admitting that he sexually assaulted the girl with his fingers and choked her over the Memorial Day weekend at the Primadonna Casino on the California-Nevada state line.

Not only did prosecutors have his confession, but video surveillance cameras had captured Strohmeyer going into the bathroom with the little girl in a game of hide-and-seek.

District Attorney Stewart Bell said that "death verdicts are always hard to get" and that the plea assures Strohmeyer will be off the street. Strohmeyer will be sentenced next month to life in prison without parole.

Defense attorney Leslie Abramson called Strohmeyer a good boy until seven months before the killing, when "evil influences" took over his life. She listed drugs, Internet

pornography and friends like David Cash Jr., whom she suggested "is not a witness but a co-perpetrator in this case."

Cash, 19, told authorities he entered the restroom a few minutes after his friend peered over the wall of an adjoining stall and saw Strohmeyer with his hand over Sherrice's mouth, muffling her screams. Cash said he told Strohmeyer to let her go and then left the restroom.

Cash was not charged because Nevada has no "Good Samaritan" law requiring someone who witnesses a crime to try to stop it or to seek help from law enforcement.

Sherrice's mother, angered by Cash's inaction, led a petition drive that gathered more than 30,000 signatures in support of a Good Samaritan law scheduled to be introduced in Congress on Wednesday.

The case also drew attention to the safety of children in casinos. The Los Angeles girl had been left in the casino arcade with her older brother while their father, LeRoy Iverson, gambled in the early-morning hours.

Security guards said that three times, they found the girl alone and told her father to come get her.



JIM LAURIE / Las Vegas Review Journal

Former honor student Jeremy Strohmeyer, with attorney Leslie Abramson at his side, pleaded guilty Tuesday hours before his trial was to begin.

Alaska Civil Liberties Union

An Affiliate of the American Civil Liberties Union

P. O. Box 201844, Anchorage, AK 99520-1844

Phone: (907) 258-0044 Fax: (907) 258-0288 Email: akclu@alaska.net

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APR 6 1999

Ans'd.....

POSITION PAPER

To: All Members of the Alaska Senate

Date: Tuesday, April 6, 1999

Re: SB 5 - Misprision of Felony

The Alaska Civil Liberties Union sees constitutional and public policy problems with the crime of misprision of a felony, particularly as written. Most significantly, the bill runs directly afoul of the privilege against self-incrimination under the Alaska Constitution, Article I, Sec. 9, and United States Constitution, Fifth Amendment.

The current misprision of felony bill makes it a class A misdemeanor for a person to witness the commission of a serious crime and not report it. Serious crime is defined as murder, kidnapping, assault in the first degree, sexual assault and abuse in the first degree or arson. It is an affirmative defense to the misdemeanor if the person reasonably believed that they would be in a substantial risk of physical injury if they reported.

This proposed misprision statute differs from the federal statute in that 18 U.S.C.A. 4 requires not only a knowledge of the actual commission of a felony but also concealment as well. Mere failure to report a felony is not sufficient to constitute a violation under federal law.¹

The current formulation of the proposed Alaska statute has been strongly disapproved. LaFave (Wayne LaFave & Austin Scott, *Criminal Law*, (1972)) stated, "It is doubtful whether this offense [e.g., the proposed Alaska statute] ever had a meaningful existence beyond the textbook writers. The offense was said to be "practically obsolete" in England almost a century ago, and the few prosecutions in that country in recent years have been limited to the most extreme situations." Commenting on the felony misprision statute in the United States Code, which has the additional element of "concealment" of the crime, LaFave notes that even this statute has fallen into disuse. Wharton's *Criminal Law* [Charles E. Torcia, Wharton's *Criminal Law* (15th Ed.)] contains a similar opinion, noting that the crime of misprision was "wholly unsuited to American Criminal law" and that it "has come to be obsolete." Wharton's notes that even the current felony misprision statute is "entirely unnecessary" since there are crimes of obstruction and accessory after the fact which covers the same conduct.

The 5th Amendment problems are real. The crime of misprision, mandating a duty to report, runs completely afoul of this constitutional right, since the proposed statute will often compel a person to report a crime for which they also could be charged. Even though the federal statute has the additional element of "concealment," the Seventh and Ninth Circuits have declared the misprision statutes unconstitutional as applied to persons who have reasonable cause to believe they will be prosecuted themselves. *U.S. v. King*, 402 F.2d 694 (9th Cir. 1968) (if defendants had reported crime to authorities, they would risk being prosecuted as aiders or abettors); *United States v. Kuh*, 541 F.2d 672 (7th Cir. 1976) (if defendants had reported the crime they could have been prosecuted for possession of stolen goods); *United States v. Jennings*, 603 F.2d 650 (7th Cir. 1979) (report of narcotics sale would have exposed defendant to charges of solicitation of a bribe). See also *U.S. v. Davila*, 698 F.2d 715 (1983).

Public policy considerations also mandate against the passage of a misprision bill. Making a crime out of a simple failure to report may actually hinder the prosecution of some of Alaska's most serious crimes. Investigation and prosecution often depend heavily on the testimony of eyewitnesses. If those eyewitnesses are subject to the risk of prosecution if they see a crime and simply fail to report it in a timely manner, a requirement open to many interpretations, they have a Fifth Amendment right to remain silent and may well assert that privilege.

Essential fairness also mandates against a crime of misprision. An accomplice of the felon is not subject to this crime since he would have a privilege to refuse to report, but a simple bystander who saw the crime can be prosecuted.

Persons who associate themselves with criminal activity will be prosecuted. Defendants are often convicted under the accomplice liability statutes, AS 11.16.110 (legal accountability based on the conduct of another), AS 11.31.110 (solicitation) and AS 11.31.120 (conspiracy). If this misprision statute is indeed a response to the Nevada murder of a 7 year old, it is an overreaction. No Alaska prosecutor would be without tools to prosecute the witness to this murder. At the least, the witness would be charged under a hindering prosecution statute, if not also under accomplice liability. In Alaska, for example, the State has prosecuted men in the Bethel area on two occasions, 14 years apart, who were present and aided a murder in some way, even though they did not directly participate in the deaths.

The misprision statute is ill-advised. It creates a crime duplicated by other statutes, interferes with the prosecution of the state's most serious crimes, and directly conflicts with the constitutional right against self-incrimination. Legal commentators have called the misprision statute obsolete and wholly unsuited to the American justice system. This misprision bill addresses a non-existent problem, and guarantees extensive constitutional challenges to its validity.

1 The federal statute makes concealment of the crime an essential element, which the proposed Alaska statute does not do. See, e.g. *U.S. v. Warters*, C.A.5 (Tex) 1989, 885 F.2d 1266 (Affirmative step to conceal is a required element of misprision of felony; mere failure to make known does not suffice); *U.S. v. Gravitt*, C.A.5 (Ga.) 1979, 590 F.2d 123 (evidence that defendant took affirmative action to conceal crime was sufficient to sustain misprision of felony of bank robbery); *U.S. v. Johnson*, C.A. 5 (Tex.) 1977, 546 F.2d 1255 (An essential element of the offense of misprision of felony is concealment, and mere failure to report a felony is not sufficient to constitute a felony under this section): *U.S. v. King*, C.A. 9 (Cal.) 1968,402 F.2d694 (If defendant had been a passenger and not a driver of the automobile in which a person who had robbed a national bank had been taken to a place so that they could drive to another city until things "cooled off", defendant's riding in the automobile would not be an affirmative step required for conviction of knowingly and willfully concealing information concerning robbery of national bank.); *Lancey v. U.S.* C.A. 9 (Cal.) 1966, 356 F.2d 407,cert. Denied 87 S. Ct.234, 385 U.S. 922, 17 L.Ed.2d 145 (A harboring of criminal with full knowledge, may be the positive act required to constitute the required concealment, an essential of offense of misprision of a felony); *Bratton v. U.S.* , C.C.A. 10 Okla.) 1934, 73 F.2d 795 (Some meaning must have been given to the words "conceal and" as used in former S251 of this title (now this section), and indictment must have alleged more than mere failure to disclose, such a suppression of evidence, harboring of Criminal, intimidation of witnesses, or other positive act designed to conceal from authorities commission of the felony).