

SB

234

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595



Committee Members:
Senator Charlie Huggins
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Gene Therriault

Senate Judiciary Committee

MEMORANDUM

March 19, 2008

TO: Jerry Luckhaupt, Leg. Legal

FROM: Cindy Smith 

RE: CSSB234 Criminal Law/Procedure

Please prepare a final as-passed version of CSSB234 using GS2038\E and making the following amendment:

In Section 18, on page seven at line 5 and 6, delete the phrase "as determined by the court based on the circumstances of the investigation" and then adding after the word date the phrase "of issuance."

I have included a page reflecting this change for your reference! Please call me if you have any questions.

25-GS2038E
Luckhaupt
3/19/08

CS FOR SENATE BILL NO. 234(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

**Offered:
Referred:**

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to certain persons who lend money on secondhand articles; relating to**
2 **penalizing certain recidivist offenders as felons; relating to defenses for the detention**
3 **of persons suspected of committing concealment of merchandise or theft; relating to**
4 **controlled substances; relating to the determination of time of a conviction; relating to**
5 **issuance of search warrants; relating to persons found incompetent to stand trial**
6 **concerning criminal conduct; relating to criminal extradition authority of the**
7 **governor; removing the statutory bar to prosecution of certain crimes; amending Rule**
8 **37(b), Alaska Rules of Criminal Procedure, relating to execution of warrants; and**
9 **providing for an effective date."**

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

11 *** Section 1. AS 08.76.010 is amended by adding a new subsection to read:**

12 **(b) A person who lends money on secondhand articles under (a) of this**

1 section and is located in a municipality that has a population of over 5,000 shall also
2 maintain an electronic record that provides the information required by (a)(1) and (4)
3 of this section for the secondhand articles on which the person lends money. The
4 person shall submit the electronic record as required by the municipal law
5 enforcement agency.

6 * Sec. 2. AS 08.76.020 is amended to read:

7 **Sec. 08.76.020. Manner of recording entry.** The entries in the book and
8 the electronic record required by AS 08.76.010 shall appear in chronological order
9 and, when made in a book, in ink or indelible pencil. Blank lines may not be left
10 between entries. Obliterations, alterations, or erasures may not be made. Corrections
11 shall be made by drawing a line [IN INK] through the entry without destroying its
12 legibility, and, when made in a book, the line shall be drawn in ink. The book
13 shall be open to the inspection of a peace officer at reasonable times.

14 * Sec. 3. AS 11.41.220(a) is amended to read:

15 (a) A person commits the crime of assault in the third degree if that person

16 (1) recklessly

17 (A) places another person in fear of imminent serious
18 physical injury by means of a dangerous instrument;

19 (B) causes physical injury to another person by means of a
20 dangerous instrument; or

21 (C) while being 18 years of age or older

22 (i) causes physical injury to a child under 10 years of
23 age and the injury would cause a reasonable caregiver to seek medical
24 attention from a health care professional in the form of diagnosis or
25 treatment;

26 (ii) causes physical injury to a child under 10 years of
27 age on more than one occasion;

28 (2) with intent to place another person in fear of death or serious
29 physical injury to the person or the person's family member makes repeated threats to
30 cause death or serious physical injury to another person;

31 (3) while being 18 years of age or older, knowingly causes physical

1 injury to a child under 16 years of age but at least 10 years of age and the injury
2 reasonably requires medical treatment; [OR]

3 (4) with criminal negligence causes serious physical injury under
4 AS 11.81.900(b)(56)(B) to another person by means of a dangerous instrument; or

5 (5) violates AS 11.41.230(a)(1) or (2) and, within the preceding 10
6 years, the person was convicted on two or more separate occasions of a crime in
7 violation of

8 (A) AS 11.41.100 - 11.41.170:

9 (B) AS 11.41.200 - 11.41.220:

10 (C) AS 11.41.230(a)(1) or (2):

11 (D) AS 11.41.280 - 11.41.282:

12 (E) AS 11.41.260 - 11.41.270:

13 (F) AS 11.41.410, 11.41.420, 11.41.436, or 11.41.438:

14 (G) a law in another jurisdiction that is similar to those
15 described in (A) - (F) of this paragraph.

16 * **Sec. 4.** AS 11.41.220 is amended by adding a new subsection to read:

17 (e) In (a)(5) of this section, the court shall consider the date of a previous
18 conviction as occurring on the date that sentence is imposed for the previous offense.

19 * **Sec. 5.** AS 11.46.230(a) is amended to read:

20 (a) In a civil or criminal action upon the complaint of a person who has been
21 detained in or in the immediate vicinity of a commercial establishment for the
22 purpose of investigation or questioning as to the ownership of merchandise, it is a
23 defense that

24 (1) the person was detained in a reasonable manner and for not more
25 than a reasonable time to permit investigation or questioning by a peace officer or by
26 the owner of the commercial establishment or the owner's agent; and

27 (2) the peace officer, owner, or owner's agent had probable cause to
28 believe that the person detained was committing or attempting to commit
29 concealment of merchandise or theft from the commercial establishment.

30 * **Sec. 6.** AS 11.46.295 is amended to read:

31 **Sec. 11.46.295. Prior convictions.** For purposes of considering prior

1 convictions in prosecuting a crime of theft under AS 11.46.130(a)(6) or
2 11.46.140(a)(3), or in prosecuting the crime of concealment of merchandise under
3 AS 11.46.220(c), a conviction for an offense under another law or ordinance with
4 similar elements is a conviction of an offense having elements similar to those of an
5 offense defined as such under Alaska law at the time the offense was committed.

6 **The court shall consider the date of a prior conviction as occurring on the date**
7 **that sentence is imposed for the prior offense.**

8 * Sec. 7. AS 11.71.170(b) is amended by adding new paragraphs to read:

9 (30) carisprodol;

10 (31) zolpidem;

11 (32) zopiclone.

12 * Sec. 8. AS 12.35.010(a) is amended to read:

13 (a) A judicial officer may issue a search warrant upon a showing of probable
14 cause, supported by oath or affirmation, and particularly describing the place to be
15 searched and the thing to be seized. **The court may issue a search warrant for a**
16 **place or property located either in the state or outside the state.**

17 * Sec. 9. AS 12.35.015(a) is amended to read:

18 (a) A judicial officer may issue a search warrant upon the sworn oral
19 testimony of a person communicated by telephone or other appropriate means, or
20 sworn affidavit transmitted by facsimile machine [IF THE JUDICIAL OFFICER
21 FINDS THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT

22 (1) THE PRESENTATION OF THE APPLICANT'S AFFIDAVIT
23 OR TESTIMONY PERSONALLY BEFORE THE JUDICIAL OFFICER WOULD
24 RESULT IN A DELAY IN OBTAINING OR EXECUTING A SEARCH
25 WARRANT; AND

26 (2) THE DELAY MIGHT RESULT IN LOSS OR DESTRUCTION
27 OF THE EVIDENCE SUBJECT TO SEIZURE OR MIGHT INTERFERE WITH
28 AN ONGOING INVESTIGATION].

29 * Sec. 10. AS 12.47.110(a) is amended to read:

30 (a) When the trial court determines by a preponderance of the evidence, in
31 accordance with AS 12.47.100, that a defendant is so incompetent that the defendant

1 is unable to understand the proceedings against the defendant or to assist in the
2 defendant's own defense, the court shall order the proceedings stayed, except as
3 provided in (d) of this section shall, [AND MAY] commit a [THE] defendant
4 charged with a felony and may commit a defendant charged with any other
5 crime to the custody of the commissioner of health and social services or the
6 commissioner's authorized representative for further evaluation and treatment until
7 the defendant is mentally competent to stand trial, or until the pending charges
8 against the defendant are disposed of according to law, but in no event longer than
9 90 days.

10 * Sec. 11. AS 12.47.110(b) is amended to read:

11 (b) On or before the expiration of the initial 90-day period of commitment,
12 the court shall conduct a hearing to determine whether or not the defendant remains
13 incompetent. If the court finds by a preponderance of the evidence that the defendant
14 remains incompetent, the court may recommit the defendant for a second period of
15 90 days. The court shall determine at the expiration of the second 90-day period
16 whether the defendant has become competent. If, at the expiration of the second 90-
17 day period, the court determines that the defendant continues to be incompetent to
18 stand trial, the charges against the defendant shall be dismissed without prejudice,
19 and continued commitment of the defendant shall be governed by the provisions
20 relating to civil commitments under AS 47.30.700 - 47.30.915 unless the defendant
21 is charged with a crime involving force against a person and the court finds that the
22 defendant presents a substantial danger of physical injury to other persons and that
23 there is a substantial probability that the defendant will regain competency within a
24 reasonable period of time, in which case the court may extend the period of
25 commitment for an additional six months. If the defendant remains incompetent at
26 the expiration of the additional six-month period, the charges shall be dismissed
27 without prejudice, and continued [EITHER CIVIL] commitment proceedings shall
28 be governed by the provisions relating to civil commitment under AS 47.30.700 -
29 47.30.915 [INSTITUTED OR THE COURT SHALL ORDER THE RELEASE OF
30 THE DEFENDANT]. If the defendant remains incompetent for five years after the
31 charges have been dismissed under this subsection, the defendant may not be

1 charged again for an offense arising out of the facts alleged in the original charges,
2 except if the original charge is a class A felony or unclassified felony.

3 * Sec. 12. AS 12.47.110 is amended by adding a new subsection to read:

4 (e) A defendant charged with a felony and found to be incompetent to
5 proceed under this section is rebuttably presumed to be mentally ill and to present a
6 likelihood of serious harm to self or others in proceedings under AS 47.30.700 -
7 47.30.915. In evaluating whether a defendant is likely to cause serious harm, the
8 court may consider as recent behavior the conduct with which the defendant was
9 originally charged.

10 * Sec. 13. AS 12.70.280(2) is amended to read:

11 (2) "governor" includes

12 (A) a person performing the functions of governor by
13 authority of the law of this state; and

14 (B) the lieutenant governor or the head of a principal
15 department in the executive branch appointed by the governor to act on
16 behalf of the governor in performing extradition duties under this
17 chapter; the appointment shall be in writing and filed with the lieutenant
18 governor;

19 * Sec. 14. AS 47.30.780 is amended to read:

20 Sec. 47.30.780. Early discharge. Except as provided in (b) of this section.
21 the [THE] professional person in charge shall at any time discharge a respondent on
22 the ground that the respondent is no longer gravely disabled or likely to cause serious
23 harm as a result of mental illness. A certificate to this effect shall be sent to the court,
24 which shall enter an order officially terminating the involuntary commitment.

25 * Sec. 15. AS 47.30.780 is amended to add a new subsection to read:

26 (b) The professional person in charge shall give the prosecuting authority 10
27 days' notice before discharging a respondent who was committed after having been
28 found incompetent to proceed under AS 12.47.110.

29 * Sec. 16. AS 12.35.015(f) is repealed.

30 * Sec. 17. AS 11.71.310 and AS 12.20.010 are repealed.

31 * Sec. 18. The uncodified law of the State of Alaska is amended by adding a new section

1 to read:

2 DIRECT COURT RULE AMENDMENT. Rule 37(b), Alaska Rules of
3 Criminal Procedure, is amended to read:

4 (b) **Execution and Return with Inventory.** The warrant shall be executed
5 and returned within 30 [10] days after its date as determined by the court based on
6 the circumstances of the investigation. However, upon sworn application made
7 before the expiration of the initial 30 [10] day period or any subsequent extension,
8 the court may for good cause extend the execution period for a reasonable time not to
9 exceed 30 [10] days. Good cause includes protecting the confidentiality of an
10 ongoing investigation and protecting a person working with law enforcement
11 authorities on an investigation. The officer taking property under the warrant

12 (1) shall give to the person from whom or from whose premises the
13 property was taken a copy of the warrant, a copy of the supporting affidavits, and
14 receipt for the property taken, or

15 (2) shall leave the copies and the receipt at the place from which the
16 property was taken.

17 The return shall be made promptly and shall be accompanied by a written inventory
18 of any property taken as a result of the search pursuant to or in conjunction with the warrant.
19 The inventory shall be made in the presence of the applicant for the warrant and the person
20 from whose possession or premises the property was taken, if they are present, or in the
21 presence of at least one credible person other than the applicant for the warrant or the person
22 from whose possession or premises the property was taken, and shall be signed by the
23 officer under the penalty of perjury pursuant to AS 09.63.020 or sworn to in front of a
24 magistrate or judge, or a notary public. The magistrate or judge or the court to which the
25 return is made shall upon request deliver a copy of the inventory to the person from whom
26 or from whose premises the property was taken and to the applicant for the warrant.

27 * **Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section
28 to read:

29 **APPLICABILITY.** (a) Sections 3, 4, 7, and 17 of this Act apply to an offense
30 occurring on or after the effective date of this Act. References to previous convictions under
31 sec. 3 of this Act apply to convictions occurring on or after the effective date of this Act.

1 (b) Section 6 of this Act applies to an offense occurring before, on, or after the
2 effective date of this Act.

3 (c) Sections 8, 9, 16, and 18 of this Act apply to search warrants applied for on or
4 after the effective date of this Act, regardless of whether the offense occurred before, on, or
5 after the effective date of this Act.

6 (d) Sections 10 - 12, 14, and 15 of this Act apply to procedures occurring after the
7 effective date of this Act, regardless of whether the offense occurred before, on, or after the
8 effective date of this Act.

9 (e) Section 13 of this Act applies to applications for criminal extraditions submitted
10 on or after the effective date of this Act, regardless of whether the offense occurred before,
11 on, or after the effective date of this Act.

12 (f) Section 5 of this Act applies to offenses occurring and actions arising on or after
13 the effective date of this Act.

14 * **Sec. 20.** This Act takes effect July 1, 2008.

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595



Committee Members:
Senator Charlie Huggins
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Gene Therriault

Senate Judiciary Committee

MEMORANDUM

March 18, 2008

TO: Jerry Luckhaupt, Leg. Legal
From: Cindy Smith *CSmith*
RE: CS for SB231 Crime Omnibus bill

Please make the following amendments to CSSB231 GS2038\C:

1. At page 2 on line one, after the word electronic delete the word database and substitute the word "record".

At page 2, at line 3 delete the phrase "make the database accessible on the Internet by" and insert the phrase "submit the electronic record as required by".

2. Replace section 3, with the amendment language attached, but include SA1 and 2 and SAM 1 and 2 as well as the listed predicates.

3. In section 6, insert "(32) zopicline" (see schedule attached).

4. In Section 17, delete the phrase "a reasonable time" and insert the phrase "30 days" on line 6 and, on line 10, delete "a reasonable time" and insert "not to exceed 30 days".

5. Change applicability sections as necessary to make the assault provisions prospective.

*** Section 1. AS 11.41.220(a) is amended to read:**

(a) A person commits the crime of assault in the third degree if that person

(1) recklessly

(A) places another person in fear of imminent serious physical injury by means of a dangerous instrument;

(B) causes physical injury to another person by means of a dangerous instrument; or

(C) while being 18 years of age or older

(i) causes physical injury to a child under 10 years of age and the injury would cause a reasonable caregiver to seek medical attention from a health care professional in the form of diagnosis or treatment;

(ii) causes physical injury to a child under 10 years of age on more than one occasion;

(2) with intent to place another person in fear of death or serious physical injury to the person or the person's family member makes repeated threats to cause death or serious physical injury to another person;

(3) while being 18 years of age or older, knowingly causes physical injury to a child under 16 years of age but at least 10 years of age and the injury reasonably requires medical treatment; [OR]

(4) with criminal negligence causes serious physical injury under AS 11.81.900(b)(56)(B) to another person by means of a dangerous instrument; or

(5) violates AS 11.41.231(a)(1) or(2) and, within the preceding 10 years, the person was convicted on two or more occasions of a crime in violation of

(A) AS 11.41.100 – 11.41.170:

(B) AS 11.41.200 – 11.41.220:

(C) AS 11.41.230(a)(1) or (2):

(D) AS 11.41.280 – 11.41.282:

(E) AS 11.41.260 – 11.41.270:

(F) a law in another jurisdiction that is similar to those described in

(A) – (E) of this paragraph.

*** Sec. 2. AS 11.41.220 is amended by adding a new subsection to read:**

(e) In (a)(5) of this section, the court shall consider the date of a previous conviction as occurring on the date that sentence is imposed for the previous offense.

Lamotrigine	2774	IV	N	Noctamid
Mazindol	1805	IV	N	Sanorex, Mazanor
Mebutamate	2800	IV	N	Capla
Medazepam	2836	IV	N	Nobrium
Mefenorex	1580	IV	N	Anorexic, Amexate, Doraci, Pondini
Meproamate	2820	IV	N	Miltown, Equanil, Mircrainin, Equageic, Mepropan
Methohexital	2264	IV	N	Brevital
Methylphenobarbital (mephobarbital)	2250	IV	N	Mebaral, mephobarbital
Midazolam	2884	IV	N	Versed
Modafinil	1680	IV	N	Provigil
Nimetazepam	2837	IV	N	Erimin
Nitrazepam	2834	IV	N	Mogadon
Nordazepam	2838	IV	N	Nordazepam, Demader, Madar
Oxazepam	2835	IV	N	Serax, Sercnid-D
Oxazolam	2839	IV	N	Serenal, Converal
Paraldehyde	2585	IV	N	Paral
Pemoline	1530	IV	N	Cylert
Pentazocine	9709	IV	N	Talwin, Talwin NX, Talacen, Talwin Compound
Pentichloral	2591	IV	N	Pentaerythritol chloral, Percilor
Phenobarbital	2285	IV	N	Luminal, Donnatal, Bettegal-S
Phentermine	1640	IV	N	Ionamin, Fastin, Adipex-P, Obe-Nix, Zentryl
Pinazepam	2883	IV	N	Domar
Pipradrol	1750	IV	N	Detaril, Stimolag Fortis
Prazepam	2764	IV	N	Centrax
Quazepam	2881	IV	N	Doral
Sibutramina	1675	IV	N	Meridia
SPA	1635	IV	N	1-dimethylamino-1,2-diphenylethane, Lefetamine
Temazepam	2925	IV	N	Restonil
Tetrazepam	2896	IV	N	Myolastan Musani
Tnazolam	2887	IV	N	Halcion
Zaleplon	2781	IV	N	Sonata
Zolpidem	2783	IV	N	Ambien, Ivadal, St'noct, Stlnox
Zopiclone	2784	IV	N	Lunesta

Back to Top

Registration Support

Toll Free Number: 1-800-882-9539

ARCOS | Career Opportunities | Chemical Program | Controlled Substance Schedules | Drugs and Chemicals of Concern
 Electronic Commerce Initiatives | Federal Register Notices | Import Export | Links | Meetings and Events | NFLIS
 Offices & Directories | On-Line Forms & Applications | Program Description | Publications | Questions & Answers | Quotas
 Reports Required by 21 CFR | Title 21 Regulations & Codified CSA
 Contact Us | Home | Hot Items | Site Map | Search | What's New



Controlled Substance Schedules > List of Controlled Substances > Schedule IV

Controlled Substances in Schedule IV

This document is a general reference and not a comprehensive list. This list describes the basic or parent chemical and does not describe the salts, isomers and salts of isomers, esters, ethers and derivatives which may also be controlled substances.

SUBSTANCE	DEA NUMBER	CSA SCH	NARC	OTHER NAMES
Alprazolam	2882	IV	N	Xanax
Barbital	2145	IV	N	Veronal, Plexonal, barbitalone
Bromazepam	2748	IV	N	Lexotan, Lexetin, Lexotanil
Eutorphanol	9720	IV	N	Stadol, Stadol NS, Torbugesic, Torbutrol
Carbamazepine	2749	IV	N	Albego, Lempidon, Paxor
Cathine	1230	IV	N	Constituent of Khat plant, (+)-norpseudoephedrine
Chloral hydrate	2480	IV	N	Beta Chlor
Chloral hydrate	2485	IV	N	Noctec
Chlordiazepoxide	2744	IV	N	Librium, Libritabs, Limbitrol, SK-Lygen
Clobazam	2751	IV	N	Urbadan, Urbanyl
Clonazepam	2737	IV	N	Klonopin, Clonopin
Clorazepate	2768	IV	N	Tranxene
Clotazepam	2752	IV	N	Trecalmo, Rize, Clozan, Veratran
Clozapolam	2753	IV	N	Akton, Lubalix, Olcadil, Sepazon
Delorazepam	2754	IV	N	
Dexfenfluramine	1670	IV	N	Redux
Dextropropoxyphene dosage forms	9278	IV	Y	Darvon, propoxyphene, Darvocet, Propacet
Diazepam	2765	IV	N	Valium, Diastat
Dichloralphenazone	2487	IV	N	Midnn, dichloralantipyrine
Diethylpropion	1810	IV	N	Tenuate, Tepanil
Difenoxin 1 mg/25 ug AISO4du	9167	IV	Y	Molofen
Estazolam	2756	IV	N	ProSom, Domnamid, Eurodin, Nuctalon
Ethchlorvynol	2540	IV	N	Placidyl
Ethinamate	2545	IV	N	Valmid, Valamin
Ethyl loflazepate	2758	IV	N	
Fencamfamin	1760	IV	N	Reactivan
Fenfluramine	1670	IV	N	Pondimin, Ponderal
Fenproporex	1575	IV	N	Gedlin, Solvolip
Fludiazepam	2759	IV	N	
Flunitrazepam	2763	IV	N	Rohypnol, Narcozep, Darkene, Roipnol
Flurazepam	2767	IV	N	Dalmane
Halazepam	2762	IV	N	Paxipam
Haloxazolam	2771	IV	N	
Ketazolam	2772	IV	N	Anxon, Loftran, Solatran, Contamex
Loprazolam	2773	IV	N	
Lorazepam	2865	IV	N	Ativan

25-GS2038VC

Luckhaupt

3/17/08

CS FOR SENATE BILL NO. 234(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE**Offered:****Referred:****Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR****A BILL****FOR AN ACT ENTITLED**

1 **"An Act relating to certain persons who lend money on secondhand articles; relating to**
2 **penalizing certain recidivist offenders as felons; relating to defenses for the detention**
3 **of persons suspected of committing concealment of merchandise or theft; relating to**
4 **the determination of time of a conviction; relating to issuance of search warrants;**
5 **relating to persons found incompetent to stand trial concerning criminal conduct;**
6 **relating to criminal extradition authority of the governor; removing the statutory bar**
7 **to prosecution of certain crimes; amending Rule 37(b), Alaska Rules of Criminal**
8 **Procedure, relating to execution of warrants; and providing for an effective date."**

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

10 *** Section 1.** AS 08.76.010 is amended by adding a new subsection to read:

11 (b) A person who lends money on secondhand articles under (a) of this
12 section and is located in a municipality that has a population of over 5,000 shall also

1 maintain an electronic database that provides the information required by (a)(1) and
2 (4) of this section for the secondhand articles on which the person lends money. The
3 person shall make the database accessible on the Internet by law enforcement
4 agencies.

5 * Sec. 2. AS 08.76.020 is amended to read:

6 **Sec. 08.76.020. Manner of recording entry.** The entries in the book and
7 the database required by AS 08.76.010 shall appear in chronological order and,
8 when made in a book, in ink or indelible pencil. Blank lines may not be left
9 between entries. Obliterations, alterations, or erasures may not be made. Corrections
10 shall be made by drawing a line [IN INK] through the entry without destroying its
11 legibility, and, when made in a book, the line shall be drawn in ink. The book
12 shall be open to the inspection of a peace officer at reasonable times.

13 * Sec. 3. AS 11 is amended by adding a new chapter to read:

14 **Chapter 21. Enhanced Penalties for Certain Offenses.**

15 **Sec. 11.21.100. Enhanced penalties for certain domestic violence offenses.**

16 If a person commits a crime involving domestic violence that is assault in the fourth
17 degree and the person has been previously convicted on two or more separate
18 occasions of felony crimes against a person under AS 11.41, then the crime is
19 increased to a class C felony, and the penalty for conviction of that crime is
20 increased to the penalty for a class C felony.

21 * Sec. 4. AS 11.46.230(a) is amended to read:

22 (a) In a civil or criminal action upon the complaint of a person who has been
23 detained in or in the immediate vicinity of a commercial establishment for the
24 purpose of investigation or questioning as to the ownership of merchandise, it is a
25 defense that

26 (1) the person was detained in a reasonable manner and for not more
27 than a reasonable time to permit investigation or questioning by a peace officer or by
28 the owner of the commercial establishment or the owner's agent; and

29 (2) the peace officer, owner, or owner's agent had probable cause to
30 believe that the person detained was committing or attempting to commit
31 concealment of merchandise or theft from the commercial establishment.

1 * **Sec. 5.** AS 11.46.295 is amended to read:

2 **Sec. 11.46.295. Prior convictions.** For purposes of considering prior
3 convictions in prosecuting a crime of theft under AS 11.46.130(a)(6) or
4 11.46.140(a)(3), or in prosecuting the crime of concealment of merchandise under
5 AS 11.46.220(c), a conviction for an offense under another law or ordinance with
6 similar elements is a conviction of an offense having elements similar to those of an
7 offense defined as such under Alaska law at the time the offense was committed.

8 **The court shall consider the date of a prior conviction as occurring on the date**
9 **that sentence is imposed for the prior offense.**

10 * **Sec. 6.** AS 11.71.170(b) is amended by adding new paragraphs to read:

11 (50) carisprodol;

12 (31) zolpidem.

13 * **Sec. 7.** AS 12.35.010(a) is amended to read:

14 (a) A judicial officer may issue a search warrant upon a showing of probable
15 cause, supported by oath or affirmation, and particularly describing the place to be
16 searched and the thing to be seized. **The court may issue a search warrant for a**
17 **place or property located either in the state or outside the state.**

18 * **Sec. 8.** AS 12.35.015(a) is amended to read:

19 (a) A judicial officer may issue a search warrant upon the sworn oral
20 testimony of a person communicated by telephone or other appropriate means, or
21 sworn affidavit transmitted by facsimile machine [, IF THE JUDICIAL OFFICER
22 FINDS THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT

23 (1) THE PRESENTATION OF THE APPLICANT'S AFFIDAVIT
24 OR TESTIMONY PERSONALLY BEFORE THE JUDICIAL OFFICER WOULD
25 RESULT IN A DELAY IN OBTAINING OR EXECUTING A SEARCH
26 WARRANT; AND

27 (2) THE DELAY MIGHT RESULT IN LOSS OR DESTRUCTION
28 OF THE EVIDENCE SUBJECT TO SEIZURE OR MIGHT INTERFERE WITH
29 AN ONGOING INVESTIGATION].

30 * **Sec. 9.** AS 12.47.110(a) is amended to read:

31 (a) When the trial court determines by a preponderance of the evidence, in

1 accordance with AS 12.47.100, that a defendant is so incompetent that the defendant
2 is unable to understand the proceedings against the defendant or to assist in the
3 defendant's own defense, the court shall order the proceedings stayed, except as
4 provided in (d) of this section shall. [AND MAY] commit a [THE] defendant
5 charged with a felony and may commit a defendant charged with any other
6 crime to the custody of the commissioner of health and social services or the
7 commissioner's authorized representative for further evaluation and treatment until
8 the defendant is mentally competent to stand trial, or until the pending charges
9 against the defendant are disposed of according to law, but in no event longer than
10 90 days.

11 * Sec. 10. AS 12.47.110(b) is amended to read:

12 (b) On or before the expiration of the initial 90-day period of commitment,
13 the court shall conduct a hearing to determine whether or not the defendant remains
14 incompetent. If the court finds by a preponderance of the evidence that the defendant
15 remains incompetent, the court may recommit the defendant for a second period of
16 90 days. The court shall determine at the expiration of the second 90-day period
17 whether the defendant has become competent. If, at the expiration of the second 90-
18 day period, the court determines that the defendant continues to be incompetent to
19 stand trial, the charges against the defendant shall be dismissed without prejudice,
20 and continued commitment of the defendant shall be governed by the provisions
21 relating to civil commitments under AS 47.30.700 - 47.30.915 unless the defendant
22 is charged with a crime involving force against a person and the court finds that the
23 defendant presents a substantial danger of physical injury to other persons and that
24 there is a substantial probability that the defendant will regain competency within a
25 reasonable period of time, in which case the court may extend the period of
26 commitment for an additional six months. If the defendant remains incompetent at
27 the expiration of the additional six-month period, the charges shall be dismissed
28 without prejudice, and continued [EITHER CIVIL] commitment proceedings shall
29 be governed by the provisions relating to civil commitment under AS 47.30.700 -
30 47.30.915 [INSTITUTED OR THE COURT SHALL ORDER THE RELEASE OF
31 THE DEFENDANT]. If the defendant remains incompetent for five years after the

1 charges have been dismissed under this subsection, the defendant may not be
2 charged again for an offense arising out of the facts alleged in the original charges,
3 except if the original charge is a class A felony or unclassified felony.

4 * **Sec. 11.** AS 12.47.110 is amended by adding a new subsection to read:

5 (e) A defendant charged with a felony and found to be incompetent to
6 proceed under this section is rebuttably presumed to be mentally ill and to present a
7 likelihood of serious harm to self or others in proceedings under AS 47.30.700 -
8 47.30.915. In evaluating whether a defendant is likely to cause serious harm, the
9 court may consider as recent behavior the conduct with which the defendant was
10 originally charged.

11 * **Sec. 12.** AS 12.70.280(2) is amended to read:

12 (2) "governor" includes

13 (A) a person performing the functions of governor by
14 authority of the law of this state; **and**

15 **(B) the lieutenant governor or the head of a principal**
16 **department in the executive branch appointed by the governor to act on**
17 **behalf of the governor in performing extradition duties under this**
18 **chapter; the appointment shall be in writing and filed with the lieutenant**
19 **governor;**

20 * **Sec. 13.** AS 47.30.780 is amended to read:

21 **Sec. 47.30.780. Early discharge. Except as provided in (b) of this section,**
22 **the** [THE] professional person in charge shall at any time discharge a respondent on
23 the ground that the respondent is no longer gravely disabled or likely to cause serious
24 harm as a result of mental illness. A certificate to this effect shall be sent to the court,
25 which shall enter an order officially terminating the involuntary commitment.

26 * **Sec. 14.** AS 47.30.780 is amended to add a new subsection to read:

27 (b) The professional person in charge shall give the prosecuting authority 10
28 days' notice before discharging a respondent who was committed after having been
29 found incompetent to proceed under AS 12.47.110.

30 * **Sec. 15.** AS 12.35.015(f) is repealed.

31 * **Sec. 16.** AS 11.71.310 and AS 12.20.010 are repealed.

1 * **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section
2 to read:

3 DIRECT COURT RULE AMENDMENT. Rule 37(b), Alaska Rules of
4 Criminal Procedure, is amended to read:

5 (b) **Execution and Return with Inventory.** The warrant shall be executed
6 and returned within a reasonable time [10 DAYS] after its date as determined by
7 the court based on the circumstances of the investigation. Upon [HOWEVER,
8 UPON] sworn application made before the expiration of the initial [10 DAY] period
9 or any subsequent extension, the court may for good cause extend the execution
10 period for a reasonable time [NOT TO EXCEED 10 DAYS]. Good cause includes
11 protecting the confidentiality of an ongoing investigation and protecting a
12 person working with law enforcement authorities on an investigation. The
13 officer taking property under the warrant

14 (1) shall give to the person from whom or from whose premises the
15 property was taken a copy of the warrant, a copy of the supporting affidavits, and
16 receipt for the property taken, or

17 (2) shall leave the copies and the receipt at the place from which the
18 property was taken.

19 The return shall be made promptly and shall be accompanied by a written inventory
20 of any property taken as a result of the search pursuant to or in conjunction with the warrant.
21 The inventory shall be made in the presence of the applicant for the warrant and the person
22 from whose possession or premises the property was taken, if they are present, or in the
23 presence of at least one credible person other than the applicant for the warrant or the person
24 from whose possession or premises the property was taken, and shall be signed by the
25 officer under the penalty of perjury pursuant to AS 09.63.020 or sworn to in front of a
26 magistrate or judge, or a notary public. The magistrate or judge or the court to which the
27 return is made shall upon request deliver a copy of the inventory to the person from whom
28 or from whose premises the property was taken and to the applicant for the warrant.

29 * **Sec. 18.** The uncodified law of the State of Alaska is amended by adding a new section
30 to read:

31 **APPLICABILITY.** (a) Sections 3, 6, and 16 of this Act apply to an offense occurring

1 on or after the effective date of this Act. References to previous convictions under sec. 3 of
2 this Act apply to convictions occurring before, on, or after the effective date of this Act.

3 (b) Section 5 of this Act applies to an offense occurring before, on, or after the
4 effective date of this Act.

5 (c) Sections 7, 8, 15, and 17 of this Act apply to search warrants applied for on or
6 after the effective date of this Act, regardless of whether the offense occurred before, on, or
7 after the effective date of this Act.

8 (d) Sections 9 - 11, 13, and 14 of this Act apply to procedures occurring after the
9 effective date of this Act, regardless of whether the offense occurred before, on, or after the
10 effective date of this Act.

11 (e) Section 12 of this Act applies to applications for criminal extraditions submitted
12 on or after the effective date of this Act, regardless of whether the offense occurred before,
13 on, or after the effective date of this Act.

14 (f) Section 4 of this Act applies to offenses occurring and actions arising on or after
15 the effective date of this Act.

16 * **Sec. 19.** This Act takes effect July 1, 2008.

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595



Committee Members:
Senator Charlie Huggins
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Gene Therriault

Senate Judiciary Committee

MEMORANDUM

Date: March 5, 2008

TO: Jerry Luckhaupt, Leg. Legal

FROM: Cindy Smith, 465-6644

RE: Senate Judiciary Committee bill draft request

Please draft a Senate Judiciary Committee bill which includes the following:

The provisions of LS1470A

The provisions of SB234 pertaining to theft, to the addition of carisprodol and zolpidem to the schedule of controlled substances, to the handling of incompetent defendants - there is amended language for these provisions which is attached - and to telephonic and electronic requests for search warrants - a sectional has been provided for your assistance with this!

In addition, please modify the provisions pertaining to assaults to include all felony level assaults and only misdemeanor pain assaults as predicates but mandating any form of domestic violence assault will qualify as the third assault.

Language regarding retail theft, which is attached.

**GOVERNOR'S CRIME LEGISLATION
SECTIONAL ANALYSIS**

Sections 1 and 2 provide that a person convicted of assault in the fourth degree for an injury assault (not including a fear assault) commits a class C felony if the person has been convicted within the past 10 years of two or more crimes against the person that are homicide, assault, reckless endangerment, or stalking. Generally, fourth degree assault is a class A misdemeanor. Making a third conviction of a violent offense a class C felony will help stop the often escalating violence by defendants both for domestic violence and other assaults

Section 3 clarifies that when a theft offense is enhanced one level because the defendant has two prior thefts within five years of the new theft, the date of the prior conviction is occurs on the date the defendant was sentenced for the theft.

Section 4 amends the crime of resisting arrest, by including a person who, with the intent to prevent a peace officer from making an arrest, resists or interferes with the arrest by disobeying an order of a peace officer. Resisting arrest is a class A misdemeanor.

Section 5 adds carisprodol (commonly called Soma and listed as a controlled substance in 17 states) and zolpidem (commonly called Ambien and listed as a Schedule IV substance in the federal schedules) to Alaska's schedules of controlled substances. The substances are listed in Schedule IVA. These prescription drugs have been widely abused, and have been found by law enforcement to be present in drivers who are impaired.

Section 6 clarifies that a court may issue a search warrant for property located outside the state. The issue of a court's authority out of state has arisen in white collar investigations where the state seeks stored electronic information. Companies that store this information are willing to provide it if law enforcement presents a search warrant for it. This will clarify that a court may issue a warrant to obtain the information.

Section 7 allows a judicial officer to issue a search warrant over the telephone or other electronic means in all cases. Alaskans rely on the telephone and other electronic communication in the important affairs of their lives. Law enforcement should not have to drive or fly to a judicial officer for a search warrant when electronic means are available for the court to fairly evaluate the evidence.

Sections 8, 9, 10, 19, and 20 will help avoid the potentially dangerous situation where a person charged with a crime, but found incompetent to be tried for it, is released back into a community without adequate consideration of the danger the individual may present, and without notice of release to the prosecution.

It requires a person found incompetent to be evaluated for commitment and treatment. If the defendant remains incompetent after one year (for persons charged with crimes involving force and presenting a substantial danger to others), the bill would require that civil commitment proceedings be considered.

The bill would also adopt a rebuttable presumption that a person found incompetent to proceed is mentally ill and likely to present a danger to himself or others. It allows the court to consider the conduct with which the person was charged in making this determination.

Before a person found incompetent to proceed may be released from the hospital, the professional authorizing the release must give at least 10 days notice to the prosecution. This notice will allow the prosecution time to reinstate charges if appropriate under the circumstances, and also give law enforcement forewarning that the person will be returning to the community.

Section 11 amends AS 12.55.090(a) to clarify that a court may order probation for a person convicted of a violation.

Sections 12, 13, and 14 are conforming amendments to section 1, that makes assault in the fourth degree a class C felony if the defendant has two convictions for serious crimes against a person in the past 10 years.

Section 15 defines "aggravated assaultive behavior" for the aggravating factor at sentencing as meaning an assault that is a felony under AS 11.41 or a similar provision in another jurisdiction.

Section 16 provides that the aggravating factor -- that a defendant convicted of a felony sex offense has engaged in a sexual offense against the same or another victim -- is a factor that may be proven to the court at sentencing rather than to the jury.

Section 17 allows the governor to delegate her extradition responsibilities to a person on her staff. The appointment must be in writing and filed with the lieutenant governor.

Section 18 allows a court to order a person convicted of violating any law or regulation under Title 16 for the unlawful taking of game to pay restitution for the unlawful taking.

Section 21 repeals AS 11.71.310 and AS 12.20.010, that prohibit prosecution by the state for violations of state law if the federal government has prosecuted the same act for violation of federal law. Although this situation does not occur regularly, it is important that Alaska has the authority to enforce its laws and protect its interests and its citizens.

Section 21 also repeals AS 12.35.015(f) to conform to the amendments in section 7, that allows a court to issue search warrants by telephone and other electronic means.

Section 22 changes a court rule to allow a judge more discretion in the timing of the return of a search warrant and inventory to allow for extended investigations and for the protection of confidential witnesses.

Sections 23 and 24 include the applicability and effective date clauses.

AMENDMENT

OFFERED IN THE SENATE JUDICIARY
COMMITTEE
TO: SB 234

BY _____

1 Page 3, line 24, following "section,":

2 Delete "and"

3

4 Page 3, line 24, following "commit":

5 Delete "the"

6 Insert "a"

7

8 Page 3, line 24, following "defendant":

9 Insert "**charged with a felony and may commit a defendant charged with any other**
10 **crime**"

11

12 Page 4, line 15, following "and":

13 Delete "[EITHER] civil"

14 Insert "**continued** [EITHER CIVIL]"

15

16 Page 4, line 15, following "be", through page 4, line 16:

17 Delete "instituted [OR"

18 Insert "**governed by the provisions relating to civil commitment under**
19 **AS 47.30.700 - 47.30.915** [INSTITUTED OR"

20

21 Page 4, line 22, following "defendant":

1 Insert "charged with a felony and"

2

3 Page 4, line 24:

4 Delete "AS 47.30.700 - 47.30.815"

5 Insert "AS 47.30.700 - 47.30.915"

AMENDMENT

OFFERED IN THE HOUSE
TO: HB 323

BY REPRESENTATIVE RAMRAS

1 Page 1, line 2, following "arrest;":

2 Insert "relating to defenses for the detention of persons suspected of committing
3 concealment of merchandise or theft;"

4

5 Page 2, following line 10:

6 Insert a new bill section to read:

7 **"* Sec. 3. AS 11.46.230(a) is amended to read:**

8 (a) In a civil or criminal action upon the complaint of a person who has been
9 detained in or in the immediate vicinity of a commercial establishment for the purpose
10 of investigation or questioning as to the ownership of merchandise, it is a defense that

11 (1) the person was detained in a reasonable manner and for not more
12 than a reasonable time to permit investigation or questioning by a peace officer or by
13 the owner of the commercial establishment or the owner's agent; and

14 (2) the peace officer, owner, or owner's agent had probable cause to
15 believe that the person detained was committing or attempting to commit concealment
16 of merchandise or theft from the commercial establishment."

17

18 Reletter the following subsections accordingly.

19

20 Page 9, line 10:

21 Delete "Sections 1, 2, 4, 5, 11-16, 18, and 21"

22 Insert "Sections 1, 2, 5, 6, 12-17, 19, and 22"

23

1 Page 9, line 12:

2 Delete "Section 3"

3 Insert "Section 4"

4

5 Page 9, line 14:

6 Delete "Sections 6, 7, and 22"

7 Insert "Sections 7, 8, and 23"

8

9 Page 9, line 17:

10 Delete "Sections 8 - 10, 19, and 20"

11 Insert "Sections 9 - 11, 20, and 21"

12

13 Page 9, line 20:

14 Delete "Section 17"

15 Insert "Section 18"

16

17 Page 9, following line 22:

18 Insert a new subsection to read:

19 "(f) Section 3 of this Act applies to offenses occurring and actions arising on or after
20 the effective date of this Act."

HOUSE BILL NO.

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - SECOND SESSION**

BY REPRESENTATIVE SAMUELS

**Introduced:
Referred:**

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to applications for post-conviction relief; amending Rule 35.1, Alaska**
2 **Rules of Criminal Procedure; and providing for an effective date."**

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

4 *** Section 1. AS 12.72.020(a) is amended to read:**

5 **(a) A claim may not be brought under AS 12.72.010 or the Alaska Rules of**
6 **Criminal Procedure if**

7 **(1) the claim is based on the admission or exclusion of evidence at trial**
8 **or on the ground that the sentence is excessive;**

9 **(2) the claim was, or could have been but was not, raised in a direct**
10 **appeal from the proceeding that resulted in the conviction;**

11 **(3) the later of the following dates has passed, except that if the**
12 **applicant claims that the sentence was illegal there is no time limit on the claim:**

13 **(A) if the claim relates to a conviction, one year [TWO**
14 **YEARS] after the entry of the judgment of the conviction or, if the conviction**

1 was appealed, one year after the court's decision is final under the Alaska
2 Rules of Appellate Procedure;

3 (B) if the claim relates to a court revocation of probation, one
4 year [TWO YEARS] after the entry of the court order revoking probation or, if
5 the order revoking probation was appealed, one year after the court's decision
6 is final under the Alaska Rules of Appellate Procedure;

7 (4) one year or more has elapsed from the final administrative decision
8 of the Board of Parole or the Department of Corrections that is being collaterally
9 attacked;

10 (5) the claim was decided on its merits or on procedural grounds in any
11 previous proceeding; or

12 (6) a previous application for post-conviction relief has been filed
13 under this chapter or under the Alaska Rules of Criminal Procedure.

14 * Sec. 2. AS 12.72.020(b) is amended to read:

15 (b) Notwithstanding (a)(3) and (4) of this section, a court may hear a claim

16 (1) if the applicant establishes due diligence in presenting the claim
17 and sets out facts supported by admissible evidence establishing that the applicant

18 (A) suffered from a physical disability or from a mental disease
19 or defect that precluded the timely assertion of the claim; or

20 (B) was physically prevented by an agent of the state from
21 filing a timely claim;

22 (2) based on newly discovered evidence if the applicant establishes due
23 diligence in presenting the claim and sets out facts supported by evidence that is
24 admissible and

25 (A) was not known within

26 (i) one year [TWO YEARS] after entry of the judgment
27 of conviction if the claim relates to a conviction;

28 (ii) one year [TWO YEARS] after entry of a court
29 order revoking probation if the claim relates to a court's revocation of
30 probation; or

31 (iii) one year after an administrative decision of the

1 Board of Parole or the Department of Corrections is final if the claim
2 relates to the administrative decision;

3 (B) is not cumulative to the evidence presented at trial;

4 (C) is not impeachment evidence; and

5 (D) establishes by clear and convincing evidence that the
6 applicant is innocent.

7 * Sec. 3. AS 12.72.020 is amended by adding a new subsection to read:

8 (d) The court may not consider substantive claims in an application brought
9 under AS 12.72.010 or the Alaska Rules of Criminal Procedure until the court has first
10 determined that the application is timely and that it is not successive to another
11 application. If the court is unable to make this determination based on the initial
12 application or the state's response, the court may, if required by law, appoint counsel
13 for the applicant to evaluate and, if necessary, litigate whether the application is
14 untimely or successive. If the court finds that the application is neither untimely or
15 successive, the court may, if required by law, appoint counsel to represent the
16 applicant for the substantive claims raised by the application.

17 * Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to
18 read:

19 **INDIRECT COURT RULE AMENDMENT.** The provisions of AS 12.72.020(a) and
20 (b), as amended by secs. 1 and 2 of this Act, and the provisions of AS 12.72.020(d), as added
21 by sec. 3 of this Act, have the effect of amending Rule 35.1, Alaska Rule of Criminal
22 Procedure, by restricting the authority of a court to hear certain applications, claims, or
23 proceedings for post-conviction relief and by prescribing a procedure for a court to determine
24 if an application, claim, or proceeding may be considered.

25 * Sec. 5. This Act takes effect July 1, 2008.

STATE OF ALASKA

DEPARTMENT OF LAW CRIMINAL DIVISION

**SARAH PALIN,
GOVERNOR**

Mailing: PO Box 110300
Juneau, AK 99811-0300
Delivery: 123 4th Street, Ste 717
Juneau, AK 99801
Phone: (907) 465-3428
Fax: (907) 465-4043

January 17, 2008

Senator Hollis French
Chair, Senate Judiciary Committee
Alaska State Capitol, Room 417
Juneau, Alaska 99801

**Re: Governor's crime legislation
An Act relating to crimes of assault in the fourth degree and resisting or
interfering with arrest; etc.**

Dear Senator French:

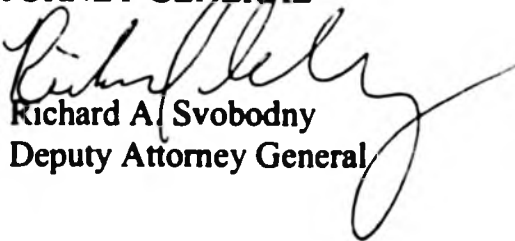
I am writing to respectfully request that you schedule the referenced bill for hearing in the Senate Judiciary Committee at your earliest convenience. The bill includes several provisions to enhance public safety in Alaska, including a provision that would raise the consequences for bullies who repeatedly assault others, including their family members; and would help avoid the release of persons found incompetent to be tried for a crime without adequate evaluation and notice to law enforcement. It also includes provisions to make the administration of justice more efficient; for example, it would allow a court to issue a search warrant by telephonic or other electronic means in all investigations.

A sectional analysis is attached that describes each provision of the bill.

Thank you for your consideration of this request.

Sincerely,

TALIS J. COLBERG
ATTORNEY GENERAL

By: 
Richard A. Svobodny
Deputy Attorney General

CC: Talis Colberg, Attorney General

GOVERNOR'S CRIME LEGISLATION SECTIONAL ANALYSIS

Sections 1 and 2 provide that a person convicted of assault in the fourth degree for an injury assault (not including a fear assault) commits a class C felony if the person has been convicted within the past 10 years of two or more crimes against the person that are homicide, assault, reckless endangerment, or stalking. Generally, fourth degree assault is a class A misdemeanor. Making a third conviction of a violent offense a class C felony will help stop the often escalating violence by defendants both for domestic violence and other assaults.

Section 3 clarifies that when a theft offense is enhanced one level because the defendant has two prior thefts within five years of the new theft, the date of the prior conviction is occurs on the date the defendant was sentenced for the theft.

Section 4 amends the crime of resisting arrest, by including a person who, with the intent to prevent a peace officer from making an arrest, resists or interferes with the arrest by disobeying an order of a peace officer. Resisting arrest is a class A misdemeanor.

Section 5 adds carisprodol (commonly called Soma and listed as a controlled substance in 17 states) and zolpidem (commonly called Ambien and listed as a Schedule IV substance in the federal schedules) to Alaska's schedules of controlled substances. The substances are listed in Schedule IVA. These prescription drugs have been widely abused, and have been found by law enforcement to be present in drivers who are impaired.

Section 6 clarifies that a court may issue a search warrant for property located outside the state. The issue of a court's authority out of state has arisen in white collar investigations where the state seeks stored electronic information. Companies that store this information are willing to provide it if law enforcement presents a search warrant for it. This will clarify that a court may issue a warrant to obtain the information.

Section 7 allows a judicial officer to issue a search warrant over the telephone or other electronic means in all cases. Alaskans rely on the telephone and other electronic communication in the important affairs of their lives. Law enforcement should not have to drive or fly to a judicial officer for a search warrant when electronic means are available for the court to fairly evaluate the evidence.

Sections 8, 9, 10, 19, and 20 will help avoid the potentially dangerous situation where a person charged with a crime, but found incompetent to be tried for it, is released back into a community without adequate consideration of the danger the individual may present, and without notice of release to the prosecution.

It requires a person found incompetent to be evaluated for commitment and treatment. If the defendant remains incompetent after one year (for persons charged with crimes involving force and presenting a substantial danger to others), the bill would require that civil commitment proceedings be considered.

The bill would also adopt a rebuttable presumption that a person found incompetent to proceed is mentally ill and likely to present a danger to himself or others. It allows the court to consider the conduct with which the person was charged in making this determination.

Before a person found incompetent to proceed may be released from the hospital, the professional authorizing the release must give at least 10 days notice to the prosecution. This notice will allow the prosecution time to reinstate charges if appropriate under the circumstances, and also give law enforcement forewarning that the person will be returning to the community.

Section 11 amends AS 12.55.090(a) to clarify that a court may order probation for a person convicted of a violation.

Sections 12, 13, and 14 are conforming amendments to section 1, that makes assault in the fourth degree a class C felony if the defendant has two convictions for serious crimes against a person in the past 10 years.

Section 15 defines "aggravated assaultive behavior" for the aggravating factor at sentencing as meaning an assault that is a felony under AS 11.41 or a similar provision in another jurisdiction.

Section 16 provides that the aggravating factor -- that a defendant convicted of a felony sex offense has engaged in a sexual offense against the same or another victim -- is a factor that may be proven to the court at sentencing rather than to the jury.

Section 17 allows the governor to delegate her extradition responsibilities to a person on her staff. The appointment must be in writing and filed with the lieutenant governor.

Section 18 allows a court to order a person convicted of violating any law or regulation under Title 16 for the unlawful taking of game to pay restitution for the unlawful taking.

Section 21 repeals AS 11.71.310 and AS 12.20.010, that prohibit prosecution by the state for violations of state law if the federal government has prosecuted the same act for violation of federal law. Although this situation does not occur regularly, it is important that Alaska has the authority to enforce its laws and protect its interests and its citizens.

Section 21 also repeals AS 12.35.015(f) to conform to the amendments in section 7, that allows a court to issue search warrants by telephone and other electronic means.

Section 22 changes a court rule to allow a judge more discretion in the timing of the return of a search warrant and inventory to allow for extended investigations and for the protection of confidential witnesses.

Sections 23 and 24 include the applicability and effective date clauses.

Cindy Smith

From: Doug Wooliver [dwooliver@courts.state.ak.us]

Sent: Wednesday, March 19, 2008 12:54 PM

To: 'Peeples, Dwayne B (DOC)'; Cindy Smith; anne.carpeneti@alaska.gov; 'Svobodny, Richard (LAW)'; 'Fink, Joshua P (DOA)'; Steiner, Quinlan G (DOA)

Subject: Draft CSSB 234(JUD)

The difference between the assault IV, three-strikes provision in the original version of SB 234 and the provision in the draft amendment that I have seen is that the draft amendment takes out the fear assaults as predicate offenses and adds in sexual assault in the first and second degrees and sexual abuse of a minor in the first and second degree. The court system numbers showed that the original version of the bill would have resulted in roughly 550 new felony cases a year; the draft amendment would result in approximately 600 new felony cases a year. This number, like the earlier number, is conservative in a number of respects. I have gone with a conservative number to offset those assault IV convictions that were part of a case that included felony charges. Those cases would already have been in the superior court and thus would not significantly impact the court system.

I understand that the plan is to also make the three-strikes provision prospective. As with the latest version of HB 307, our eventual fiscal note will adopt the prospective formula reflected in the calculations from the DOC. Doug

3/19/2008

**AN ACT TO IMPROVE THE PRESERVATION AND ACCESSIBILITY OF
BIOLOGICAL EVIDENCE**

SECTION 1. LEGISLATIVE INTENT

The legislature finds that:

1. The value of properly preserved biological evidence has been enhanced by the discovery of modern DNA testing methods, which, coupled with a comprehensive system of DNA databases that store crime scene and offender profiles, allow law enforcement to improve its crime-solving potential;
2. Tapping the potential of preserved biological evidence requires the proper identification, collection, preservation, storage, cataloguing and organization of such evidence;
3. Law enforcement agencies indicate that "cold" case investigations are hindered by an inability to access evidence, including biological evidence, that was collected in connection with criminal investigations;
4. Innocent people mistakenly convicted of the serious crimes for which evidence, including biological evidence, is probative cannot prove their innocence if such evidence is not accessible for testing in appropriate circumstances;
5. It is well established that the failure to update policies regarding the preservation of evidence squanders valuable law enforcement resources, manpower hours and storage space; and
6. Simple but crucial enhancements to protocols for properly preserving evidence, including biological evidence, can solve old crimes, enhance public safety and settle claims of innocence.

SECTION 2: DEFINITIONS

For the purposes of this Act:

1. "Biological evidence" means the contents of a sexual assault examination kit; and any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids or other identifiable biological material that was collected as part of the criminal investigation or may reasonably be used to incriminate or exculpate any person for the offense. This definition applies whether that material is catalogued separately (e.g., on a slide, swab or in a test tube) or is present on other evidence (including, but not limited to, clothing, ligatures, bedding or other household material, drinking cups, cigarettes, etc.):
2. "DNA" means deoxyribonucleic acid;
3. "Custody" means persons currently incarcerated; civilly committed; on parole or probation; or subject to sex offender registration;
4. "Profile" means a unique identifier of an individual, derived from DNA; and
5. "State" refers to any governmental or public entity within Alaska (including all private entities that perform such functions) and its officials or employees, including but not limited to law enforcement agencies, prosecutors' offices, courts, public hospitals, crime laboratories, and any other entity or individual charged with the collection, storage and/or retrieval of biological evidence.

SECTION 3. PRESERVATION OF EVIDENCE PROCEDURES

A. The State of Alaska shall preserve all evidence, including biological evidence:

1. That is secured in relation to an investigation or prosecution of a crime for the

period of time that the crime remains unsolved; or

2. That is secured in relation to an investigation or prosecution of a crime for the period of time that the person convicted of that crime remains in custody.

B. This Act applies to evidence that:

1. Was in the possession of the State during the investigation and prosecution of the case; and

2. At the time of conviction was likely to contain biological material.

C. The State shall not destroy evidence, including biological evidence, should an additional co-defendant or co-defendants, convicted of the same crime, remain in custody and shall preserve said evidence for the period of time in which all co-defendants remain in custody.

D. The State shall retain evidence in the amount and manner sufficient to develop a DNA profile from the biological material contained in or included on the evidence.

E. Upon written request by the defendant, the State shall prepare an inventory of evidence, including biological evidence, that has been preserved in connection with his criminal case.

F. The State may destroy evidence, including that which includes biological material, before the expiration of the time period specified in subsection (A) of this section if all of the following apply:

1. No other provision of federal or state law requires the State to preserve the evidence.

2. The State sends certified delivery of notice of intent to destroy the evidence to:

a. All persons who remain in custody as a result of the criminal

conviction, delinquency adjudication, or commitment related to evidence in question;

b. The attorney of record for each person in custody;

c. The Alaska Public Defender Agency;

d. The District Attorney's Office in the jurisdiction which prosecuted the case; and

e. The Alaska Attorney General's Office.

3. No person who is notified under Section 3(F)(2) of this Act does either of the following within 180 days after the date on which the person received the notice:

a. Files a motion for testing of evidence under; or

b. Submits a written request for retention of evidence to the State entity which provided notice of its intent to destroy evidence under Section 3(F)(2) of this Act.

G. If, after providing notice under Section (3)(F)(2) of this Act of its intent to destroy evidence, the State receives a written request for retention of the evidence, the State shall retain the evidence while the person remains in custody.

H. The State shall not be required to preserve physical evidence that is of such a size, bulk, or physical character as to render retention impracticable. When such retention is impracticable, the State shall remove and preserve portions of the material evidence likely to contain relevant evidence related to the offense, including biological evidence in a quantity sufficient to permit future DNA testing, before returning or disposing of said physical evidence.

I. Should the State be called upon to produce evidence, including biological evidence,

that could not be located and whose preservation was required under the provisions of this statute, the chief evidence custodian assigned to the entity charged with the preservation of said evidence shall provide an affidavit in which he stipulates, under penalty of perjury, that describes the efforts taken to locate that evidence and that the evidence could not be located.

SECTION 4. REMEDIES FOR NONCOMPLIANCE

If the court finds that evidence was destroyed in violation of the provisions of this statute, it may impose appropriate sanctions and order appropriate remedies.

SECTION 5. STANDARDS AND TRAINING OF EVIDENCE CUSTODIANS

A. From appropriations made for that purpose, a statewide task force comprised of members appointed by the Governor; the Attorney General; the District Attorney's Office; the Public Defender's Office and Office of Public Advocacy; the Alaska State Bar Association; the Judiciary Committee of the Alaska State Senate; the Judiciary Committee of the Alaska State House of Representatives; the Chief Justice of the Alaska Supreme Court; the Office of Victim's Rights; the Alaska Innocence Project; a representative of municipal police agencies within the State of Alaska and the Alaska State Troopers, shall establish a system regarding the proper preservation of biological evidence. Specifically, the task force shall:

1. Devise standards regarding the proper collection, retention and cataloguing of evidence, including biological evidence, for ongoing investigations and prosecutions; and
2. Recommend practices, protocols, models and resources for the cataloguing and

accessibility of preserved evidence, including biological evidence, already in the State's possession.

B. In consultation with the task force described in Section 5(A) of this Act, the Alaska Department of Public Safety shall administer and conduct training programs for law enforcement officers and other relevant employees that are charged with preserving and cataloguing biological evidence regarding the methods and procedures referenced in this Act.

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES
DIVISION OF BEHAVIORAL HEALTH

SARAH PALIN, GOVERNOR

ALASKA PSYCHIATRIC INSTITUTE
2800 PROVIDENCE DRIVE
ANCHORAGE, ALASKA 99508-4877
PHONE: (907) 269-7100
FAX: (907) 269-7251
TDD: (907) 581-8809
TOLL FREE: (888) 825-5274

Ronald M. Adler, CEO

R. Duane Hopson, MD, Medical Director

March 18, 2008

Senator Hollis French
State Capitol, Room 417
Juneau, Alaska 99501

Ref: Senate Bill #234 / Alaska Psychiatric Institute (API) – Taku Treatment Unit

Dear Senator French.

The Taku Unit is a 10 bed Medium Security Forensic Treatment Unit located at API designed and built in accordance with specifications to meet the unique demands of the forensic population. Although the unit has a 10 bed capacity, two beds are occupied by long term, NGRI (Not Guilty by Reason of Insanity) patients. The ALOS (Average Length of Stay) for the 8 beds that are available is 33 days.

For the past several months, the Taku Treatment Unit is at capacity (10 beds). At times, the unit does permit an admission over the existing capacity by eliminating the 'family & conference' room. As of today, there are four pending admissions to the Taku Treatment Unit.

The API Taku Unit provides evaluation for competency, culpability, aide in disposition and restoration to competency services. It also conducts IST (Incompetent to Stand Trial) evaluations to mentally ill offenders in the Department of Corrections. This service expedites restoration and treatment.

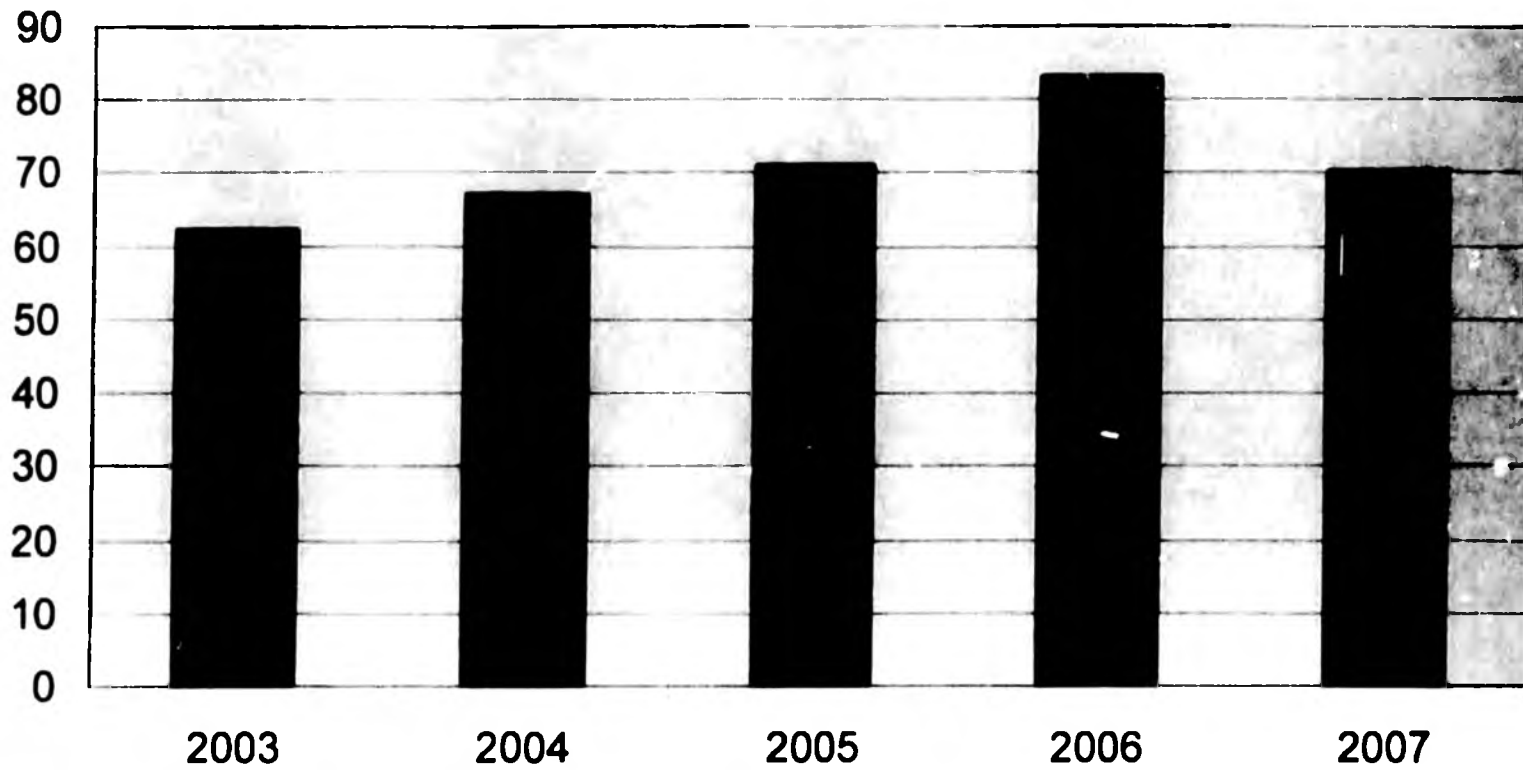
Regards,



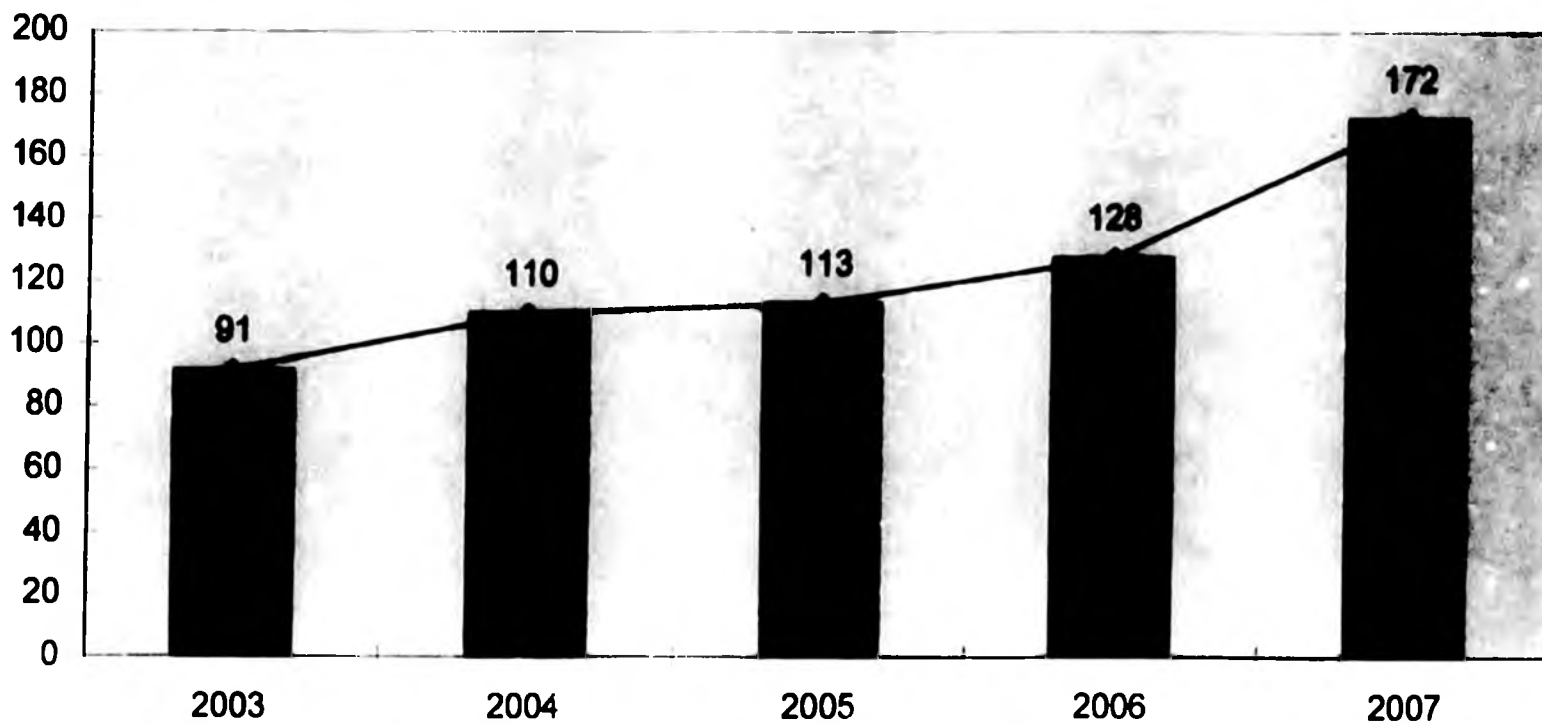
Ron Adler, CEO
Alaska Psychiatric Institute

RA:lf
Attachment

Number of Admissions on Taku by Calendar Year 2003 - 2007



Court Ordered Evaluations by Calendar Year



(Evaluations include competency, culpability, aide in disposition, and other.)

The TRUST

The Alaska Mental Health Trust Authority

February 28, 2008

Senator Hollis French – Chair of the Judiciary Committee
State Capitol Room #417
Juneau, AK 99801

Dear Senator French,

I am writing to share some serious concerns regarding specific sections of the current version of SB234.

As you know, nationally and in Alaska people with mental illness are overrepresented in all parts of the criminal justice system – in their contact with law enforcement, in the courts, in jails and prisons, and in parole and probation caseloads across the country. A 2007 study, *Trust beneficiaries in the Alaska Department of Corrections*, found that approximately 42 percent of all inmates in the custody of the State of Alaska, Department of Corrections are Trust Beneficiaries¹.

There are several sections of the current bill that propose changes to existing law that if passed would have significant unintended negative consequences to Trust Beneficiaries and the criminal justice system as a whole (i.e. placing Trust Beneficiaries minimal financial and health care benefits at risk, reducing housing options available to Trust Beneficiaries, further placing Trust Beneficiary offenders at a disadvantage in obtaining gainful employment, placing additional burdens to an already stressed criminal justice system, etc.). In fact, if the current version of the bill were to pass into law, there could be a significant additional increase in the percentage of Trust Beneficiaries in the custody of the Department of Corrections.

The sections of the bill of significant concern include:

- *Section 2 AS 11.41.230* – making an individual previously convicted of a crime in violation of AS 11.41.100 – 11.41.289 or a similar in another jurisdiction two or more times within the 10 years preceding the date of the present offense a Class C felony is the person has been previously convicted of a similar assault within a ten year period.
- *Sec. 4 AS 11.56.700(a)* – to include disobeying an order of a peace officer a class A misdemeanor.
- *Sec. 14 AS 12.55.135(g)* – which mandates minimum sentences for persons convicted of assault in the fourth degree that is a misdemeanor and a crime involving domestic violence.

I would be happy to schedule a time to meet to discuss the implications of these changes in detail or can provide additional information as requested.

Sincerely,



Jeff Jestee, CEO

¹ Trust beneficiaries are those experiencing: 1) mental illness; 2) developmental disabilities; 3) chronic alcoholism with psychosis; and, 4) Alzheimer's disease, related dementias and other cognitive impairments.



Representative Jay Ramras
Chair, Judiciary
Labor & Commerce
Oil & Gas
Military & Veteran Affairs
1292 Sadler Way, Suite 324
Fairbanks, Alaska 99701
Phone: (907) 452-1088
Fax: (907) 452-1146

Alaska State Legislature



While in Session
State Capitol, Room 118
Juneau, Alaska 99801-1182
(907) 485-3004
Fax: 485-2070
Toll Free: (877) 485-3004

House District 10

House of Representatives

Fax

To: Daryl Hersch

Fax #: 907-339-7778

Number of pages including cover: 6

From: Emily Beatley

Cc:

Date: October 24, 2007

Re: Work Draft for HB 245

Attached is a work draft for HB 245. Please call once you have reviewed the changes. Thanks!

Should you have any questions, please do not hesitate to contact me.

WORK DRAFT

WORK DRAFT

WORK DRAFT

25-LS0682M
Luckhaupt
10/15/07

**SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 245
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - SECOND SESSION**

BY REPRESENTATIVE RAMRAS BY REQUEST

Introduced:
Referred:

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to theft and concealment of merchandise."**

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

3 *** Section 1. AS 11.46.120(a) is amended to read:**

4 (a) A person commits the crime of theft in the first degree if the person
5 commits theft as defined in AS 11.46.100 and

6 (1) the value of the property or services is \$25,000 or more;

7 (2) the value of the property or services is \$500 or more but less
8 than \$25,000 and, within the preceding five years, the person has been convicted

9 and sentenced on two or more separate occasions in this or another jurisdiction
10 of

11 (A) an offense under this section or AS 11.46.130, or an
12 offense under another law or ordinance with similar elements;

13 (B) an offense under AS 11.46.140(a)(1), or an offense
14 under another law or ordinance with similar elements; or

15 (C) an offense under AS 11.46.220(c)(1), (c)(2)(A), or

WORK DRAFT

WORK DRAFT

25-LS0687AM

1 (c)(3)(A) or an offense under another law or ordinance with similar
2 elements.

3 * Sec. 2. AS 11.46.130(a) is amended to read:

4 (a) A person commits the crime of theft in the second degree if the person
5 commits theft as defined in AS 11.46.100 and

6 (1) the value of the property or services is \$500 or more but less than
7 \$25,000;

8 (2) the property is a firearm or explosive;

9 (3) the property is taken from the person of another;

10 (4) the property is taken from a vessel and is vessel safety or survival
11 equipment;

12 (5) the property is taken from an aircraft and the property is aircraft
13 safety or survival equipment;

14 (6) the value of the property is \$50 or more but less than \$500 and,
15 within the preceding five years, the person has been convicted and sentenced on two
16 or more separate occasions in this or another jurisdiction of

17 (A) an offense under AS 11.46.120, or an offense under
18 another law or ordinance with similar elements;

19 (B) a crime set out in this subsection or an offense under
20 another law or ordinance with similar elements;

21 (C) an offense under AS 11.46.140(a)(1), or an offense under
22 another law or ordinance with similar elements; or

23 (D) an offense under AS 11.46.220(c)(1), [OR] (c)(2)(A), or
24 (c)(3)(A), or an offense under another law or ordinance with similar elements;

25 or

26 (7) the property is an access device.

27 * Sec. 3. AS 11.46.190(a) is amended to read:

28 (a) A person commits theft by receiving if the person

29 (1) buys, receives, retains, conceals, or disposes of stolen property with
30 reckless disregard that the property was stolen; or

31 (2) with reckless disregard that the merchandise was stolen, buys

WORK DRAFT

WORK DRAFT

25-LS0682AM

1 or receives merchandise from another person in an establishment that does not
2 sell that merchandise as part of the normal business of the establishment.

3 * Sec. 4. AS 11.46.220 is amended to read:

4 (a) A person commits the crime of concealment of merchandise if without
5 authority the person knowingly conceals on or about the person, or in a cart, basket,
6 or bag, or other implement under the person's control, the merchandise of a
7 commercial establishment, not purchased by the person, while still upon the premises
8 of the commercial establishment, with intent to deprive the owner of the merchandise
9 or with intent to appropriate the merchandise.

10 (b) Merchandise found concealed upon or about the person, or in a cart,
11 basket, bag, or other implement under the person's control, which has not been
12 purchased by the person is prima facie evidence of a knowing concealment.

13 (c) Concealment of merchandise is

14 (1) a class ~~(B)~~ [C] felony if

15 (A) the merchandise is a firearm or explosive;

16 (B) the value of the merchandise is \$1,500 [\$500] or more; or

17 (C) the value of the merchandise is \$500 [\$50] or more but less
18 than \$1,500 [\$500] and, within the preceding five years, the person has been
19 convicted and sentenced on two or more separate occasions in this or another
20 jurisdiction of

21 (i) the offense of concealment of merchandise under
22 this paragraph or ~~(2)(A)~~ or (3)(A) of this subsection, or an offense
23 under another law or ordinance with similar elements; or

24 (ii) an offense under AS 11.46.120, 11.46.130, or
25 11.46.140(a)(1), or an offense under another law or ordinance with
26 similar elements;

27 (D) the value of the merchandise is \$500 or more but less
28 than \$1,500 and the person used another person or any form of electronic
29 or other device, equipment, or tool to aid in the commission of the crime:

30 (2) a class C felony if

31 (A) the value of the merchandise is \$500 or more but less

WORK DRAFT

WORK DRAFT

25-LS0682M

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

than \$1,500;

(B) the value of the merchandise is \$50 or more but less than \$500 and, within the preceding five years, the person has been convicted and sentenced on two or more separate occasions in this or another jurisdiction of

(i) the offense of concealment of merchandise under this paragraph or (1)(A) or (3)(A) of this subsection, or an offense under another law or ordinance with similar elements; or

(ii) an offense under AS 11.46.120, 11.46.130, or 11.46.140(a)(1), or an offense under another law or ordinance with similar elements;

(C) the value of the merchandise is \$50 or more but less than \$500 and the person used another person or any form of electronic or other device, equipment, or tool to aid in the commission of the crime;

(3) a class A misdemeanor if

(A) the value of the merchandise is \$50 or more but less than \$500; or

(B) the value of the merchandise is less than \$50 and, within the preceding five years, the person has been convicted and sentenced on two or more separate occasions of the offense of concealment of merchandise or theft in any degree, or an offense under another law or ordinance with similar elements;

(C) the value of the merchandise is less than \$50 and the person used another person or any form of electronic or other device, equipment, or tool to aid in the commission of the crime;

(4) [(3)] a class B misdemeanor if the value of the merchandise is less than \$50

* Sec. 5. AS 11.46.230(a) is amended to read:

(a) In a civil or criminal action upon the complaint of a person who has been detained in or in the immediate vicinity of a commercial establishment for the purpose of investigation or questioning as to the ownership of merchandise, it is a defense that

WORK DRAFT

WORK DRAFT

25-LS0682M

1
2
3
4
5
6
7
8
9
10
11
12
13
14

(1) the person was detained in a reasonable manner and for not more than a reasonable time to permit investigation or questioning by a peace officer or by the owner of the commercial establishment or the owner's agent; and

(2) the peace officer, owner, or owner's agent had probable cause to believe that the person detained was committing or attempting to commit theft under AS 11.46.120 - 11.46.150 or concealment of merchandise.

* Sec. 6. AS 11.46.295 is amended to read:

Sec. 11.46.295. Prior convictions. For purposes of considering prior convictions in prosecuting a crime of theft under AS 11.46.120(a)(2), AS 11.46.130(a)(6), or 11.46.140(a)(3), or in prosecuting the crime of concealment of merchandise under AS 11.46.220(c), a conviction for an offense under another law or ordinance with similar elements is a conviction of an offense having elements similar to those of an offense defined as such under Alaska law at the time the offense was committed.

L

Pawn Language

- **The most common stolen items in Anchorage (in numerical order)**
 1. Jewelry
 2. radios/televisions/sound equipment
 3. Tools
 4. Computer equipment
 5. Special documents (tickets, food stamps, etc)

- **Only pawn shops and pawn transactions are affected by this language. A pawn broker is a person who lends money on secondhand articles.**

- **Not affected under this language:**
 - Consignment shops
 - Second hand or thrift stores
 - Antique stores
 - Online sales sites such as "craigslist"

- **Electronic reporting means - the information is given to the local law enforcement in an electronic format.**

- **Larger pawn companies already do this. In Anchorage.**

City Name	2000 Population	2005 Estimate
Over 100,000		
Anchorage	260,283	275,043
10,000 - 100,000		
Fairbanks	30,224	31,324
Juneau	30,711	30,987
5,000 - 10,000		
Sitka	8835	8986
Wasilla	5469	8471
Kenai	6942	7464
Ketchikan	7922	7410
Palmer	4533	6920
Kodiak	6334	6273
Bethel	5471	6262
Homer	3946	5364

1,000 - 5,000		
Unalaska	4283	4347
Barrow	4581	4218
Soldotna	3759	4087
Valdez	4036	4015
Nome	3505	3590
Kotzebue	3082	3237
Seward	2830	3016
Petersburg	3224	3010
Dillingham	2466	2468
Cordova	2454	2327
Wrangell	2308	2117
North Pole	1570	1778
Houston	1202	1614
Craig	1397	1217

Could be
over 5,000
@ next
census