

SB

186

<TARGET><BILL>SB 186</BILL><SUBJECT>SB
186</SUBJECT><COMM>SJUD27</COMM></TARGET>

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 Bill Wielechowski
Senator Lesil McGuire
Senator Joe Paskvan
Senator John Coghill

Senate Judiciary Committee

Sponsor Statement SB 186 Sentencing/Probation/Mentally Ill

Senate Bill 186 provides important corrections to the state's guilty but mentally ill (GBMI) statutes, ensuring that they comply with the United States Supreme Court in *Apprendi v. New Jersey* and *Blakely v. Washington*. The bill provides a procedure for post-conviction findings of GBMI, and adopts a 10 day notice when any party intends to raise the issue. It clarifies that the jury must determine that a defendant is guilty but mentally ill, unless the right to a jury determination is waived by the defendant.

Other changes to the statute ensure that the provisions of the *Blakely* decision are applied to issues of burden of proof in various factors in homicide cases, and clarify when juries must make factual findings to forward to a judge for sentencing purposes.

The bill also clarifies that neither the prosecuting attorney nor the defendant can, without mutual agreement, change the terms of a Rule 11 plea agreement under the Rules of Criminal Procedure after it has been imposed, and that the court may not reduce a period of probation agreed to under a Rule 11 agreement without the consent of the prosecution.

Senate Bill 186 makes important changes to ensure that Alaska's criminal procedures comply with Supreme Court decisions, and that plea agreements made in good faith are upheld by the courts. The bill is supported by the Alaska Department of Law.

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SENATE BILL 186 SECTIONAL ANALYSIS

Section 1 clarifies in statute that in order for a person to be found guilty but mentally ill (GBMI), the fact finder must determine by proof beyond a reasonable doubt that when the defendant committed the crime he or she was guilty but mentally ill. This change is required by the decisions of the United States Supreme Court in *Apprendi v. New Jersey* and *Blakely v. Washington*, holding that the Sixth Amendment right to a jury trial requires that a factual finding that would increase the statutory maximum penalty for an offense must be submitted to a jury and proven beyond a reasonable doubt.

The court of appeals has said that a person who is found guilty but mentally ill does not qualify for parole release, including mandatory parole, until the person no longer suffers from a mental disease or defect that causes the defendant to be dangerous to the public. Because a person who is found GBMI may not qualify for mandatory parole, the factual decisions addressing whether the defendant is GBMI must be submitted to a jury (unless the defendant waives this requirement) and proven beyond a reasonable doubt.

Section 2: Under current law the defense, the prosecution, or the court may raise the question after a guilty verdict, of whether the defendant is guilty but mentally ill. This is possible if the issue has not been raised in the trial. The procedure for addressing this issue needs to be changed to reflect the constitutional requirements articulated in *Apprendi* and *Blakely*. **Section 2** makes these changes. It also adopts a procedure for giving notice 10 days before trial if the party intends to raise the issue after trial.

Section 3 clarifies that the jury must determine whether the defendant is guilty but mentally ill, unless the right is waived by the defendant. The court then determines the sentence.

Section 4 is amended to recognize that current law has other provisions that require a different standard of proof in addition to those specified in the current statute.

Sections 5 and 6 add provisions to ensure that neither the prosecuting authority nor the defendant can, without mutual agreement, change the terms of a Rule 11, Alaska Rules of Criminal Procedure, agreement after it has been imposed. If a defendant, as part of a plea agreement under Rule 11, agrees to a particular period of probation the court may not, without the consent of the prosecution, reduce the period of probation. This has the effect of overruling the decision in *State v. Henry*, 240 P. 3d 846 (Alaska App. 2010). Judges, in sentencing a person who has violated a condition of probation, must still apply the *Chaney* criteria in deciding how much, if any, of the suspended period of incarceration should be imposed.

However, the court may not reduce the period of probation or the period of suspended time (less the time imposed for the probation violation) without the agreement of the prosecuting authority.

Section 7 amends the sentencing law for murder in the first degree to change the burden of proof that the defendant subjected the victim to substantial physical torture or that the defendant was a peace officer who used the officer's authority to facilitate the murder. The current statute provides for a clear and convincing burden on the prosecution. Under the *Apprendi* and *Blakely* decisions, the state must prove these factors beyond a reasonable doubt.

Section 8 clarifies in statute that if a sentence is imposed on a defendant that would preclude the person from receiving good time, for example a person who has been convicted of the first degree murder of a peace officer, the jury (unless waived by the defendant) must determine the factual issue, in this example, that the victim was a peace officer, beyond a reasonable doubt. Additionally, if a court is sentencing a person who is subject to a presumptive range and the prosecution seeks to increase the range by proof of certain aggravating factors, the jury (unless waived) must determine the factual issue by proof beyond a reasonable doubt.

Section 9 includes guidance to the court in finding the aggravating factor that the defendant's conduct was the most serious in the definition of the offense. AS 12.55.155(c)(10). First, it provides that the jury must determine the facts supporting an allegation that the defendant's conduct was the most serious in the definition of the offense. Because finding a factor in aggravation allows the court to impose a higher term of imprisonment than the presumptive range, the finding by the jury (unless waived) is required by the *Apprendi/Blakely* decisions. After the jury makes this factual determination, the court then makes the legal decision that the factual decision justifies an increase in sentence because the conduct is the most serious in the definition of the offense. The crime of theft provides a good illustration of this. Theft in the second degree, a class C felony, prohibits a person from committing theft of property valued between \$500 and \$25,000. The maximum term for a class C felony is five years incarceration; the presumptive range is zero to two years for a first felony offense. If the jury finds that the defendant stole an amount close to \$25,000, the court may then consider this conduct as the most serious in the definition of second degree theft.

Section 9 also codifies court decisions that clarify that once a factor in aggravation has been decided as required in *Apprendi/Blakely*, other factors in aggravation may be considered without a factual determination beyond a reasonable doubt by the jury. Once one factor in aggravation is decided, the judge may sentence a person up to the maximum term; thus additional factors do not raise the maximum term. *Reandean v. State*, 265 P.3d 1045 (Alaska App. 2011).

Sections 20 and 11 are conforming to **Sections 5 and 6**.

Section 12 notes the indirect effect of **Section 8** on Rule 32.1, Alaska Rules of Criminal Procedure.

Sections 13 – 15 include applicability provisions, conditional effect of the court rule change, and the effective date, July 1, 2012.

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version SB186
 Fiscal Note Number _____
 () Publish Date _____

Identifier (file name) SB186-DOA-OPA-2-3-12 Dept. Affected Administration
 Title Sentencing/Probation/Mentally Ill Appropriation Legal and Advocacy Services
 Allocation Office of Public Advocacy
 Sponsor Judiciary
 Requester Senate Judiciary OMB Component Number 43

Expenditures/Revenues (Thousands of Dollars)

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES	FY13	FY13	FY14	FY15	FY16	FY17	FY18
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE		(Thousands of Dollars)					
1002	Federal Receipts						
1003	GF Match						
1004	GF						
1005	GF/Prgm (DGF)						
1037	GF/MH (UGF)						
1178	temp code (UGF)						
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES							

Estimated **SUPPLEMENTAL (FY12) operating costs** _____ (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated **CAPITAL (FY13) costs** _____ (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Not applicable, initial version

Prepared by Richard Allen, Director
 Division Office of Public Advocacy
 Approved by John Cramer, Deputy Commissioner
Department of Administration

Phone 907-269-3504
 Date/Time 02/03/12 3:00 p.m.
 Date 2/3/2012

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

BILL NO. SB186

Analysis

This bill requires that post-conviction determination of a defendant being "guilty but mentally ill" requires the party seeking this determination to give notice of this intention 10 days before the trial. This bill also requires that this determination be made by the original fact finder in the trial unless the defendant, with the concurrence of the prosecution, waives this requirement in writing. This bill specifies that the standard of proof to be applied in determining whether the defendant is guilty but mentally ill is a reasonable doubt standard.

The bill also limits the court's discretion to modify the term of probation or suspended incarceration following a certain plea agreement. This bill also permits a trial court to make legal determinations and factual findings on additional aggravating factors that enhance the penalty range on felony offenses.

Although provisions on this bill are subject to litigation, it is not anticipated that this bill will have significant fiscal impact. The Agency, therefore, submits a zero fiscal note.

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version SB186
 Fiscal Note Number _____
 () Publish Date _____

Identifier (file name) SB186-DOA-PDA-2-3-12 Dept. Affected Administration
 Title Sentencing/Probation/Mentally Ill Appropriation Legal and Advocacy Services
 Allocation Public Defender Agency
 Sponsor Judiciary
 Requester Senate Judiciary OMB Component Number 1631

Expenditures/Revenues (Thousands of Dollars)

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES	FY13	FY13	FY14	FY15	FY16	FY17	FY18
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE		(Thousands of Dollars)					
1002	Federal Receipts						
1003	GF Match						
1004	GF						
1005	GF/Prgm (DGF)						
1037	GF/MH (UGF)						
1178	temp code (UGF)						
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES							

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 (discuss reasons and fund source(s) in analysis section)

Estimated **CAPITAL (FY13) costs** _____ (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Not applicable, initial version

Prepared by Quinlan Steiner
 Division Public Defender Agency
 Approved by John Cramer, Deputy Commissioner
Department of Administration

Phone 907 334-4414
 Date/Time 2/3/12 1:30 PM
 Date 2/3/2012

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

BILL NO. SB186

Analysis

This bill requires that post-conviction determination of a defendant being "guilty but mentally ill" requires the party seeking this determination to give notice of this intention 10 days before the trial. This bill also requires that this determination be made by the original fact finder in the trial unless the defendant, with the concurrence of the prosecution, waives this requirement in writing. This bill specifies that the standard of proof to be applied in determining whether the defendant is guilty but mentally ill is a reasonable doubt standard.

The bill also limits the court's discretion to modify the term of probation or suspended incarceration following a certain plea agreement. This bill also permits a trial court to make legal determinations and factual findings on additional aggravating factors that enhance the penalty range on felony offenses.

Although provisions on this bill are subject to litigation, it is not anticipated that this bill will have significant fiscal impact. The Agency, therefore, submits a zero fiscal note.

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version SB 186
 Fiscal Note Number _____
 () Publish Date _____

Identifier (file name) SB186-LAW-CRIM-02-04-12 Dept. Affected Law
 Title An Act relating to mentally ill; sentencing procedures; and probation. Appropriation Criminal
 Allocation Criminal Justice Litigation
 Sponsor Judiciary
 Requester (S) Judiciary OMB Component Number 2202

Expenditures/Revenues (Thousands of Dollars)

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES	FY13	FY13	FY14	FY15	FY16	FY17	FY18
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE		(Thousands of Dollars)					
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POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES							
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Estimated SUPPLEMENTAL (FY12) operating costs _____ (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs _____ (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Not applicable, initial version.

Prepared by Eileen Donahue, Division Operations Manager
 Division Administrative Services
 Approved by Michael C. Geraghty, Attorney General
Department of Law

Phone 465-5427
 Date/Time 2/4/12 12:10PM
 Date 2/4/2012

FISCAL NOTE

**STATE OF ALASKA
2012 LEGISLATIVE SESSION**

BILL NO. SB 186

Analysis

SB 186 makes several changes in criminal procedures in response to the decisions by the United States Supreme Court that factual issues that would increase the potential penalty for conviction of a crime must be decided by a jury (unless the defendant waives this right) by proof beyond a reasonable doubt. The bill also clarifies procedures for deciding certain factors in aggravation.

SB 186 also clarifies procedures for imposition of a sentence after a probation violation if the defendant has made certain agreements as part of a plea negotiation.

The fiscal impact to Department of Law is zero.

Cindy Smith

From: Nancy Meade <NMeade@courts.state.ak.us>
Sent: Monday, February 13, 2012 4:07 PM
To: Sen. Hollis French; Sen. Bill Wielechowski; Sen. John Coghill; Sen. Lesil McGuire; Sen. Joe Paskvan
Cc: Cindy Smith; Karen Lidster
Subject: SB 186 - Senator Coghill's amendment re felony theft dollar amounts

Follow Up Flag: Follow up
Flag Status: Flagged

On Friday, the Senate Judiciary Committee considered proposed amendments to SB 186 from Senator Coghill that would raise the threshold value amount for a felony theft from \$500 to \$1500. (Currently, Theft 2 occurs when the value of the stolen item is between \$500 and \$25,000, and it is a Class C felony. If the value is less than \$500, the theft is a misdemeanor.)

Senator Wielechowski asked whether the court system could extract information from its statistics to explain how many felony theft cases are charged, or how many felony convictions result, when the dollar value of the stolen item is below \$1500 (or just slightly above \$500). The court's statistics are kept by statute, and, unfortunately, they do not describe the value of the items at issue in a theft case. We can say how many charges are brought under a statute, and how many defendants were convicted under a statute, but our statistics do not describe factual details about the cases.

Please let me know if I can help with any other information.

*Nancy Meade
General Counsel
Alaska Court System
Anch: 907-264-8264
Juneau: 907-463-4736*

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Juneau, Alaska 99801-1182
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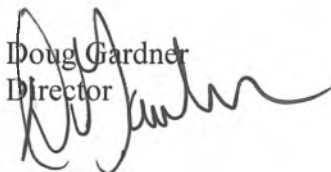
MEMORANDUM

February 15, 2012

SUBJECT: Proposed Amendment to AS 11.41.200(a); AS 11.81.900(b)

TO: Senator Hollis French
Attn: Cindy Smith

FROM: Doug Gardner
Director



I spoke with Cindy Smith in your office regarding the enclosed proposed amendment. While I discussed making changes to conform the amendment to other criminal statutes, I elected to provide the amendment as drafted, but enclose this memorandum to spot issues that may arise during hearings on the proposed amendment. It was my view that this was more helpful to you than trying to make some changes, and yet not necessarily fix some of the broader concerns raised by the amendment. My comments in the time available are as follows:

- Currently, the concept embodied in this amendment exists in principle in AS 11.41.230(a)(1)(C) (assault in the third degree). Another way to address the concerns raised in the amendment is to move the provision in AS 11.41.230(a)(1)(C), to assault in the second degree, with a different mental state, etc. A concern that may be raised with the proposed amendment is how the amendment relates to existing AS 11.41.230(a)(1)(C), or 11.41.230(a)(3).
- A serious concern is that not all of the injuries in the proposed amendment to AS 11.81.900(b) (serious bodily injury to a child), would qualify as serious physical injury as the term is currently defined in AS 11.81.900(b)(56). For example, a broken bone from an intentional shove of a child by a person over 18 of a person under 12 years of age, would classify as a class A felony assault. What if the broken bone was a bone in the foot, such as a toe? Many of the serious injuries listed in the proposed amendment are already clearly serious physical injuries as the term is already defined. The inconsistent results of establishing, as noted above, that any fracture of a bone is a serious bodily injury to a child, in contrast to dealing with each injury on a case-by-case basis, through expert testimony, will lead to potentially inapposite results. The general definition of serious physical injury arguably provides more fairness and equity in analyzing what constitutes serious physical injury, than the proposed list in the amending language.
- A disadvantage in this proposal is that because an element of the offense requires proof of a child's age, or proof of age and disability, this statute will render

unavailable the aggravator in AS 12.55.155(c)(5) (vulnerability due to age, disability, etc.). Is this intended? I note that this issue already exists for prosecution under the assault in the third degree statute noted above, but at the A felony level, the consequences are more significant in eliminating this aggravator.

- "[O]n more than one occasion." Could this language be used in an argument that a defendant may only be charged once for multiple assaults, forcing the state back to existing assault charging theories? Clearly this language would need to be addressed.
- The amendment employs a new term "serious bodily injury" that is not used in the criminal code. This new term overlaps broadly with the term "serious physical injury" which is commonly used in the criminal code but also includes within its meaning conditions which may or may not normally be considered serious. Employing different definitions for broadly similar conditions is never wise. It is impossible to accurately predict how a court will rationalize different statutes imposing different penalties while employing these terms. To the extent there is overlap one can be certain that equal protection and due process issues may require the imposition of a lesser punishment when similar statutes punish the same conduct. In this regard, how this amendment interacts with AS 11.41.220 should be closely examined.
- The amendment uses an age of 12 years. The legislature has previously employed the age of 10 when creating special relationships or conditions to increase the severity of conduct in the assault statutes. For example, AS 11.41.220(a) provides:
 - (a) A person commits the crime of assault in the third degree if that person
 - (1) recklessly
 - ...
 - (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;**
 - ...
 - (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;**
 -

Is there a particular reason for using the age of 12 instead of the age of 10 as the legislature has previously done?

- The legislature previously looked at the issues of assaults on children and proof of the injuries and enacted the provisions of AS 11.41.220(a) that are set out above. If this provision and our other assault statutes are no longer seen as sufficiently

criminalizing the conduct, might it be wise to use and expand upon this framework. For example, instead of focusing on whether an injury necessitates medical attention or treatment one could increase the level of the offense if it requires hospitalization or some other factor.

- When the legislature includes things that qualify as aggravating factors as elements in crimes, the prosecution is not permitted to use that aggravating factor to increase the term of imprisonment for the offense. The existence of an aggravating factor allows a court to increase the imprisonment up to maximum for that level of offense. Without an aggravating factor, a court must sentence an offender within the presumptive range for the offense, a term that is usually significantly less than the maximum. Increasing levels of offenses, for example from a C felony to a B felony, may not always result in an increase in punishment due to the loss of aggravating factors being used to increase punishment at sentencing.

DDG:plm
12-095.plm

Enclosure

AMENDMENT

OFFERED IN THE SENATE

TO: SB 186

1 Page 1, line 1, following "Act":

2 Insert "**relating to assault causing serious bodily injury to a child; relating to a**
3 **definition of "serious bodily injury to a child";"**

4

5 Page 1, following line 6:

6 Insert new bill sections to read:

7 **** Section 1.** AS 11.41.200(a) is amended to read:

8 (a) A person commits the crime of assault in the first degree if

9 (1) that person recklessly causes serious physical injury to another by
10 means of a dangerous instrument;

11 (2) with intent to cause serious physical injury to another, the person
12 causes serious physical injury to any person;

13 (3) the person knowingly engages in conduct that results in serious
14 physical injury to another under circumstances manifesting extreme indifference to the
15 value of human life; or

16 (4) that person recklessly causes serious physical injury to another by
17 repeated assaults using a dangerous instrument, even if each assault individually does
18 not cause serious physical injury;

19 **(5) while being 18 years of age or older, that person**

20 **(A) intentionally causes serious bodily injury to a child**
21 **under 12 years of age or to a child under 16 years of age who is mentally**
22 **or physically impaired; or**

23 **(B) recklessly causes serious bodily injury on one or more**

1 **than one occasion to a child under 12 years of age or to a child under 16**
 2 **years of age who is mentally or physically impaired.**

3 * **Sec. 2.** AS 11.81.900(b) is amended by adding a new paragraph to read:

4 (65) "serious bodily injury to a child" includes second or third degree
 5 burns, a fracture of any bone, a concussion, strangulation, injuries to the skin that
 6 involve severe bruising or the likelihood of permanent or protracted disfigurement,
 7 including those sustained by striking children with objects, or other physical injury
 8 that results in significant physical injury to the child."
 9

10 Page 1, line 7:

11 Delete "Section 1"

12 Insert "Sec. 3"

14 Renumber the following bill sections accordingly.
 15

16 Page 5, line 23:

17 Delete "sec. 8"

18 Insert "sec. 10"

20 Page 5, line 24:

21 Delete "sec. 9"

22 Insert "sec. 11"

24 Page 5, line 29:

25 Delete "sec. 1"

26 Insert "sec. 3"

28 Page 5, line 30:

29 Delete "sec. 2"

30 Insert "sec. 4"

31 Delete "sec. 3"

1 Insert "sec. 5"

2

3 Page 5, line 31:

4 Delete "sec. 4"

5 Insert "sec. 6"

6

7 Page 6, line 1:

8 Delete "sec. 7"

9 Insert "sec. 9"

10

11 Page 6, lines 3 - 4:

12 Delete all material and insert:

13 "(b) AS 11.41.200(a), as amended by sec. 1 of this Act, AS 11.81.900(b)(65), as
14 added by sec. 2 of this Act, and AS 12.55.090, as amended by sec. 8 of this Act, apply to
15 offenses occurring on or after the effective date of this Act."

16

17 Page 6, line 5:

18 Delete "sec. 8"

19 Insert "sec. 10"

20

21 Page 6, line 10:

22 Delete "Sections 8 and 9"

23 Insert "Sections 10 and 11"

24 Delete "sec. 12"

25 Insert "sec. 14"

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR COGHILL

TO: SB 186

1 Page 1, line 1, following "Act":

2 Insert "relating to property crimes;"

3

4 Page 1, following line 6:

5 Insert new bill sections to read:

6 ** Section 1. AS 11.46.130(a) is amended to read:

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

9 (1) the value of the property or services is \$1,500 [\$500] or more but
10 less than \$25,000;

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

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

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

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

17 (6) the value of the property is \$250 [\$50] or more but less than \$1,500
18 [\$500] and, within the preceding five years, the person has been convicted and
19 sentenced on two or more separate occasions in this or another jurisdiction of

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

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

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

3 (D) an offense under AS 11.46.220(c)(1) or (c)(2)(A), or an
4 offense under another law or ordinance with similar elements; or

5 (7) the property is an access device.

6 * **Sec. 2.** AS 11.46.140(a) is amended to read:

7 (a) A person commits the crime of theft in the third degree if the person
8 commits theft as defined in AS 11.46.100 and

9 (1) the value of the property or services is \$250 [\$50] or more but less
10 than \$1,500 [\$500]; **or**

11 (2) [REPEALED]

12 (3) the value of the property is less than \$250 [\$50] and, within the
13 past five years, the person has been convicted and sentenced on two or more separate
14 occasions in this or another jurisdiction of theft or concealment of merchandise, or an
15 offense under another law or ordinance with similar elements.

16 * **Sec. 3.** AS 11.46.150(a) is amended to read:

17 (a) A person commits the crime of theft in the fourth degree if the person
18 commits theft as defined in AS 11.46.100 and the value of the property or services is
19 less than \$250 [\$50].

20 * **Sec. 4.** AS 11.46.220(c) is amended to read:

21 (c) Concealment of merchandise is

22 (1) a class C felony if

23 (A) the merchandise is a firearm;

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

25 (C) the value of the merchandise is \$250 [\$50] or more but less
26 than \$1,500 [\$500] and, within the preceding five years, the person has been
27 convicted and sentenced on two or more separate occasions in this or another
28 jurisdiction of

29 (i) the offense of concealment of merchandise under
30 this paragraph or (2)(A) of this subsection, or an offense under another
31 law or ordinance with similar elements; or

1 (ii) an offense under AS 11.46.120, 11.46.130, or
2 11.46.140(a)(1), or an offense under another law or ordinance with
3 similar elements;

4 (2) a class A misdemeanor if

5 (A) the value of the merchandise is \$250 [\$50] or more but less
6 than \$1,500 [\$500]; or

7 (B) the value of the merchandise is less than \$250 [\$50] and,
8 within the preceding five years, the person has been convicted and sentenced
9 on two or more separate occasions of the offense of concealment of
10 merchandise or theft in any degree, or an offense under another law or
11 ordinance with similar elements;

12 (3) a class B misdemeanor if the value of the merchandise is less than
13 \$250 [\$50].

14 * Sec. 5. AS 11.46.260(b) is amended to read:

15 (b) Removal of identification marks is

16 (1) a class C felony if the value of the property on which the serial
17 number or identification mark appeared is \$1,500 [\$500] or more;

18 (2) a class A misdemeanor if the value of the property on which the
19 serial number or identification mark appeared is \$250 [\$50] or more but less than
20 \$1,500 [\$500];

21 (3) a class B misdemeanor if the value of the property on which the
22 serial number or identification mark appeared is less than \$250 [\$50].

23 * Sec. 6. AS 11.46.270(b) is amended to read:

24 (b) Unlawful possession is

25 (1) a class C felony if the value of the property on which the serial
26 number or identification mark appeared is \$1,500 [\$500] or more;

27 (2) a class A misdemeanor if the value of the property on which the
28 serial number or identification mark appeared is \$250 [\$50] or more but less than
29 \$1,500 [\$500];

30 (3) a class B misdemeanor if the value of the property on which the
31 serial number or identification mark appeared is less than \$250 [\$50].

1 * **Sec. 7.** AS 11.46.280(d) is amended to read:

2 (d) Issuing a bad check is

3 (1) a class B felony if the face amount of the check is \$25,000 or more;

4 (2) a class C felony if the face amount of the check is \$1,500 [\$500] or
5 more but less than \$25,000;

6 (3) a class A misdemeanor if the face amount of the check is \$250
7 [\$50] or more but less than \$1,500 [\$500];

8 (4) a class B misdemeanor if the face amount of the check is less than
9 \$250 [\$50].

10 * **Sec. 8.** AS 11.46.285(b) is amended to read:

11 (b) Fraudulent use of an access device is

12 (1) a class B felony if the value of the property or services obtained is
13 \$25,000 or more;

14 (2) a class C felony if the value of the property or services obtained is
15 \$1,500 [\$50] or more but less than \$25,000;

16 (3) a class A misdemeanor if the value of the property or services
17 obtained is less than \$1,500 [\$50].

18 * **Sec. 9.** AS 11.46.295 is amended to read:

19 **Sec. 11.46.295. Prior convictions.** For purposes of considering prior
20 convictions in prosecuting a crime of theft under AS 11.46.130(a)(6) or
21 11.46.140(a)(2) [11.46.140(a)(3)], or in prosecuting the crime of concealment of
22 merchandise under AS 11.46.220(c), a conviction for an offense under another law or
23 ordinance with similar elements is a conviction of an offense having elements similar
24 to those of an offense defined as such under Alaska law at the time the offense was
25 committed. The court shall consider the date of a prior conviction as occurring on the
26 date that sentence is imposed for the prior offense.

27 * **Sec. 10.** AS 11.46.360(a) is amended to read:

28 (a) A person commits the crime of vehicle theft in the first degree if, having
29 no right to do so or any reasonable ground to believe the person has such a right, the
30 person drives, tows away, or takes

31 (1) the car, truck, motorcycle, motor home, bus, aircraft, or watercraft

1 of another;

2 (2) the propelled vehicle of another and

3 (A) the vehicle or any other property of another is damaged in a
4 total amount of \$1,500 [\$500] or more;

5 (B) the owner incurs reasonable expenses as a result of the loss
6 of use of the vehicle, in a total amount of \$1,500 [\$500] or more; or

7 (C) the owner is deprived of the use of the vehicle for seven
8 days or more;

9 (3) the propelled vehicle of another and the vehicle is marked as a
10 police or emergency vehicle; or

11 (4) the propelled vehicle of another and, within the preceding seven
12 years, the person was convicted under

13 (A) this section or AS 11.46.365;

14 (B) former AS 11.46.482(a)(4) or (5);

15 (C) former AS 11.46.484(a)(2);

16 (D) AS 11.46.120 - 11.46.140 of an offense involving the theft
17 of a propelled vehicle; or

18 (E) a law or ordinance of this or another jurisdiction with
19 elements substantially similar to those of an offense described in (A) - (D) of
20 this paragraph.

21 * **Sec. 11.** AS 11.46.482(a) is amended to read:

22 (a) A person commits the crime of criminal mischief in the third degree if,
23 having no right to do so or any reasonable ground to believe the person has such a
24 right,

25 (1) with intent to damage property of another, the person damages
26 property of another in an amount of \$1,500 [\$500] or more;

27 (2) the person recklessly creates a risk of damage in an amount
28 exceeding \$100,000 to property of another by the use of widely dangerous means; or

29 (3) the person knowingly

30 (A) defaces, damages, or desecrates a cemetery or the contents
31 of a cemetery or a tomb, grave, or memorial regardless of whether the tomb,

1 grave, or memorial is in a cemetery or whether the cemetery, tomb, grave, or
2 memorial appears to be abandoned, lost, or neglected;

3 (B) removes human remains or associated burial artifacts from
4 a cemetery, tomb, grave, or memorial regardless of whether the cemetery,
5 tomb, grave, or memorial appears to be abandoned, lost, or neglected.

6 * **Sec. 12.** AS 11.46.484(a) is amended to read:

7 (a) A person commits the crime of criminal mischief in the fourth degree if,
8 having no right to do so or any reasonable ground to believe the person has such a
9 right

10 (1) with intent to damage property of another, the person damages
11 property of another in an amount of \$250 [\$50] or more but less than \$1,500 [\$500];

12 (2) the person tampers with a fire protection device in a building that is
13 a public place;

14 (3) the person knowingly accesses a computer, computer system,
15 computer program, computer network, or part of a computer system or network;

16 (4) the person uses a device to descramble an electronic signal that has
17 been scrambled to prevent unauthorized receipt or viewing of the signal unless the
18 device is used only to descramble signals received directly from a satellite or unless
19 the person owned the device before September 18, 1984; or

20 (5) the person knowingly removes, relocates, defaces, alters, obscures,
21 shoots at, destroys, or otherwise tampers with an official traffic control device or
22 damages the work upon a highway under construction.

23 * **Sec. 13.** AS 11.46.486(a) is amended to read:

24 (a) A person commits the crime of criminal mischief in the fifth degree if,
25 having no right to do so or any reasonable ground to believe the person has such a
26 right,

27 (1) with reckless disregard for the risk of harm to or loss of the
28 property or with intent to cause substantial inconvenience to another, the person
29 tampers with property of another;

30 (2) with intent to damage property of another, the person damages
31 property of another in an amount less than \$250 [\$50]; or

1 (3) the person rides in a propelled vehicle knowing it has been stolen
2 or that it is being used in violation of AS 11.46.360 or 11.46.365(a)(1).

3 * **Sec. 14.** AS 11.46.530(b) is amended to read:

4 (b) Criminal simulation is

5 (1) a class C felony if the value of what the object purports to represent
6 is \$1,500 [\$500] or more;

7 (2) a class A misdemeanor if the value of what the object purports to
8 represent is \$250 [\$50] or more but less than \$1,500 [\$500];

9 (3) a class B misdemeanor if the value of what the object purports to
10 represent is less than \$250 [\$50].

11 * **Sec. 15.** AS 11.46.620(d) is amended to read:

12 (d) Misapplication of property is

13 (1) a class C felony if the value of the property misapplied is \$1,500
14 [\$500] or more;

15 (2) a class A misdemeanor if the value of the property misapplied is
16 less than \$1,500 [\$500].

17 * **Sec. 16.** AS 11.46.730(c) is amended to read:

18 (c) Defrauding creditors is a class A misdemeanor unless that secured party,
19 judgment creditor, or creditor incurs a pecuniary loss of \$1,500 [\$500] or more as a
20 result to the defendant's conduct, in which case defrauding secured creditors is

21 (1) a class B felony if the loss is \$25,000 or more;

22 (2) a class C felony if the loss is \$1,500 [\$500] or more but less than
23 \$25,000."

24

25 Page 1, line 7:

26 Delete "Section 1"

27 Insert "Sec. 17"

28

29 Renumber the following bill sections accordingly.

30

31 Page 5, line 23:

- 1 Delete "sec. 8"
2 Insert "sec. 24"
3
4 Page 5, line 24:
5 Delete "sec. 9"
6 Insert "sec. 25"
7
8 Page 5, line 29:
9 Delete "sec. 1"
10 Insert "sec. 17"
11
12 Page 5, line 30:
13 Delete "sec. 2"
14 Insert "sec. 18"
15 Delete "sec. 3"
16 Insert "sec. 19"
17
18 Page 5, line 31:
19 Delete "sec. 4"
20 Insert "sec. 20"
21
22 Page 6, line 1:
23 Delete "sec. 7"
24 Insert "sec. 23"
25
26 Page 6, line 3, following "(b)":
27 Insert "AS 11.46.130(a), as amended by sec. 1 of this Act, AS 11.46.140(a), as
28 amended by sec. 2 of this Act, AS 11.46.150(a), as amended by sec. 3 of this Act,
29 AS 11.46.220(c), as amended by sec. 4 of this Act, AS 11.46.260(b), as amended by sec. 5 of
30 this Act, AS 11.46.270(b), as amended by sec. 6 of this Act, AS 11.46.280(d), as amended by
31 sec. 7 of this Act, AS 11.46.285(b), as amended by sec. 8 of this Act, AS 11.46.295, as

1 amended by sec. 9 of this Act, AS 11.46.360(a), as amended by sec. 10 of this Act,
2 AS 11.46.482(a), as amended by sec. 11 of this Act, AS 11.46.484(a), as amended by sec. 12
3 of this Act, AS 11.46.486(a), as amended by sec. 13 of this Act, AS 11.46.530(b), as amended
4 by sec. 14 of this Act, AS 11.46.620(d), as amended by sec. 15 of this Act, AS 11.46.730(c),
5 as amended by sec. 16 of this Act, and"

6

7 Page 6, line 3:

8 Delete "sec. 6"

9 Insert "sec. 22"

10 Delete "applies"

11 Insert "apply"

12

13 Page 6, line 5:

14 Delete "sec. 8"

15 Insert "sec. 24"

16

17 Page 6, line 10:

18 Delete "Sections 8 and 9"

19 Insert "Sections 24 and 25"

20 Delete "sec. 12"

21 Insert "sec. 28"

SB 186
Amendment 27-LS0811\1.1
Summary of Amendment

The purpose of this amendment is to raise the threshold amounts for offenses regarding property. The offenses proposed for amendment are theft and its related offenses which include concealment of merchandise, removal of identification marks, unlawful possession, issuing a bad check, and fraudulent use of an access device. This amendment also addresses the crimes of vehicle theft, criminal mischief, criminal simulation, misapplication of property, and defrauding creditors.

These crimes regarding property have a value threshold that distinguishes first, second, third, and fourth degree offenses that, depending on the value of the property, or the loss incurred by the victim, are a Class C felony or an A or B misdemeanor.

The values of these crimes regarding property were set in 1978, and since that time have not been adjusted. This amendment will adjust the value from \$500 to \$1500, and \$50 to \$250 establishing the thresholds for C felony, A misdemeanor, and B misdemeanor crimes.

Presently ***Removal of an Identification Mark*** on an item valued at \$50.00 is a Class B misdemeanor; with the proposed amendment the value of the property would be raised to \$250.00.

I have listed a few of the other offenses (by Section) to show that the change throughout the property offenses sections that we are addressing is consistently \$500 is increased to \$1500 and \$50 is increased to \$250.

Sec. 1 Theft in the Second Degree (Class C Felony) Increases the value of property or services \$1500 (\$500) but less than \$25,000.

Value of property is \$250 (\$50) or more but less than \$1500 (\$500) and within the preceding 5 years the person has been convicted or sentenced on two or more separate occasions in this or another jurisdiction.

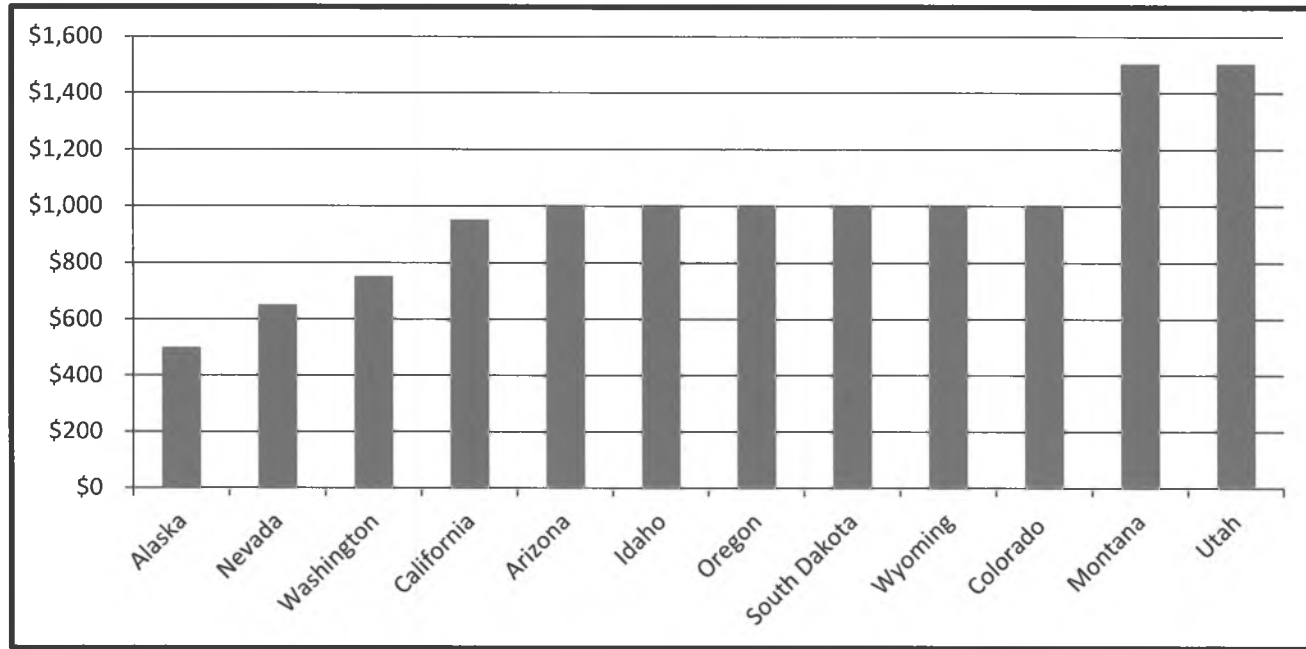
Sec. 2 Theft in the Third Degree (A Misdemeanor) value of property is \$250 (\$50) but less than \$1500 (\$500)

Value of property is less than \$250 (\$50) and within the past 5 years person has been convicted or sentenced on two or more separate occasions in or another jurisdiction.

Sec. 3 Theft in the Fourth Degree (B Misdemeanor) value of property is less than \$250 (\$50).

Property Theft Felony Thresholds in Western U.S.

Alaska	\$500
Nevada	\$650
Washington	\$750
California	\$950
Arizona	\$1,000
Idaho	\$1,000
Oregon	\$1,000
South Dakota	\$1,000
Wyoming	\$1,000
Colorado	\$1,000
Montana	\$1,500
Utah	\$1,500



AK Property Crimes Cases/Charges Filed During FY11

AS 11.46.130(a) Theft 2nd Deg. - \$500 - \$24,999 (911)
 AS 11.46.140(a) Theft 3rd Deg. - \$50 - \$499 (807)
 AS 11.46.150 Theft 4th Deg. - < \$50 (404)

Alaska Court System
Property Crimes Under AS 11.46
Criminal Cases/Charges Filed During FY11

	Cases
AS11.46.130(a)(1): Theft 2-Value \$500-\$24,999	911
AS11.46.130(a)(6): Theft 2- \$50-\$499, Prior Convictions	62
AS11.46.140(a)(1): Theft 3- Value \$50-\$499	807
AS11.46.140(a)(2): Theft 3- Access Device	2
AS11.46.140(a)(3): Theft 3- Under \$50, Prior Convictions	35
AS11.46.150: Theft 4- Under \$50	404
AS11.46.220(c)(1)(C): Conceal Merch-\$50-\$499, Prior Convics	4
AS11.46.220(c)(2)(A): Conceal Merch- Value \$50-\$499	12
AS11.46.220(c)(2)(B): Conceal Merch- Undr \$50, Priors	5
AS11.46.220(c)(2): Conceal Merch- \$50-\$499 Or Priors	3
AS11.46.220(c)(3): Conceal Merch - Under \$50	45
AS11.46.260(b)(1): Removal Of ID Marks - Value \$500+	4
AS11.46.260(b)(2): Removal Of ID Marks -Value \$50-\$499	1
AS11.46.280(d)(2): Issuing Bad Check- Value \$500-\$24,999	12
AS11.46.280(d)(3): Issuing Bad Check- Value \$50-\$499	10
AS11.46.280(d)(4): Issuing Bad Check- Under \$50	3
AS11.46.285(b)(2): Fraud Use Access Device- \$50 - \$24,999	171
AS11.46.285(b)(3): Fraud Use Access Device - under \$50	48

AS11.46.360(a)(2)(A): Vehicle Theft 1- Damage \$500+	11
AS11.46.482(a)(1): Criminal Mischief 3 - Damage \$500+	395
AS11.46.484(a)(1): Crim Mischief 4-Prop Dam \$50-\$499	738
AS11.46.486(a)(2): Criminal Mischief 5 - Damage Under \$50	107
AS11.46.620(d)(1): Misapply Property- Value \$500+	3
AS11.46.620(d)(2): Misapply Property- Value Under \$500	1
TOTAL	3794

** Subsections addressed in the proposed legislation that are not listed here did not have charges cases listed for FY11 in the Court data.*

Amended
27-LS0811\1.1
Gardner
2/9/12

AMENDMENT

OFFERED IN THE SENATE
TO: SB 186

BY SENATOR COGHILL

1 Page 1, line 1, following "Act":

2 Insert "**relating to property crimes;**"

3

4 Page 1, following line 6:

5 Insert new bill sections to read:

6 **** Section 1.** AS 11.46.130(a) is amended to read:

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

9 (1) the value of the property or services is **\$1,500** [\$500] or more but
10 less than \$25,000;

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

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

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

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

17 (6) the value of the property is **\$250** [\$50] or more but less than **\$1,500**
18 [\$500] and, within the preceding five years, the person has been convicted and
19 sentenced on two or more separate occasions in this or another jurisdiction of

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

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

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

3 (D) an offense under AS 11.46.220(c)(1) or (c)(2)(A), or an
4 offense under another law or ordinance with similar elements; or

5 (7) the property is an access device.

6 * **Sec. 2.** AS 11.46.140(a) is amended to read:

7 (a) A person commits the crime of theft in the third degree if the person
8 commits theft as defined in AS 11.46.100 and

9 (1) the value of the property or services is \$250 [\$50] or more but less
10 than \$1,500 [\$500]; **or**

11 (2) [REPEALED]

12 (3)] the value of the property is less than \$250 [\$50] and, within the
13 past five years, the person has been convicted and sentenced on two or more separate
14 occasions in this or another jurisdiction of theft or concealment of merchandise, or an
15 offense under another law or ordinance with similar elements.

16 * **Sec. 3.** AS 11.46.150(a) is amended to read:

17 (a) A person commits the crime of theft in the fourth degree if the person
18 commits theft as defined in AS 11.46.100 and the value of the property or services is
19 less than \$250 [\$50].

20 * **Sec. 4.** AS 11.46.220(c) is amended to read:

21 (c) Concealment of merchandise is

22 (1) a class C felony if

23 (A) the merchandise is a firearm;

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

25 (C) the value of the merchandise is \$250 [\$50] or more but less
26 than \$1,500 [\$500] and, within the preceding five years, the person has been
27 convicted and sentenced on two or more separate occasions in this or another
28 jurisdiction of

29 (i) the offense of concealment of merchandise under
30 this paragraph or (2)(A) of this subsection, or an offense under another
31 law or ordinance with similar elements; or

1 (ii) an offense under AS 11.46.120, 11.46.130, or
2 11.46.140(a)(1), or an offense under another law or ordinance with
3 similar elements;

4 (2) a class A misdemeanor if

5 (A) the value of the merchandise is \$250 [\$50] or more but less
6 than \$1,500 [\$500]; or

7 (B) the value of the merchandise is less than \$250 [\$50] and,
8 within the preceding five years, the person has been convicted and sentenced
9 on two or more separate occasions of the offense of concealment of
10 merchandise or theft in any degree, or an offense under another law or
11 ordinance with similar elements;

12 (3) a class B misdemeanor if the value of the merchandise is less than
13 \$250 [\$50].

14 * Sec. 5. AS 11.46.260(b) is amended to read:

15 (b) Removal of identification marks is

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17 number or identification mark appeared is \$1,500 [\$500] or more;

18 (2) a class A misdemeanor if the value of the property on which the
19 serial number or identification mark appeared is \$250 [\$50] or more but less than
20 \$1,500 [\$500];

21 (3) a class B misdemeanor if the value of the property on which the
22 serial number or identification mark appeared is less than \$250 [\$50].

23 * Sec. 6. AS 11.46.270(b) is amended to read:

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26 number or identification mark appeared is \$1,500 [\$500] or more;

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28 serial number or identification mark appeared is \$250 [\$50] or more but less than
29 \$1,500 [\$500];

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5 more but less than \$25,000;

6 (3) a class A misdemeanor if the face amount of the check is \$250
7 [\$50] or more but less than \$1,500 [\$500];

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9 \$250 [\$50].

10 * **Sec. 8.** AS 11.46.285(b) is amended to read:

11 (b) Fraudulent use of an access device is

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19 **Sec. 11.46.295. Prior convictions.** For purposes of considering prior
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21 11.46.140(a)(2) [11.46.140(a)(3)], or in prosecuting the crime of concealment of
22 merchandise under AS 11.46.220(c), a conviction for an offense under another law or
23 ordinance with similar elements is a conviction of an offense having elements similar
24 to those of an offense defined as such under Alaska law at the time the offense was
25 committed. The court shall consider the date of a prior conviction as occurring on the
26 date that sentence is imposed for the prior offense.

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28 (a) A person commits the crime of vehicle theft in the first degree if, having
29 no right to do so or any reasonable ground to believe the person has such a right, the
30 person drives, tows away, or takes

31 (1) the car, truck, motorcycle, motor home, bus, aircraft, or watercraft

1 of another;

2 (2) the propelled vehicle of another and

3 (A) the vehicle or any other property of another is damaged in a
4 total amount of \$1,500 [\$500] or more;

5 (B) the owner incurs reasonable expenses as a result of the loss
6 of use of the vehicle, in a total amount of \$1,500 [\$500] or more; or

7 (C) the owner is deprived of the use of the vehicle for seven
8 days or more;

9 (3) the propelled vehicle of another and the vehicle is marked as a
10 police or emergency vehicle; or

11 (4) the propelled vehicle of another and, within the preceding seven
12 years, the person was convicted under

13 (A) this section or AS 11.46.365;

14 (B) former AS 11.46.482(a)(4) or (5);

15 (C) former AS 11.46.484(a)(2);

16 (D) AS 11.46.120 - 11.46.140 of an offense involving the theft
17 of a propelled vehicle; or

18 (E) a law or ordinance of this or another jurisdiction with
19 elements substantially similar to those of an offense described in (A) - (D) of
20 this paragraph.

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22 (a) A person commits the crime of criminal mischief in the third degree if,
23 having no right to do so or any reasonable ground to believe the person has such a
24 right,

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26 property of another in an amount of \$1,500 [\$500] or more;

27 (2) the person recklessly creates a risk of damage in an amount
28 exceeding \$100,000 to property of another by the use of widely dangerous means; or

29 (3) the person knowingly

30 (A) defaces, damages, or desecrates a cemetery or the contents
31 of a cemetery or a tomb, grave, or memorial regardless of whether the tomb,

1 grave, or memorial is in a cemetery or whether the cemetery, tomb, grave, or
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7 (a) A person commits the crime of criminal mischief in the fourth degree if,
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9 right

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11 property of another in an amount of \$250 [\$50] or more but less than \$1,500 [\$500];

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13 a public place;

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15 computer program, computer network, or part of a computer system or network;

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17 been scrambled to prevent unauthorized receipt or viewing of the signal unless the
18 device is used only to descramble signals received directly from a satellite or unless
19 the person owned the device before September 18, 1984; or

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21 shoots at, destroys, or otherwise tampers with an official traffic control device or
22 damages the work upon a highway under construction.

23 * **Sec. 13.** AS 11.46.486(a) is amended to read:

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25 having no right to do so or any reasonable ground to believe the person has such a
26 right,

27 (1) with reckless disregard for the risk of harm to or loss of the
28 property or with intent to cause substantial inconvenience to another, the person
29 tampers with property of another;

30 (2) with intent to damage property of another, the person damages
31 property of another in an amount less than \$250 [\$50]; or

1 (3) the person rides in a propelled vehicle knowing it has been stolen
2 or that it is being used in violation of AS 11.46.360 or 11.46.365(a)(1).

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4 (b) Criminal simulation is

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18 (c) Defrauding creditors is a class A misdemeanor unless that secured party,
19 judgment creditor, or creditor incurs a pecuniary loss of \$1,500 [\$500] or more as a
20 result to the defendant's conduct, in which case defrauding secured creditors is

21 (1) a class B felony if the loss is \$25,000 or more;

22 (2) a class C felony if the loss is \$1,500 [\$500] or more but less than
23 \$25,000."

24

25 Page 1, line 7:

26 Delete "Section 1"

27 Insert "Sec. 17"

28

29 Renumber the following bill sections accordingly.

30

31 Page 5, line 23:

1 Delete "sec. 8"

2 Insert "sec. 24"

3

4 Page 5, line 24:

5 Delete "sec. 9"

6 Insert "sec. 25"

7

8 Page 5, line 29:

9 Delete "sec. 1"

10 Insert "sec. 17"

11

12 Page 5, line 30:

13 Delete "sec. 2"

14 Insert "sec. 18"

15 Delete "sec. 3"

16 Insert "sec. 19"

17

18 Page 5, line 31:

19 Delete "sec. 4"

20 Insert "sec. 20"

21

22 Page 6, line 1:

23 Delete "sec. 7"

24 Insert "sec. 23"

25

26 Page 6, line 3, following "(b)":

27 Insert "AS 11.46.130(a), as amended by sec. 1 of this Act, AS 11.46.140(a), as
28 amended by sec. 2 of this Act, AS 11.46.150(a), as amended by sec. 3 of this Act,
29 AS 11.46.220(c), as amended by sec. 4 of this Act, AS 11.46.260(b), as amended by sec. 5 of
30 this Act, AS 11.46.270(b), as amended by sec. 6 of this Act, AS 11.46.280(d), as amended by
31 sec. 7 of this Act, AS 11.46.285(b), as amended by sec. 8 of this Act, AS 11.46.295, as

1 amended by sec. 9 of this Act, AS 11.46.360(a), as amended by sec. 10 of this Act,
2 AS 11.46.482(a), as amended by sec. 11 of this Act, AS 11.46.484(a), as amended by sec. 12
3 of this Act, AS 11.46.486(a), as amended by sec. 13 of this Act, AS 11.46.530(b), as amended
4 by sec. 14 of this Act, AS 11.46.620(d), as amended by sec. 15 of this Act, AS 11.46.730(c),
5 as amended by sec. 16 of this Act, and"

6

7 Page 6, line 3:

8 Delete "sec. 6"

9 Insert "sec. 22"

10 Delete "applies"

11 Insert "apply"

12

13 Page 6, line 5:

14 Delete "sec. 8"

15 Insert "sec. 24"

16

17 Page 6, line 10:

18 Delete "Sections 8 and 9"

19 Insert "Sections 24 and 25"

20 Delete "sec. 12"

21 Insert "sec. 28"

SENATE BILL NO. 186

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Introduced: 2/1/12

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to persons found guilty but mentally ill; relating to sentencing
 2 procedures for factors that may increase the presumptive range or affect mandatory
 3 parole eligibility; relating to the granting of probation; relating to procedures for
 4 finding aggravating factors at sentencing; amending Rule 32.1, Alaska Rules of
 5 Criminal Procedure; and providing for an effective date."

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

New Section 1. Amendment by Coghill \$1,500 [500]

7 * Section ¹⁰ AS 12.47.040(b) is amended to read:

8 (b) To return a verdict under (a)(4) of this section, the fact finder [JURY]
 9 must find beyond a reasonable doubt that the defendant committed the crime and
 10 [FIND BY A PREPONDERANCE OF THE EVIDENCE] that, when the defendant
 11 committed the crime, the defendant was guilty but mentally ill as defined in
 12 AS 12.47.030.

13 * Sec. ~~7~~ AS 12.47.060(a) is amended to read:

1 (a) In a prosecution for a crime when the affirmative defense of insanity is not
 2 raised and when evidence of mental disease or defect of the defendant is not admitted
 3 at trial under AS 12.47.020, [AND THE DEFENDANT IS CONVICTED OF A
 4 CRIME,] the defendant or [,] the prosecuting attorney [, OR THE COURT ON ITS
 5 OWN MOTION] may raise the issue of whether the defendant is guilty but mentally
 6 ill. A party that seeks a post-conviction determination of guilty but mentally ill
 7 must give notice 10 days before trial of intent to do so; however, this deadline is
 8 waived if the opposing party presents evidence or argument at trial tending to
 9 show that the defendant may be guilty but mentally ill. A hearing must be held on
 10 this issue [AT OR] before the same fact finder that returned the verdict of guilty
 11 under procedures set by the court. In cases decided by a jury, at the request of
 12 the defendant and with the concurrence of the prosecuting attorney, the court
 13 may decide the issue. A waiver of consideration by a jury must be in writing and
 14 in person before the court [SENTENCING HEARING]. At the hearing, the fact
 15 finder [COURT] shall determine whether the defendant has been shown to be guilty
 16 but mentally ill beyond a reasonable doubt, considering [BY A
 17 PREPONDERANCE OF THE] evidence presented at the hearing and any evidence
 18 relevant to the issue that was presented at trial.

19 * Sec. ~~3~~¹⁹. AS 12.47.060(b) is amended to read:

20 (b) If the fact finder [COURT] finds that a defendant is guilty but mentally
 21 ill, the court [IT] shall sentence the defendant as provided by law and shall enter the
 22 finding of guilty but mentally ill as part of the judgment.

23 * Sec. ~~4~~²⁰. AS 12.55.025(i) is amended to read:

24 (i) Except as otherwise provided in this chapter [BY AS 12.55.125(a)(3),
 25 12.55.145(d), 12.55.155(f), AND 12.55.165], the preponderance of the evidence
 26 standard of proof applies to sentencing proceedings.

27 * Sec. ~~5~~²¹. AS 12.55.090(b) is amended to read:

28 (b) Except as otherwise provided in (f) of this section, the [THE] court may
 29 revoke or modify any condition of probation [,] or may change the period of
 30 probation.

31 * Sec. ~~6~~²². AS 12.55.090 is amended by adding a new subsection to read:

1 (f) Unless the defendant and the prosecuting authority agree at the probation
 2 revocation proceeding or other proceeding, the court may not reduce the specific
 3 period of probation, or the specific term of suspended incarceration except by the
 4 amount of incarceration imposed for a probation violation, if

5 (1) the sentence was imposed in accordance with a plea agreement
 6 under Rule 11, Alaska Rules of Criminal Procedure; and

7 (2) the agreement required a specific period of probation or a specific
 8 term of suspended incarceration.

9 * Sec. ~~AS~~ AS 12.55.125(a) is amended to read:

10 (a) A defendant convicted of murder in the first degree or murder of an unborn
 11 child under AS 11.41.150(a)(1) shall be sentenced to a definite term of imprisonment
 12 of at least 20 years but not more than 99 years. A defendant convicted of murder in the
 13 first degree shall be sentenced to a mandatory term of imprisonment of 99 years when

14 (1) the defendant is convicted of the murder of a uniformed or
 15 otherwise clearly identified peace officer, firefighter, or correctional employee who
 16 was engaged in the performance of official duties at the time of the murder;

17 (2) the defendant has been previously convicted of

18 (A) murder in the first degree under AS 11.41.100 or former
 19 AS 11.15.010 or 11.15.020;

20 (B) murder in the second degree under AS 11.41.110 or former
 21 AS 11.15.030; or

22 (C) homicide under the laws of another jurisdiction when the
 23 offense of which the defendant was convicted contains elements similar to first
 24 degree murder under AS 11.41.100 or second degree murder under
 25 AS 11.41.110;

26 (3) [THE COURT FINDS BY CLEAR AND CONVINCING
 27 EVIDENCE THAT] the defendant subjected the murder victim to substantial physical
 28 torture;

29 (4) the defendant is convicted of the murder of and personally caused
 30 the death of a person, other than a participant, during a robbery; or

31 (5) [THE COURT FINDS BY CLEAR AND CONVINCING

1 EVIDENCE THAT] the defendant is a peace officer who used the officer's authority
2 as a peace officer to facilitate the murder.

3 * ~~Sec. 8.~~²⁴ AS 12.55.125 is amended by adding a new subsection to read:

4 (p) If the state seeks either (1) the imposition of a sentence under (a) of this
5 section that would preclude the defendant from being awarded a good time deduction
6 under AS 33.20.010(a) based on a fact other than a prior conviction; or (2) to establish
7 a fact that would increase the presumptive sentencing range under (c)(2), (d)(2), (e)(4),
8 (i)(1)(A) or (B), or (i)(2)(A) or (B) of this section, the factual question required to be
9 decided shall be presented to a trial jury and proven beyond a reasonable doubt under
10 procedures set by the court, unless the defendant waives trial by jury and either
11 stipulates to the existence of the fact or consents to have the fact proven to the court
12 sitting without a jury. Written notice of the intent to establish a fact under this
13 subsection must be served on the defendant and filed with the court as provided for
14 notice under AS 12.55.155(f)(2).

15 * ~~Sec. 9.~~²⁵ AS 12.55.155 is amended by adding new subsections to read:

16 (i) If the state seeks to establish a factor in aggravation at sentencing under
17 (c)(10) of this section,

18 (1) the assessment of the facts underlying the state's allegation that the
19 defendant's conduct was among the most serious included in the definition of the
20 offense shall be made by the trial jury under procedures set by the court and as
21 provided in (f)(2) of this section, unless the defendant waives trial by jury, stipulates
22 to the existence of the aggravating factor or to the facts alleged by the state, or
23 consents to have the assessment proved under procedures set out in (f)(1) of this
24 section; factual assertions underlying the state's allegation that the defendant's conduct
25 was among the most serious included in the definition of the offense must be proved
26 beyond a reasonable doubt;

27 (2) the legal decision concerning whether the defendant's conduct
28 determined under (1) of this subsection was among the most serious included in the
29 definition of the offense shall be made by the court under procedures set out in (f)(1)
30 of this section.

31 (j) If one of the aggravating factors in (c) of this section is established as

1 provided in (f)(1) and (2) of this section, the court may increase the term of
 2 imprisonment up to the maximum term of imprisonment. Any additional aggravating
 3 factor may then be established by clear and convincing evidence by the court sitting
 4 without a jury, including an aggravating factor that the jury has found not to have been
 5 established beyond a reasonable doubt.

6 * ~~Sec. 10~~²¹. AS 33.05.050 is amended to read:

7 **Sec. 33.05.050. Report of probation officer.** When directed by the court, the
 8 probation officer shall report to the court [,] with a statement of the conduct of the
 9 probationer while on probation. Except as otherwise provided by law, the [THE]
 10 court may then discharge the probationer from further supervision and may terminate
 11 the proceedings against the probationer, or may extend the probation, as shall seem
 12 advisable.

13 * ~~Sec. N~~²⁷. AS 33.05.070(b) is amended to read:

14 (b) As speedily as possible after arrest, the probationer shall be taken before
 15 the court for the district having jurisdiction over the probationer. Except as provided
 16 in AS 12.55.090(f), [THEREUPON] the court may revoke the probation and require
 17 the probationer to serve the sentence imposed [,] or any lesser sentence [,] and, if
 18 imposition of sentence was suspended, may impose any sentence that [WHICH]
 19 might originally have been imposed, subject to the limitation specified in
 20 AS 12.55.086(c).

21 * ~~Sec. 12~~²⁸. The uncodified law of the State of Alaska is amended by adding a new section to
 22 read:

23 INDIRECT COURT RULE AMENDMENT. AS 12.55.125(p), enacted by ~~sec. 8~~²⁴ of
 24 this Act, and AS 12.55.155(i) and (j), enacted by ~~sec. 9~~²⁵ of this Act, have the effect of
 25 changing Rule 32.1, Alaska Rules of Criminal Procedure, by amending procedures for
 26 sentencing persons convicted of certain crimes.

27 * ~~Sec. 13~~²⁹. The uncodified law of the State of Alaska is amended by adding a new section to
 28 read:

29 APPLICABILITY. (a) AS 12.47.040(b), as amended by ~~sec. 7~~¹⁷ of this Act,
 30 AS 12.47.060(a), as amended by ~~sec. 7~~¹⁸ of this Act, AS 12.47.060(b), as amended by ~~sec. 7~~¹⁹ of
 31 this Act, AS 12.55.025(i), as amended by ~~sec. 4~~²² of this Act, and AS 12.55.125(a), as amended

1 by sec. ²³7 of this Act, apply to proceedings occurring on or after the effective date of this Act
 2 for offenses occurring before, on, or after the effective date of this Act.

3 (b) AS 12.55.090, as amended by sec. ²²6 of this Act, applies to offenses occurring on
 4 or after the effective date of this Act.

5 (c) AS 12.55.125(p), enacted by sec. ²⁴8 of this Act, applies to sentencing proceedings
 6 occurring on or after the effective date of this Act for offenses occurring before, on, or after
 7 the effective date of this Act.

8 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
 9 read:

10 **CONDITIONAL EFFECT.** Sections ²⁴8 and ²⁵9 of this Act take effect only if sec. ²⁸12 of
 11 this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,
 12 Constitution of the State of Alaska.

13 * **Sec. 15.** This Act takes effect July 1, 2012.

FISCAL NOTE

STATE OF ALASKA cost # codes
 2012 LEGISLATIVE SESSION

Bill Version SB186
 Fiscal Note Number _____
 Publish Date _____

Identifier (file name) SB186-DOC-OC-02-10-12 Dept. Affected DOC
 Title "An Act relating to persons found guilty but mentally ill; relating to sentencing procedures..." Appropriation Administration and Support
 Allocation Office of the Commissioner
 Sponsor Senate Judiciary
 Requester Senate Judiciary OMB Component Number 694

Expenditures/Revenues (Thousands of Dollars)

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES	FY13	FY13	FY14	FY15	FY16	FY17	FY18
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE		(Thousands of Dollars)					
1002	Federal Receipts						
1003	GF Match						
1004	GF						
1005	GF/Prgm (DGF)						
1037	GF/MH (UGF)						
1178	temp code (UGF)						
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES							

Estimated SUPPLEMENTAL (FY12) operating costs 0.0 (separate supplemental appropriation required;
 (discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs 0.0 (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

This is the original version of the bill.

Prepared by Leslie Houston, Director
 Division Department of Corrections - Administrative Services
 Approved by Joseph D. Schmidt, Commissioner
Department of Corrections

Phone 907-465-3339
 Date/Time 02/10/12 9:00AM
 Date 2/10/2012

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

BILL NO. SB186

Analysis

This legislation requires a jury to find someone Guilty But Mentally Ill (GBMI) "beyond a reasonable doubt" as opposed to the current language of "by a preponderance of the evidence." DOC has very few offenders who meet this criteria, therefore, this legislation will have little to no fiscal impact on the department.