

SB

5

<TARGET><BILL>SB 5</BILL><SUBJECT>SB
5</SUBJECT><COMM>SJUD29</COMM></TARGET>

Senate Peter A. Micciche

Alaska State Legislature

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SB 5 SPONSOR STATEMENT

An Act relating to loss of income and valuing property for orders of restitution

SB 5 strengthens Alaska's restitution laws; helps restore crime victims to a pre-offense condition; and protects the property interests of all Alaskans.

According to the Department of Public Safety's annual report, *Crime in Alaska 2013*, Alaskans suffered over 23 million dollars in loss due to property crimes in 2013, up more than 12% from 2011. Surely we need to do all we can to ensure our laws work for, and not against, restitution to victims of property crimes.

SB 5 amends Alaska's restitution statutes in AS 12.55.045(a) directing courts to take into account the public policy consideration that favors requiring offenders to compensate victim damages and injury, *including loss of income*.

SB 5 further specifies that *loss of income* includes the total loss of income a business or person suffers as a result of not having stolen property available during the time it takes to obtain a replacement.

Finally, SB 5 amends AS 12.55.100(a)(2) to state that in determination of actual damages or loss the court will value the property according to its market value at the time and place of the crime, or, if this value cannot reasonably be determined, the cost of replacement of the property within a reasonable time after the crime.

In December of 2013 Alaska's Appellate Court ruled in *Lori Welsh v. State of Alaska* that the business victim of a theft crime was not entitled restitution that covered loss of income (retail or market value), but only the actual cost paid for the property. This decision is problematic to Alaskans and their business interests, requiring them to disclose confidential pricing information and depriving them of the benefit of our free market economy.

In *Welsh*, the district court ruled in the restitution order that the defendant should restore at market value the property stolen from the business owner, as the defendant should not be better off than a lawful customer paying the market price. The Appellate Court disagreed, stating this reasoning was inconsistent with Alaska's two restitution statutes, finding that AS 12.55.045(a) - restitution orders as a provision of a sentence, does not limit restitution to actual damages or loss caused by the crime; and AS 12.55.100(a)(2) - restitution as a condition of probation, does limit restitution to actual damages or loss.

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The Appellate Court found it unusual that the two statutes would be construed differently, reversed the district court's order, and decided that Alaska courts would impose restitution for actual damages or loss suffered by the victim, and not the amount of the defendant's unjust gain, regardless of whether restitution was made part of the defendant's sentence or as a condition of probation.

SB 5 makes it clear in the law we recognize *loss of income* to be a real loss to persons and businesses, and that we expect the courts to recognize this in determination of restitution orders.

I am committed to protect the rights of crime victims to just and fair restitution orders from our courts, and to the preservation of our free market economy. SB 5 is a substantial step in this direction. Please join me in strengthening Alaska's restitution laws; restoring crime victims to a pre-offense condition; and protecting property interests of all Alaskans.

Staff contact: Chuck Kopp (907)465-3792

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Senate Bill 5

SECTIONAL ANALYSIS

Version "H"

Section 1 amends AS 12.55.045(a)(1) *Restitution and compensation*, clarifying that our public policy favors requiring criminals to compensate their victims not only for damages and injury, but loss of income as well.

Section 2 amends 12.55.045(n) to define "loss of income" as *the total loss of income a business or person suffers as a result of not having stolen property available during the time it takes to obtain a replacement*.

Section 3 amends AS 12.55.045 adding new subsection (o) which directs the courts, in making determinations of loss or damage for restitution, to value property as the market value of the property at the time and place of the crime or, if this cannot reasonably be established, the cost of replacement within a reasonable time after the crime.

This section adopts language currently used by the courts in AS 11.46.980 to make determinations of property value in criminal offenses against property (i.e. theft, burglary, criminal trespass, vehicle theft, arson, criminal mischief, forgery, business and commercial offenses).

Section 4 amends AS 12.55.100(a) *Conditions of probation*, clarifying how the court shall value property when determining the amount of actual damages or loss under this paragraph, establishing the same standard as in Section 3.

Section 5 establishes that amendments in Sections 1-4 of the Act apply to an order of restitution for an offense committed on or after the effective date of the Act.



ASSOCIATED GENERAL CONTRACTORS of ALASKA

8005 SCHOON STREET, SUITE 100 • ANCHORAGE, ALASKA 99518
TELEPHONE (907) 561-5354 • FAX (907) 562-6118

February 18, 2015

Senator Mia Costello
Chair, Senate Labor & Commerce
State Capitol, Room 510
Juneau AK, 99801

Re: Senate Bill 5

Dear Senator Costello, *Mia*

The Associated General Contractors of Alaska (AGC) is a trade association representing over 640 Alaskan businesses in the construction industry. Within our membership is a majority of Alaska's construction industry. On behalf of the AGC and those businesses, I offer the following comments in support of Senate Bill 5.

In response to some low profile but very expensive copper wire thefts at a couple of remote gravel crushing operations in 2013, we learned that Alaska was the only state with no requirements dealing with the sale of certain scrap metals, including copper wire (usually stolen). Working with scrap metal dealers we were able to address the immediate issue last year with CSHB 305. The bill instituted recordkeeping requirements of those scrap metal businesses. While not stopping such theft, experience of other states after putting similar requirement in place did significantly reduce theft.

In last year's legislation, we weren't able to address the compensation or restitution for the loss from the crime. The copper wire thefts previously mentioned each resulted in less than one-thousand dollars of copper scrap value. The cost to repair was a few tens of thousands dollars and the loss of income from the theft was never calculated, but would easily have been many times more. The criminal has more rights than the victim.

Fair restitution is not an unjust enrichment of the victim, and should not be a break for the person who committed the crime at the expense of the victim. Fair restitution needs to include the cost of restoration to a pre-offense condition and the loss of income as a result of the theft. Please support this legislation.

Sincerely,

John MacKinnon, Executive Director
Associated General Contractors of Alaska



February 18, 2015

The Honorable Peter Micciche
State Capitol Room 514
Juneau AK, 99801

Re: Support for Senate Bill 5 Restitution Orders

Dear Senator Micciche:

The Alaska Chamber supports Senate Bill 5 (SB 5), an act relating to loss of income and valuing property for orders of restitution.

The Alaska Chamber is an organization dedicated to improving the business environment in Alaska. The Chamber represents hundreds of businesses from Ketchikan to Barrow that share a common goal: to make Alaska a viable and competitive place to do business. We believe statutes and regulations in Alaska should provide a level playing field for the free market, and provide recourse against those who attempt to tilt the system.

Income to Alaska businesses supports thousands of Alaskan families; and loss of income to a business as the result of a crime should be considered in restitution orders. Presently, there is an inconsistency between restitution considerations administered by the courts and those considerations as a condition of probation. As seen in the 2013 ruling in *Lori Welsh v. State of Alaska*, this inconsistency can result in businesses affected by crime not receiving compensation for income lost due to that crime.

We support the State's efforts to coherently and consistently administer justice. On behalf of Alaska's business community, thank you for your efforts to assure Alaska's businesses are protected, and made whole when offended.

Sincerely,

A handwritten signature in black ink that reads 'Rachael Petro'.

Rachael Petro
President and CEO

Chuck Kopp

From: Robin Forsi
Sent: Friday, February 20, 2015 10:13 AM
To: Chuck Kopp
Subject: FW: SB 5

From: Bryce Erickson [mailto:BErickson@orionmarinegroup.com]
Sent: Monday, February 16, 2015 3:19 PM
To: Sen. Peter Micciche
Subject: SB 5

Senator,

I have been hearing comments about SB 5 allowing loss of income to be considered by the court in restitution orders. We have been lucky enough to not have had too much trouble, but see the great potential.

We do a lot of remote work, and someone doing damage to our gear, or removing batteries, etc., could stop a job. If there are 10 guys that have to stop work until a replacement comes in, it could cost \$8500 per day, plus \$1500 in room & board, plus at least that much in rented equipment on some jobs.

If it is at the end of the year, it could cost the season, cause liquidated damages to start, miss a barge out, etc.

It cannot be construed as unjust enrichment, it would just be a step towards making a business whole to the point they were before the crime occurred.

I am in support of SB 5.

Bryce Erickson

Vice President

Construction Operations Alaska

Orion Marine Group, Inc.

Phone 907 561 9811

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Senator Peter Micciche
State Capitol Room 514
Juneau, Alaska, 99801

February 23, 2015

Subj: SB 5 - Support

Dear Senator Micciche,

As owner of Alcan Electrical & Engineering, an Alaskan electrical construction company, I would like to express my support for passage of SB 5 Restitution: Property and Income Loss. It is important that the Legislature address the 2013 Alaska Appellate Court decision and allow loss of income to be considered in calculating restitution.

As you can imagine, Alcan's construction sites often become targets of theft of equipment and materials. The loss of either not only impacts us with the cost of the item(s) stolen, but also the resulting cost of project delays and possibly project cancellation. Therefore, we support amending Alaska's statutes to make certain that offenders are required to compensate not only victim damages and injury, but also the loss of income. We also support amending Alaska's restitution statues to require that actual value of damages or loss are determined according to market value at the time and place of the crime.

Thank you for introducing SB 5 and for your support of Alaska's electrical construction industry.

If you have any questions or require further information, please contact me.

Sincerely,

Scott Bringmann
President

NFIB

The Voice of Small Business®

ALASKA

January 30, 2015

The Honorable Peter Micciche
State Capitol Building
Juneau, Alaska 99801-1182

RE: Senate Bill 5 – Restitution Orders

Dear Senator Micciche:

On behalf of the National Federation of Independent Business/Alaska, I wish to respectfully share our support for Senate Bill 5 relating to restitution orders. The National Federation of Independent Business is the largest small-business advocacy group in Alaska.

Senate Bill 5 is an important step towards protecting individuals who have been victims of crimes and are entitled to restitution. This measure provides for restitution orders to include all losses caused by a criminal's act, including the loss of income.

Simply stated, a criminal who disables a commercial fishing boat at a time when the boat would be fishing causes harm to more than the boat. It limits the person's ability to earn an income from the activity for which the boat is used. That loss is clearly the result of the criminal act and should be compensated. This would be similarly true of a contractor's loss of equipment and subsequent loss of a job.

This bill would also establish that the retail value of a property is properly the replacement cost, acknowledging that deductions below that threshold fail to recognize the loss of business opportunity or the difficulty, sometimes impossibility, of determining any other cost basis.

In a recent court case, the district court was correct in ruling that the defendant should restore at market value the property stolen from a business owner, as the defendant should not be better off than a lawful customer paying the market price. The Appellate Court got it wrong in ruling that the victim of a crime is not entitled to restitution that covered loss of income.

Senator Peter Micciche
January 30, 2015
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This legislation recognizes the extent of harm a crime causes and appropriately recognizes the real cost of a crime that should be included in restitution orders.

Sincerely yours,



Dennis L. DeWitt
Alaska State Director

**Cc: NFIB/AK Leadership Council
Senate Labor & Commerce Committee-**

Alaska Stat. § 11.46.980

Current through the 2014 Second Regular Session of the Twenty-Eighth State Legislature

Alaska Statutes > TITLE 11. CRIMINAL LAW > CHAPTER 46. OFFENSES AGAINST PROPERTY > ARTICLE 7. GENERAL PROVISIONS

Sec. 11.46.980. Determination of value; aggregation of amounts

- (a) In this chapter, whenever it is necessary to determine the value of property, that value is the market value of the property at the time and place of the crime unless otherwise specified or, if the market value cannot reasonably be ascertained, the cost of replacement of the property within a reasonable time after the crime.
- (b) The value of written instruments, exclusive of public and corporate bonds and securities and other instruments having a readily ascertainable market value, shall be determined in the following manner:
 - (1) the value of an instrument constituting an evidence of debt, including a check, draft, or promissory note, is the amount due or collected on the instrument;
 - (2) the value of any other instrument that affects a valuable legal right, privilege, or obligation shall be considered the greatest amount of economic loss that the owner of the instrument might reasonably incur because of the loss of the instrument.
- (c) In determining the degree or classification of a crime under this chapter, amounts involved in criminal acts committed under one course of conduct, whether from the same person or several persons, shall be aggregated.

History

(§ 4 ch 166 SLA 1978)

Annotations

Case Notes

NOTES TO DECISIONS

ITEMS MARKED FOR SALE. –The fact that allegedly shoplifted grocery items, which had been photographed by store managers, were marked for sale at a particular price was strong evidence of value. [*Page v. State, 725 P.2d 1082 \(Alaska Ct. App. 1986\).*](#)

MARKET VALUE. –Defendant's contention that the term "market value" had no ascertainable legal meaning, and was thus subject to the rule of lenity, was rejected where the term had a recognized meaning at common law, i.e., the price at which the property would have changed hands in an arm's length transaction between a willing seller and a willing buyer who were aware of the pertinent facts. [*Morris v. State, 334 P.3d 1244 \(Alaska Ct. App. 2014\).*](#)

COST OF REPAIR. –Because damage can be determined by cost of repair and, in turn, cost of repair can be established without determining the value of the damaged property, subsection (a), which uses market value, does not apply when the prosecution relies on evidence of cost of repair to prove the amount of damage in a criminal mischief case. [*Willet v. State, 826 P.2d 1142 \(Alaska Ct. App. 1992\).*](#)

PROOF OF SINGLE COURSE OF CONDUCT. –Although Alaska's aggregation statute was enacted to require proof of a single course of conduct and the state should have instructed the grand jury on this requirement, it was harmless error where the grand jurors understood that they were dealing with a related series of thefts and that the state's theory of the case was based on the aggregated value of stolen property. [*Buckwalter v. State, 23 P.3d 81 \(Alaska Ct. App. 2001\).*](#)

2011 ROBBERY

DEFINITION

The Uniform Crime Reporting (UCR) Program defines robbery as the taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.³

SUMMARY

A total of 576 robberies were committed in 2011. This represents 13.1 percent of the violent crimes and 2.5 percent of the total crime index offenses. The number of robberies decreased 2.7 percent between 2010 and 2011. Monthly figures indicate that more persons were robbed during September than any other month, while the fewest number were robbed in November. Twenty-two point six (22.6) percent of the robberies were committed using a firearm while 61.8 percent were committed using strong-arm tactics. Arrest data submitted by 34 agencies indicated 18.9 percent of the persons arrested for robbery were under 18 years of age and 81.1 percent were 18 and over. Eighty-four point six (84.6) percent of the persons arrested for robbery were male.

The estimated dollar value of associated property loss was \$298,349. Robberies reported to have occurred on streets or highways accounted for approximately 50.9 percent of the offense total and 24.3 percent of the property loss.

ROBBERY INDEX AND RATE VARIANCE 2007 - 2011

YEAR	NUMBER	INDEX % CHANGE	RATE % CHANGE
2007	577	-2.0	-4.8
2008	642	11.3	9.6
2009	643	0.2	-2.1
2010	592	-7.9	-9.6
2011	576	-2.7	-4.4

³ *Crime in the United States 2010*, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/violent-crime/robberymain>

2011 BURGLARY

DEFINITION

Burglary is the unlawful entry of a structure to commit a felony or theft. To classify an offense as a burglary, the use of force to gain entry need not have occurred. The Program has three sub classifications for burglary: forcible entry, unlawful entry where no force is used, and attempted forcible entry. The UCR definition of "structure" includes, for example, apartment, barn, house trailer or houseboat when used as a permanent dwelling, office, railroad car (but not automobile), stable, and vessel (i.e., ship).⁵

SUMMARY

A total of 2,841 burglaries were reported in 2011. This represents 15.0 percent of the property crimes and 12.2 percent of the total crime index offenses. The number of burglaries decreased 7.8 percent between 2010 and 2011. Monthly figures indicate that more burglaries occurred during the month of September than any other month in 2011 while the fewest number occurred in February. Arrest data submitted by 34 reporting agencies indicated 26 percent of the persons arrested for burglary were under 18 years of age and 74 percent were 18 and over. Males constituted 87.2 percent of the offenders.

Thirty-one (31) of the 34 agencies reported the offense of burglary. Place and time of occurrence information was available regarding all of the burglaries, and 61.6 percent of these were residential in nature. The estimated value of property loss for all burglaries was \$3,731,180. Thirty (30) percent of the burglaries were known to have occurred at night. Nature of entry information was provided regarding all burglaries. Sixty-two point one (62.1) percent of the burglaries involved forcible entry, 33.1 percent were unlawful entries (without force) and 4.8 percent were forcible entry attempts.

BURGLARY INDEX AND RATE VARIANCE 2007 - 2011

YEAR	NUMBER	INDEX % CHANGE	RATE % CHANGE
2007	3606	-10.2	-12.7
2008	3175	-11.9	-13.3
2009	3498	10.2	7.7
2010	3083	-12.0	-13.4
2011	2841	-7.8	-9.4

⁵ *Crime in the United States 2010*, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/property-crime/burglarymain>

2011 LARCENY-THEFT

DEFINITION

Larceny-theft is the unlawful taking, carrying, leading, or riding away of property from the possession or constructive possession of another. Examples are thefts of bicycles, motor vehicle parts and accessories, shoplifting, pocket-picking, or the stealing of any property or article that is not taken by force, violence, or by fraud. Attempted larcenies are included. Embezzlement, confidence games, forgery, check fraud, etc., are excluded.⁶

SUMMARY

A total of 14,742 larceny-thefts were reported in 2011. This represents 77.7 percent of the property crimes and 63.1 percent of the total crime index offenses. The number of larceny-thefts decreased 4.3 percent between 2010 and 2011. Larceny-theft was most prevalent during the month of July and least occurring in February. Arrest data submitted by 34 reporting agencies indicated 27 percent of the people arrested for larceny-theft were under 18 years of age and 73 percent were 18 and over. Sixty-one point two (61.2) percent of the offenders were male.

All 34 agencies reported the offense of larceny, and provided information regarding the type of larceny. The estimated property loss related to larceny-theft was \$8,434,135. Losses of goods and property reported stolen as a result of pocket-picking totaled \$21,296; purse-snatching, \$11,638; and shoplifting, \$426,961. The value of the property stolen from motor vehicles was \$1,714,459; from buildings, \$3,162,416; and from coin-operated machines, \$30,704. Thefts of motor vehicle accessories totaled \$265,905; and theft of bicycles totaled \$331,507. All other thefts totaled \$2,469,249.

LARCENY-THEFT INDEX AND RATE VARIANCE 2007 – 2011

YEAR	NUMBER	INDEX % CHANGE	RATE % CHANGE
2007	16,533	-0.2	-3.0
2008	14,931	-9.7	-11.0
2009	15,133	1.4	-0.9
2010	15,412	2.0	2.4
2011	14,742	-4.3	-6.0

⁶ *Crime in the United States 2010*, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/property-crime/larcenytheftmain>

2011 MOTOR VEHICLE THEFT

DEFINITION

Motor vehicle theft is the theft or attempted theft of a motor vehicle. In the UCR Program, a motor vehicle is a self-propelled vehicle which runs on land surfaces and not on rails. Examples of motor vehicles include sport utility vehicles, automobiles, trucks, buses, motorcycles, motor scooters, all-terrain vehicles, and snowmobiles. Motor vehicle theft does not include farm equipment, bulldozers, airplanes, construction equipment or water craft such as motorboats, sailboats, houseboats, or jet skis. The taking of a motor vehicle for temporary use by persons having lawful access is excluded from this definition. ⁷

SUMMARY

A total of 1,378 motor vehicle thefts occurred during 2011. This represents 7.3 percent of the property crime and 5.9 percent of the total crime index offenses. There was a 14.3 percent decrease in the motor vehicle theft crime index between 2010 and 2011. Monthly figures indicate that more vehicles were stolen in August than any other month in 2011, while the fewest number were stolen in January. Arrest data submitted by 34 reporting agencies indicated 25.4 percent of the persons arrested for motor vehicle thefts were under 18 years of age and 74.6 percent were 18 and over. Eighty-one (81) percent of the arrested offenders were male.

Thirty-three (33) of the 34 agencies reported the offense of motor vehicle theft and all agencies provided the value of the property loss. The estimated property loss related to motor vehicle theft was \$8,311,793.

MOTOR VEHICLE THEFT INDEX AND RATE VARIANCE 2007 - 2011

YEAR	NUMBER	INDEX % CHANGE	RATE % CHANGE
2007	2,375	-3.4	-3.0
2008	1,594	-32.9	-33.9
2009	1,671	4.8	2.5
2010	1,607	-4.0	-5.5
2011	1,378	-14.3	-15.7

⁷ *Crime in the United States 2010*, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/property-crime/mvtheftmain>

2013 ROBBERY

DEFINITION

The Uniform Crime Reporting (UCR) Program defines robbery as the taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.³

SUMMARY

A total of 620 robberies were committed in 2013. This represents 13.3 percent of the violent crimes and 2.4 percent of the total crime index offenses. The number of robberies decreased 1.0 percent between 2012 and 2013. Monthly figures indicate that more persons were robbed during August than any other month, while the fewest number were robbed in March. Twenty-two point four (22.4) percent of the robberies were committed using a firearm while 59.5 percent were committed using strong-arm tactics. Arrest data submitted by 30 agencies indicated 5.9 percent of the persons arrested for robbery were under 18 years of age and 94.1 percent were 18 and over. Seventy-nine point four (79.4) percent of the persons arrested for robbery were male.

Seventeen (17) agencies reported the offense of robbery occurring within their jurisdiction. Of those 17 agencies, 14 provided additional information regarding location and value of property loss for the robberies they reported. The estimated dollar value of associated property loss was \$356,132. Robberies reported to have occurred on streets or highways accounted for approximately 53.5 percent of the offense total and 45.9 percent of the property loss.

ROBBERY INDEX AND RATE VARIANCE 2009 - 2013

YEAR	NUMBER	INDEX % CHANGE	RATE % CHANGE
2009	643	0.2	-2.1
2010	592	-7.9	-9.6
2011	576	-2.7	-2.7
2012	626	8.7	7.4
2013	620	-1.0	-1.5

³ *Crime in the United States 2013*, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/violent-crime/robbery>

2013 BURGLARY

DEFINITION

Burglary is the unlawful entry of a structure to commit a felony or theft. To classify an offense as a burglary, the use of force to gain entry need not have occurred. The UCR Program has three sub classifications for burglary: forcible entry, unlawful entry where no force is used, and attempted forcible entry. The UCR definition of "structure" includes, for example, apartment, barn, house trailer or houseboat when used as a permanent dwelling, office, railroad car (but not automobile), stable, and vessel (i.e., ship).⁵

SUMMARY

A total of 2,901 burglaries were reported in 2013. This represents 13.7 percent of the property crimes and 11.2 percent of the total crime index offenses. Arrest data submitted by 30 reporting agencies indicated 13.9 percent of the persons arrested for burglary were under 18 years of age, 86.1 percent were 18 and over, and males constituted 84.7 percent of the known offenders.

Twenty-nine (29) of the 32 reporting agencies provided more details regarding the place, time of occurrence, and value of property stolen during the burglary. Of the agencies who supplied details regarding the nature of the burglary, 70.6 percent were residential in nature. The estimated value of property loss was \$3,821,752. Thirty point one (30.1) percent of the burglaries were reported as occurring at night. Sixty-seven point seven (67.7) percent of the burglaries involved forcible entry, 27.8 percent were unlawful entries (without force), and 4.5 percent were forcible entry attempts.

BURGLARY INDEX AND RATE VARIANCE 2009 – 2013

YEAR	NUMBER	INDEX % CHANGE	RATE % CHANGE
2009	3498	10.2	7.7
2010	3083	-12.0	-13.4
2011	2841	-7.8	-7.8
2012	2934	3.3	2.0
2013	2901	-1.1	-1.6

⁵ *Crime in the United States 2013*, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/property-crime/burglary>

2013 LARCENY-THEFT

DEFINITION

Larceny-theft is the unlawful taking, carrying, leading, or riding away of property from the possession or constructive possession of another. Examples are thefts of bicycles, motor vehicle parts and accessories, shoplifting, pocket-picking, or the stealing of any property or article that is not taken by force, violence, or by fraud. Attempted larcenies are included. Embezzlement, confidence games, forgery, check fraud, etc., are excluded. ⁶

SUMMARY

A total of 16,498 larceny-thefts were reported in 2013. This represents 77.6 percent of the property crimes and 63.7 percent of the total crime index offenses. The reported number of larceny-thefts increased 6.8 percent between 2012 and 2013. Larceny-theft was most prevalent during the month of July and least reported in February. Arrest data submitted by 30 reporting agencies indicated 18.9 percent of the people arrested for larceny-theft were under 18 years of age and 81.1 percent were 18 and over. Fifty-eight point two (58.2) percent of the offenders were male.

Twenty-nine (29) of the agencies provided information regarding the type and value of larceny. The estimated property loss related to larceny-theft was \$9,575,320. Losses of goods and property reported stolen as a result of pocket-picking totaled \$16,166; purse-snatching, \$4,063; and shoplifting, \$616,800. The value of the property stolen from motor vehicles was \$2,425,748; from buildings, \$3,601,524; and from coin-operated machines, \$5,096. Thefts of motor vehicle accessories totaled \$154,142; and theft of bicycles totaled \$389,313. All other thefts totaled \$2,362,468.

LARCENY-THEFT INDEX AND RATE VARIANCE 2009 – 2013

YEAR	NUMBER	INDEX % CHANGE	RATE % CHANGE
2009	15,133	1.4	-0.9
2010	15,412	2.0	2.4
2011	14,742	-4.3	-4.3
2012	15,454	4.8	3.6
2013	16,498	6.8	6.2

⁶ *Crime in the United States 2013*, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/property-crime/larceny-theft>

2013 MOTOR VEHICLE THEFT

DEFINITION

Motor vehicle theft is the theft or attempted theft of a motor vehicle. In the UCR Program, a motor vehicle is a self-propelled vehicle which runs on land surfaces and not on rails. Examples of motor vehicles include sport utility vehicles, automobiles, trucks, buses, motorcycles, motor scooters, all-terrain vehicles, and snowmobiles. Motor vehicle theft does not include farm equipment, bulldozers, airplanes, construction equipment or water craft such as motorboats, sailboats, houseboats, or jet skis. The taking of a motor vehicle for temporary use by persons having lawful access is excluded from this definition.⁷

SUMMARY

A total of 1,686 motor vehicle thefts were reported during 2013. Monthly figures indicate that more vehicles were stolen in September than any other month in 2013, while the fewest number were stolen in March. Arrest data submitted by 30 reporting agencies indicated 15.3 percent of the persons arrested for motor vehicle thefts were under 18 years of age and 84.7 percent were 18 and over. Eighty point nine (80.9) percent of the arrested offenders were male.

Thirty-one (31) of the 32 agencies reported the offense of motor vehicle theft. The estimated property loss related to motor vehicle theft was \$9,769,828.

MOTOR VEHICLE THEFT INDEX AND RATE VARIANCE 2009 - 2013

YEAR	NUMBER	INDEX % CHANGE	RATE % CHANGE
2009	1,671	4.8	2.5
2010	1,607	-4.0	-5.5
2011	1,378	-14.3	-14.2
2012	1,516	10.0	8.7
2013	1686	11.2	10.7

⁷ *Crime in the United States 2013*, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/property-crime/motor-vehicle-theft>

CRIME INDEX OFFENSE SUMMARY

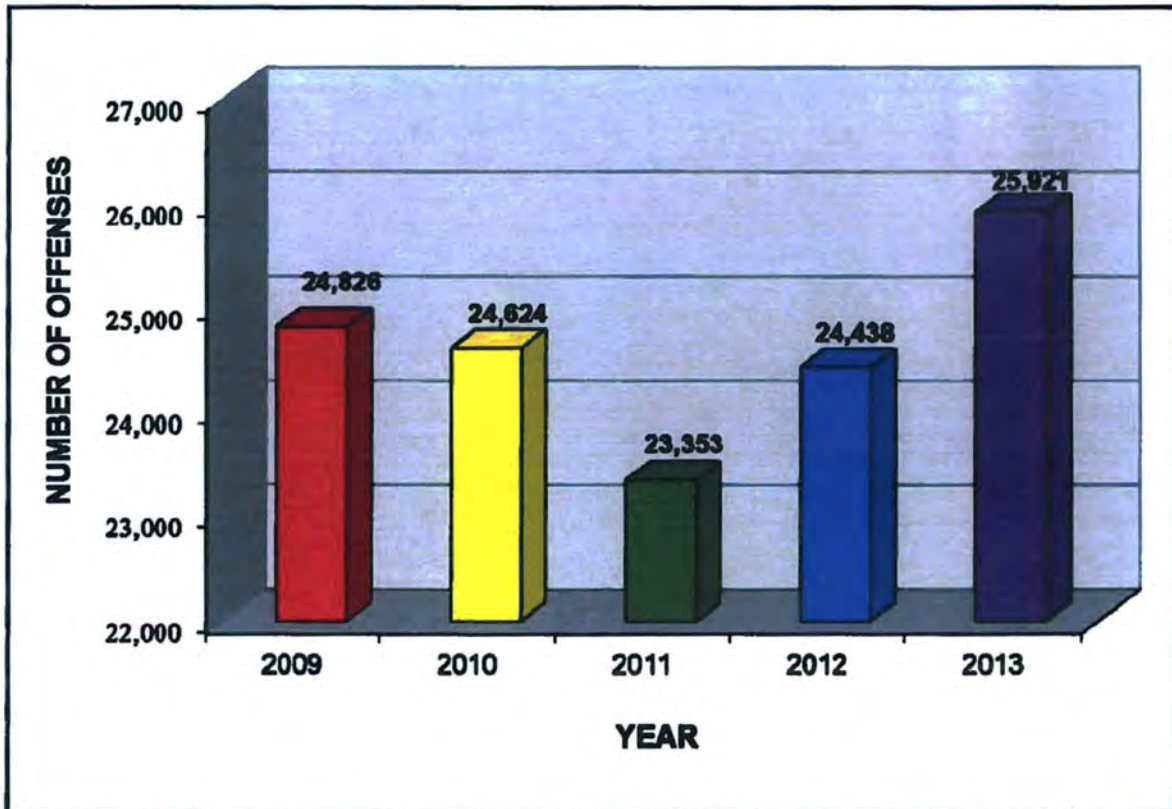
2009 – 2013

	TOTAL OFFENSES	VIOLENT CRIMES	PROPERTY CRIMES	MURDER*	RAPE	ROBBERY	AGGRAVATED ASSAULT*	BURGLARY	LARCENY-THEFT	MOTOR VEHICLE THEFT	ARSON
2009	24,826	4,524	20,302	21	503	643	3,357	3,498	15,133	1,671	**
2010	24,624	4,522	20,102	32	528	592	3,370	3,083	15,412	1,607	**
2011	23,353	4,392	18,961	31	434	576	3,351	2,841	14,742	1,378	**
2012	24,438	4,347	20,091	30	576	626	3,115	2,934	15,454	1,516	167
2013	25,921	4,669	21,252	34	919***	620	3,096	2,901	16,498	1,686	167

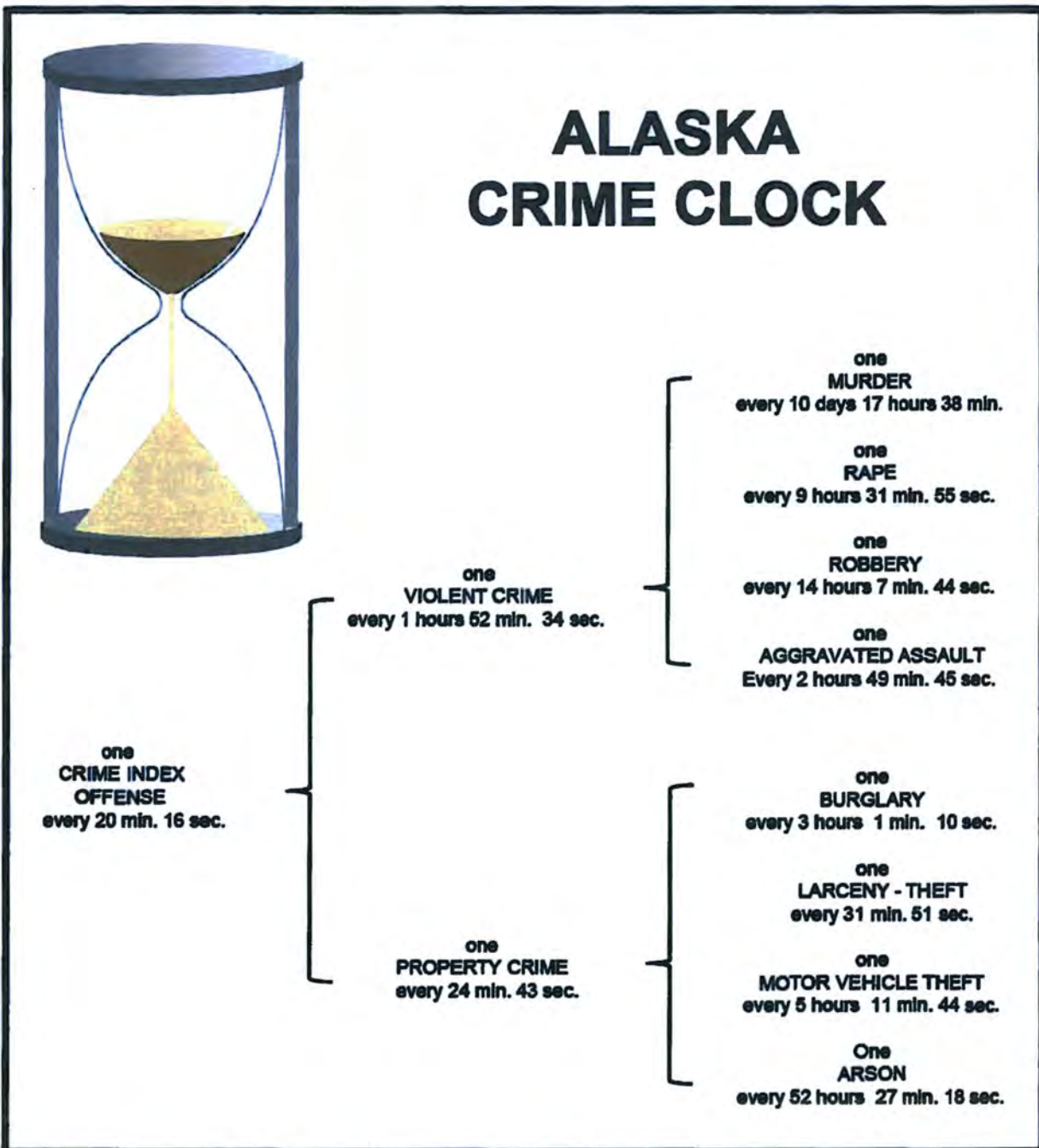
*Negligent manslaughter and simple assault omitted from totals.

**Prior to 2012 crime data for Arson was not included in the index and rate calculations.

***In 2013 the National UCR Program revised the definition of Rape that now includes male and female victims/offenders. The State UCR Program implemented this change in 2013. Many offenses previously reported as Other Sex Offenses are now reported as Rape under the revised definition.



2013 REPORTED CRIME FREQUENCY



The Crime Clock should be viewed with care. Being the most aggregate representation of UCR data, it is designed to convey the annual reported crime experience by showing the relative frequency of occurrence of the Index Offenses. This mode of display should not be taken to imply a regularity in the commission of the Crime Index Offenses; rather, it represents the annual ratio of crime to fixed time intervals.

Senate Peter A. Micciche

Alaska State Legislature

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Senate Bill 5 Supporters

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Senator Peter Micciche
State Capitol Room 514
Juneau, Alaska, 99801

February 23, 2015

Subj: SB 5 - Support

Dear Senator Micciche,

As owner of Alcan Electrical & Engineering, an Alaskan electrical construction company, I would like to express my support for passage of SB 5 Restitution: Property and Income Loss. It is important that the Legislature address the 2013 Alaska Appellate Court decision and allow loss of income to be considered in calculating restitution.

As you can imagine, Alcan's construction sites often become targets of theft of equipment and materials. The loss of either not only impacts us with the cost of the item(s) stolen, but also the resulting cost of project delays and possibly project cancellation. Therefore, we support amending Alaska's statutes to make certain that offenders are required to compensate not only victim damages and injury, but also the loss of income. We also support amending Alaska's restitution statutes to require that actual value of damages or loss are determined according to market value at the time and place of the crime.

Thank you for introducing SB 5 and for your support of Alaska's electrical construction industry.

If you have any questions or require further information, please contact me.

Sincerely,

A handwritten signature in blue ink that reads "Scott Bringmann". The signature is written in a cursive, flowing style.

Scott Bringmann
President

Senate Peter A. Micciche

Alaska State Legislature

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Lori S. Welsh v State of Alaska, 2013

Brief

Lori Welsh was convicted of Theft 3 for stealing pain medication from her place of employment, a veterinary clinic. The District Court ordered Welsh to pay restitution to the clinic for the retail value of the pills – the amount for which the pills would have sold to a paying customer. The rationale of the District Court for restitution based on retail value vs wholesale value was that the defendant “should not obtain a better result” by stealing the pills than if she had purchased the pills.

On appeal, Welsh argued the District Court should have ordered restitution to the victim for the wholesale value of pills – the amount the clinic paid for the pills. The Appellate Court reversed the District Court reasoning that the ruling was inconsistent with Alaska restitution statutes which can be imposed in two (2) different ways – 1) under AS 12.55.045 as a direct provision of a defendant’s sentence, or 2) under 12.55.100 as a condition of a defendant’s probation.

AS 12.55.045 does not explicitly declare restitution should be for actual damages or loss but paid “to the victim or other person injured by the offense”.

AS 12.55.100 specifies restitution should be for “actual damages or loss caused by the crime for which the conviction was had.”

The court determined legislative intent was to limit restitution orders to the amount of *actual damages or loss* under the 12.55.100 condition of probation standard, rather than ordering a defendant to pay the greater amount including *loss of income*, as allowed under the AS 12.55.045 condition of sentence standard, saying “it would be anomalous to construe the two statutes differently”.

The Appellate court stated that while the lower court’s intention was to negate any unjust enrichment for Welsh, *there remains an element of unjust enrichment in the district court’s decision to award restitution to the veterinary clinic based on the retail value of the pills (76 cents apiece) rather than the wholesale value (3 cents apiece). By ordering Welsh to pay the clinic 76 cents for every stolen pill, the district court has essentially ordered Welsh to fund the clinic’s future purchase of twenty-five times as many pills as were stolen.*

The court held that restitution under either statute should be assessed according to the damages or loss arising from the defendant’s crime, and not the amount of the defendant’s unjust gain.

Commentary

In *Welsh*, the Court's reasoning seems to show either disapproval of our free market system, or a lack of understanding of what it takes to operate a small business. Profit margins pay the overhead- to include labor, healthcare premiums, taxes, insurance, supplies and many other operating costs.

In the Court's ruling in *Welsh*, it could have interpreted the word "loss" to include the lost opportunity to sell the item to the defendant who stole it under the principles of a free market system.

The court seems to have ignored AS 12.55.045(d) language which states –

In any case, including a case in which the defendant is convicted of a violation of AS 11.46.120-11.46.150 and the property is commercial fishing gear as defined in AS 16.43.990, the court shall consider the victim's loss, and the order of restitution may include compensation for loss of income (emphasis added).

Two examples of restitution problems the Appellate Court has created in *Welsh*-

1. Guy steals a Happy Meal. Retail value of Happy Meal is \$4.99. Previous to this decision, the Court would order \$4.99 restitution to McDonalds. Now under the *Welsh* decision the Courts may determine loss in a different way. How much did the ingredients cost McDonald's? The Court is also permitted to consider other factors such as labor to assemble the Happy Meal and, possibly, the utility costs to refrigerate it and to heat it back up again and the like. So problem #1 will be that the hearings to establish these values will, in many cases, not be worth the trouble to do. McDonald's will just forego getting restitution rather than have someone figure up and testify about all of this.

2. Guy steals an iPhone 6 from Walmart. Previously the Court would order restitution to Walmart for the retail price of the phone. Under *Welsh*, profit to Walmart based on the retail price is not "loss" but rather "unjust enrichment". So to order any restitution the court would need to determine what that iPhone cost Walmart. Unfortunately, Apple considers all sales agreements with each vendor confidential, they don't want anyone to know what their deal is with Walmart. There is a clause in the contract between Apple and Walmart that forbids disclosure of the terms of the sale of iPhones. Under this scenario Walmart will have to forego receiving ANY restitution because it cannot reveal what they paid for the phone. Clearly, the retail value is the accurate loss to the crime victim, and the restitution amount they are due.

In conclusion, our Appellate Court states that a defendant cannot be ordered to pay restitution on the amount of *the defendant's unjust gain*. The Court acknowledges that the gain is unjust, but denies reparation to the victim. SB 5 is about restoring crime victims to a pre-offense condition, and protecting the property interests of all Alaskans.

This legislation is strongly supported by Alaskans and small business entities.

NOTICE

The text of this opinion can be corrected before the opinion is published in the Pacific Reporter. Readers are encouraged to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts:

303 K Street, Anchorage, Alaska 99501

Fax: (907) 264-0878

E-mail: corrections@appellate.courts.state.ak.us

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

LORI S. WELSH,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-11197
Trial Court No. 3PA-11-2403 CR

O P I N I O N

No. 2405 — December 13, 2013

Appeal from the District Court, Third Judicial District,
Palmer, John W. Wolfe, Judge.

Appearances: Hannah E. King (briefs) and Hanley R. Robinson (oral argument), Assistant Public Defenders, and Quinlan Steiner, Public Defender, Anchorage, for the Appellant. Mary Gilson, Assistant Attorney General, Office of Special Prosecutions and Appeals, Anchorage, and Michael C. Geraghty, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Coats, Senior Judge*.

Judge MANNHEIMER.

* Sitting by assignment made pursuant to Article IV, Section 11 of the Alaska Constitution and Administrative Rule 23(a).

Lori S. Welsh was convicted of third-degree theft for stealing pain medication pills from the veterinary clinic where she worked. As part of her sentence, the district court ordered Welsh to pay restitution to the clinic for the retail value of the pills — *i.e.*, the amount of money that these pills would have sold for, if the clinic had sold them to paying customers. In this appeal, Welsh argues that the district court should have ordered her to pay restitution for the wholesale value of the pills — *i.e.*, the amount of money that the clinic paid for the pills.

There was a significant difference between the retail value of the pills and the wholesale value of the pills. According to the testimony, the clinic bought the pills for 3 cents apiece, but the clinic sold the pills for an average of 76 cents apiece.

The district court ordered Welsh to pay the higher figure based on the rationale that Welsh had been unjustly enriched in an amount equal to 76 cents per pill. The court reasoned that Welsh “should not obtain a better result” by stealing the pills than if she had purchased the pills as a retail customer. But we conclude that this reasoning is inconsistent with Alaska’s restitution statutes.

Two statutes govern awards of restitution in criminal cases, because these awards can be imposed in two different ways: as a direct provision of the defendant’s sentence, or as a condition of the defendant’s probation.

The statute that governs restitution as a condition of probation, AS 12.55.-100(a)(2), specifies that the restitution should be “for actual damages or loss caused by the crime for which [the] conviction was had.”

The statute that governs restitution as a direct provision of a sentence, AS 12.55.045(a), does not explicitly declare that the restitution should be for “actual damages or loss”. However, the statute does specify that the restitution should be paid “to the victim or other person *injured* by the offense” (emphasis added), and the statute

declares that, when the sentencing court determines the amount of restitution, the court “shall take into account the ... public policy that favors requiring criminals to *compensate for damages and injury* to their victims”, as well as “[the] *financial burden* placed on the victim ... and other persons injured by the offense”. (Again, emphasis added)

These phrases suggest that AS 12.55.045(a), like its sibling AS 12.55.100(a)(2), was intended to authorize courts to impose restitution for the actual damages or loss suffered by the victim or other injured person.

Moreover, it would be anomalous to construe the two statutes differently — to limit restitution orders to the amount of actual damages or loss when the restitution is imposed as a condition of the defendant’s probation under AS 12.55.100(a)(2), but allow the sentencing court to order the defendant to pay a greater amount when the restitution is a direct provision of the defendant’s sentence under AS 12.55.045(a).

We also note that even though the district court’s stated intention was to negate any unjust enrichment for Welsh, there remains an element of unjust enrichment in the district court’s decision to award restitution to the veterinary clinic based on the retail value of the pills (76 cents apiece) rather than the wholesale value (3 cents apiece). By ordering Welsh to pay the clinic 76 cents for every stolen pill, the district court has essentially ordered Welsh to fund the clinic’s future purchase of twenty-five times as many pills as were stolen.

In past decisions, this Court has noted the differing wording of the two statutes, and we have suggested — but never directly held — that the two statutes should be construed *in pari materia*, so that restitution in criminal cases would be limited to actual damages regardless of whether the restitution was made a direct part of the defendant’s sentence or a condition of the defendant’s probation. *See Noffsinger v. State*, 850 P.2d 647, 650 (Alaska App. 1993); *Fee v. State*, 656 P.2d 1202, 1206 (Alaska App. 1982).

We now hold that restitution under either statute should be assessed according to the damages or loss arising from the defendant's crime, and not the amount of the defendant's unjust gain. Accordingly, we reverse the district court's restitution order in this case, and we direct the court to enter a restitution order based on the veterinary clinic's loss.

We do not say that the revised amount of restitution must be limited to the wholesale cost of the stolen pills — because that amount of restitution might not wholly cover the clinic's actual damages or loss. *See State v. Hall*, 304 P.3d 677 (Kan. 2013) (discussing the proper amount of restitution in a similar case of theft from an animal clinic). But the restitution order must be based on the clinic's loss, not Welsh's gain.

This portion of the district court's judgement is REVERSED, and the district court is directed to re-assess the amount of restitution in accordance with this opinion.

Please give my thanks and appreciation to the members of the Judiciary Committee for their attention and hard work on this bill. I am grateful for their interest and support in this matter. Below I have responded as best I can, as quickly as I can to the questions and concerns you brought to my attention. I hope this is helpful.

1. **Lapsed license 6 months – year.**

The Board's concerns would be: Has that person been practicing unlicensed in that period? Unlicensed practice is a serious offense that could result in that individual being permanently barred from licensure in Alaska.

What are the reasons for the lapse? For example the person could have moved to another state and let their license lapse. For whatever reason the person changed their mind and returned to Alaska and sought to reinstate their license. We would want to make sure that they met the requirements for a renewal (e.g., sufficient continuing education hours). We would want an explanation in writing of the reasons for the lapse. We would also want to do a background check to make sure that they are not hiding some recent transgression.

2. **Biennial renewals** – at this point the board intends to enact regulations that call for a background check for initial applicants but not biennial background checks. We do not intend to require background checks for those psychologists and psychological associates already licensed and practicing.

3. **Application for renewal vs new license after lapse of several years** –

The Board would need to know what the applicant had been doing in those lapsed years. If the person had been licensed to practice in another jurisdiction in that period we would want proof of continuing education in that time and verification that they had been legitimately practicing. We would request information about any complaints made against them in that period. We would also do a background check (assuming SB 41 passes).

if the individual had not been practicing and not licensed we would want to know what they had been doing and why they were not practicing and licensed. We would need to see some evidence of continuing education. We have the discretion to issue a license along with a plan for “catching up” their missing CE hours. We also have the discretion to deny a license for cause:

12 AAC 60.055. DENIAL OF APPLICATION. The board will, in its discretion, deny an application for licensure by credentials, or deny approval to take a licensing examination, if the applicant has

- (1) been found guilty of incompetence by another state or jurisdiction;
- (2) violated the ethical standards for providers of psychological services as established by another state agency or jurisdiction;
- (3) misrepresented his or her qualifications to the board in any way; or
- (4) been found to be practicing psychological services without a license.

12 AAC 60.340. REINSTATEMENT. (a) The license of any licensee which is not renewed by reason of failure to comply with the continuing education requirements of 12 AAC 60.250—12 AAC 60.350, may be reinstated after submission to the board of proof of the completion of all continuing education credit hours required.

(b) A licensee unable to obtain the required continuing education hours for license renewal, due to reasonable cause or excusable neglect, must request exemption status in writing to the board with a statement explaining the reasonable cause or excusable neglect. The board will, in its discretion, prescribe an alternative method of

compliance with the continuing education requirements as the board considers appropriate to the individual situation.

“the board can ask any licensed psychologist to submit a background check if board has reason to suspect some kind of malpractice “ I would rather deal with this at the regulatory rather than the statutory level. Complaints for “malpractice” generally are about current or recent practice. A background check will not likely shed light on the matter in the complaint, but will add unnecessary cost, delay and complication. If the nature of the complaint indicates something in the background of the person being complained about, then the board would investigate accordingly. My preference is as I testified – that we need a bill that grants us the authority to do background checks and to craft appropriate regulations. Good conservative principals tell us to put as much governmental authority as possible as close to and as accessible to the citizenry as possible. The regulatory process is much more accessible, open and available to the citizenry than the legislative process. Therefore I am in favor of a bill that grants us authority and charges us with responsibility to craft appropriate regulations to exercise that authority. This minimizes unintended consequences and allows for the greatest flexibility in making the law work as intended.

I am in agreement with Senator Coghill about the board needing to have the discretion to do background checks as it sees fit to protect the public. I believe that discretion would best be defined and mandated at the regulatory rather than statutory level. I would be happy to keep the judiciary committee informed as to our progress as we develop and implement regulations after SB 41 is passed. I am in favor of keeping government small and effective rather than needlessly growing it through unnecessary statutory language.

5. **Handling and defining barrier crimes.** The legislature created the Behavior Analyst license last year. The legislation specified fingerprinting and background checks but did not specify how that information was to be used or what would constitute barrier crimes to licensure. The legislation authorizes suspension, revocation or refusal to issue a license if the applicant “has been convicted of a felony or other crime that affects the licensee's ability to continue to practice competently and safely;”

The statutes for the other three behavioral health licenses in Alaska (LCSW, LPC, LMFT) do not specify barrier crimes and also do not mandate background checks. However AS 28.15.046 Licensing of School Bus Drivers enumerates the following barrier crimes.

(c) The department may not issue a license under this section to an applicant who has been convicted of any of the following offenses within 20 years of the time of application:

(1) sexual abuse of a minor in any degree under AS [11.41.434](#) - [11.41.440](#);

(2) sexual assault in any degree under AS [11.41.410](#) - [11.41.425](#);

(3) incest under AS [11.41.450](#) ;

(4) unlawful exploitation of a minor under AS [11.41.455](#) ;

(5) contributing to the delinquency of a minor under AS [11.51.130](#) ;

(6) a felony involving possession of a controlled or imitation controlled substance under AS [11.71](#) or AS [11.73](#);

(7) a felony or misdemeanor involving distribution of a controlled or imitation controlled substance under AS [11.71](#) or AS [11.73](#);

(8) promoting prostitution in the first or second degree under AS [11.66.110](#) or [11.66.120](#);

(9) indecent exposure in the first or second degree under AS [11.41.458](#) or [11.41.460](#).

(d) The department may not issue a license to an applicant who has been convicted of driving while under the influence of an alcoholic beverage, inhalant, or controlled substance under AS [28.35.030](#) within two years of the time of application or to an applicant who has two or more convictions for driving while under the influence of an alcoholic beverage, inhalant, or controlled substance within 10 years of the time of application.

I testified that there is validated scientific research regarding the risk factors of various kinds of criminal history. The board intends to craft regulations based on the best research and science available. My preference remains to do as much as possible at the regulatory level.

I hope this is helpful. I could be available to respond to questions by phone for Monday's hearing if necessary.

Al

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