

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

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1           “(A) As applied to a manufacturer of firearms, a  
2           person who devotes time, attention, and labor to manu-  
3           facturing firearms as a regular course of trade or  
4           business with the principal objective of livelihood and  
5           profit through the sale or distribution of the firearms  
6           manufactured.

7           “(B) As applied to a manufacturer of ammunition,  
8           a person who devotes time, attention, and labor to  
9           manufacturing ammunition as a regular course of trade  
10          or business with the principal objective of livelihood  
11          and profit through the sale or distribution of the ammu-  
12          nition manufactured.

13          “(C) As applied to a dealer in firearms, as defined  
14          in section 921(a)(11)(A), a person who devotes time,  
15          attention, and labor to dealing in firearms as a regular  
16          course of trade or business with the principal objective  
17          of livelihood and profit through the repetitive purchase  
18          and resale of firearms. The term shall not include a  
19          person who makes occasional sales, exchanges, or pur-  
20          chases of firearms for the enhancement of a personal  
21          collection or hobby, or who sells all or part of his per-  
22          sonal collection of firearms.

23          “(D) As applied to a dealer in firearms, as defined  
24          in section 921(a)(11)(B), a person who devotes time,  
25          attention, and labor to engaging in such activity as a

1 regular course of trade or business with the principal  
2 objective of livelihood and profit. The term shall not in-  
3 clude a person who makes occasional repairs of fire-  
4 arms or who occasionally fits special barrels, stocks, or  
5 trigger mechanisms to firearms.

6 "(E) As applied to an importer of firearms, a  
7 person who devotes time, attention, and labor to im-  
8 porting firearms as a regular course of trade or busi-  
9 ness with the principal objective of livelihood and profit  
10 through the sale or distribution of the firearms  
11 imported.

12 "(F) As applied to an importer of ammunition, a  
13 person who devotes time, attention, and labor to im-  
14 porting ammunition as a regular course of trade or  
15 business with the principal objective of livelihood and  
16 profit through the activity involving firearms, includ-  
17 ing the sale or other distribution of the ammunition  
18 imported.

19 "(22) The term 'with the principal objective of liveli-  
20 hood and profit' means that the intent underlying the sale or  
21 disposition of firearms is predominantly one of obtaining live-  
22 lihood and pecuniary gain, as distinguished from other in-  
23 tents, such as improving or liquidating a personal firearms  
24 collection."



1 tion or receipt of a firearm obtained in conformity with  
2 the provisions of subsection (b)(3) of this section,";

3 (4) in subsection (b)—

4 (A) by deleting in paragraph (2) "or ammuni-  
5 tion" each place it appears;

6 (B) by deleting clause (A) in paragraph (3)  
7 and inserting in lieu thereof the following: "(A)  
8 shall not apply to the sale or delivery of any fire-  
9 arm to a resident of a State other than a State in  
10 which the licensee's place of business is located if  
11 the sale, delivery and receipt fully comply with  
12 the legal conditions of sale in both such States:  
13 *Provided, however,* That any licensed manufactur-  
14 er, importer or dealer shall be presumed, in the  
15 absence of evidence to the contrary, to have had  
16 actual knowledge of the State laws and published  
17 ordinances of both States,";

18 (C) by inserting "and" before "(B)" in para-  
19 graph (3);

20 (D) by striking out ", and" in clause (B) of  
21 paragraph (3) and inserting in lieu thereof a  
22 semicolon;

23 (E) by repealing clause (C) of paragraph (3);  
24 and

1 (F) by deleting from paragraph (5) "or am-  
2 munition except .22 rimfire ammunition";

3 (5) in subsection (d)—

4 (A) by deleting "licensed importer, licensed  
5 manufacturer, licensed dealer, or licensed collec-  
6 tor" the first time they appear and inserting in  
7 lieu thereof "person";

8 (B) by amending paragraph (3) to read as fol-  
9 lows:

10 "(3) is an unlawful user of or addicted to marijua-  
11 na or any depressant or stimulant substance or narcotic  
12 drug (as those terms are defined in section 102 of the  
13 Controlled Substances Act (21 U.S.C. 802));";

14 (C) by replacing the period in paragraph (4)  
15 with a semicolon; and

16 (D) by inserting after paragraph (4) the  
17 following:

18 "(5) who, being an alien, is illegally or unlawfully  
19 in the United States;

20 "(6) who has been discharged from the Armed  
21 Forces under dishonorable conditions; or

22 "(7) who, having been a citizen of the United  
23 States, has renounced his citizenship.";

24 (6) in subsection (g)—

1 (A) by deleting the words "is under indict-  
2 ment for, or who" in paragraph (1);

3 (B) by amending paragraph (3) to read as fol-  
4 lows:

5 "(3) is an unlawful user of or addicted to marijua-  
6 na or any depressant or stimulant substance or narcotic  
7 drug (as those terms are defined in section 102 of the  
8 Controlled Substances Act (21 U.S.C. 802));";

9 (C) by inserting after paragraph (4) the  
10 following:

11 "(5) who, being an alien, is illegally or unlawfully  
12 in the United States;

13 "(6) who has been discharged from the Armed  
14 Forces under dishonorable conditions; or

15 "(7) who, having been a citizen of the United  
16 States, has renounced his citizenship;"; and

17 (D) by deleting the words "to ship or trans-  
18 port any firearm or ammunition in interstate or  
19 foreign commerce" and inserting in lieu thereof  
20 the words "to ship or transport in interstate or  
21 foreign commerce, or possess in or affecting com-  
22 merce, any firearm or ammunition; or to receive  
23 any firearm or ammunition which has been  
24 shipped or transported in interstate or foreign  
25 commerce.";

1 (7) in subsection (h)—

2 (A) by inserting after the word “any” and  
3 before the word “person” the words “individual  
4 who to his knowledge and while being employed  
5 by any”;

6 (B) by deleting the words “is under indict-  
7 ment for, or who” in paragraph (1);

8 (C) by amending paragraph (3) to read as fol-  
9 lows:

10 “(3) is an unlawful user of or addicted to marijua-  
11 na or any depressant or stimulant substance or narcotic  
12 drug (as those terms are defined in section 102 of the  
13 Controlled Substances Act (21 U.S.C. 802));”;

14 (D) by inserting after paragraph (4) the  
15 following:

16 “(5) who, being an alien, is illegally or unlawfully  
17 in the United States;

18 “(6) who has been discharged from the Armed  
19 Forces under dishonorable conditions; or

20 “(7) who having been a citizen of the United  
21 States, has renounced his citizenship;” and

22 (E) by deleting the words “to receive any  
23 firearm or ammunition which has been shipped or  
24 transported in interstate or foreign commerce”  
25 and inserting in lieu thereof the words “in the

1 course of such employment to ship or transport in  
 2 interstate or foreign commerce, or possess in or  
 3 affecting commerce, any firearm or ammunition;  
 4 or to receive any firearm or ammunition which  
 5 has been shipped or transported in interstate or  
 6 foreign commerce.”; and

7 (8) by inserting after subsection (m) a new subsec-  
 8 tion to read as follows:

9 “(n) It shall be unlawful for any person who is under  
 10 indictment for a crime punishable by imprisonment for a term  
 11 exceeding one year to ship or transport in interstate or for-  
 12 eign commerce any firearm or ammunition or receive any  
 13 firearm or ammunition which has been shipped or transported  
 14 in interstate or foreign commerce.”.

15 AMENDMENTS TO SECTION 923

16 SEC. 103. Section 923 of title 18, United States Code,  
 17 is amended—

18 (1)(A) in subsection (a)—

19 (i) by deleting the words “No person shall  
 20 engage in business as a firearms or ammunition  
 21 importer, manufacturer, or dealer until he has  
 22 filed an application with, and received a license to  
 23 do so from the Secretary.” and inserting in lieu  
 24 thereof the words “No person shall engage in the  
 25 business of importing, manufacturing, or dealing  
 26 in firearms, or importing or manufacturing ammu-

1           nition, until he has filed an application with and  
2           received a license to do so from the Secretary.”;  
3           and

4           (ii) by deleting the words “and contain such  
5           information”, and inserting in lieu thereof the  
6           words “and contain only that information neces-  
7           sary to determine eligibility for licensing.”;

8           (B) in subsection (a)(3)(B) by deleting the words  
9           “or ammunition for firearms other than destructive  
10          devices”;

11          (2) in subsection (b) by striking out “and contain  
12          such information”, and inserting in lieu thereof “and  
13          contain only that information necessary to determine  
14          eligibility for licensing”;

15          (3) in subsection (c) by adding at the end thereof  
16          the following: “*Provided, however,* That nothing in this  
17          chapter shall be construed to prohibit a licensed manu-  
18          facturer, importer, or dealer from maintaining and dis-  
19          posing of a personal collection of firearms, subject only  
20          to such restrictions as apply in this chapter to disposi-  
21          tions by a person other than a licensed manufacturer,  
22          importer, or dealer: *Provided further,* That if any fire-  
23          arm is in a licensee’s personal collection disposed of by  
24          a licensee within one year of its transfer from his busi-  
25          ness inventory into his personal collection or if such

1 transfer is made for the purpose of willfully evading  
2 the restrictions placed upon licensees by this chapter,  
3 then such firearm shall be deemed part of his business  
4 inventory.”;

5 (4) in subsection (e) by inserting before the word  
6 “violated” the word “willfully”;

7 (5) in subsection (f)—

8 (A) by inserting the words “de novo” before  
9 the word “judicial” in paragraph (3);

10 (B) by adding the words “, whether or not  
11 such evidence was considered at the hearing held  
12 under paragraph (2).” after the words “to the  
13 proceeding” in paragraph (3); and

14 (C) by inserting at the end thereof the fol-  
15 lowing new paragraph:

16 “(4) If criminal proceedings are instituted against a li-  
17 censee alleging violations of this chapter or regulations pro-  
18 mulgated thereunder, and the licensee is acquitted of such  
19 charges, or such proceedings are terminated, other than upon  
20 motion of the Government prior to trial upon such charges,  
21 the Secretary shall be absolutely barred from denying or re-  
22 voking any license granted under the provisions of this chap-  
23 ter where such denial or revocation is based in whole or in  
24 part on the facts which form the basis of such criminal  
25 charges. No proceedings for the revocation of a license shall

1 be instituted by the Secretary more than one year after the  
2 filing of the indictment or information.”;

3 (6) by amending subsection (g) to read as follows:

4 “(g)(1) Each licensed importer, licensed manufacturer,  
5 and licensed dealer, shall maintain such records of importa-  
6 tion, production, shipment, receipt, sale, or other disposition,  
7 of firearms at his place of business for such period, and in  
8 such form, as the Secretary may by regulations prescribe.  
9 Such importers, manufacturers and dealers shall not be re-  
10 quired to submit to the Secretary reports and information  
11 with respect to such records and the contents thereof, except  
12 as expressly required by this section. The Secretary, when he  
13 has reasonable cause to believe a violation of this law has  
14 occurred, and that evidence thereof may be found on such  
15 premises may, upon demonstrating such cause before a Fed-  
16 eral magistrate, and securing from him a warrant authorizing  
17 entry, enter during business hours the premises (including  
18 places of storage) of any licensed firearms importer, licensed  
19 manufacturer, licensed dealer, licensed collector or any li-  
20 censed importer or manufacturer of ammunition, for the pur-  
21 poses of inspecting or examining (1) any records or docu-  
22 ments required to be kept by such licensed importer, licensed  
23 manufacturer, licensed dealer, or licensed collector under the  
24 provisions of this chapter or regulations issued under this  
25 chapter, and (2) any firearms or ammunition kept or stored

1 by such licensed importer, licensed manufacturer, licensed  
2 dealer, or licensed collector, at such premises. The Secretary  
3 may inspect or examine the inventory and records of a li-  
4 censed importer, licensed manufacturer, or licensed dealer  
5 without such cause or warrant, (A) in the course of a reason-  
6 able inquiry during the course of a criminal investigation of a  
7 person or persons other than the licensee; or (B) no more  
8 than once in any twelve consecutive months, upon reasonable  
9 notice, but no criminal charges shall be brought against the  
10 licensee based upon such inspection except for willful viola-  
11 tions of the recordkeeping requirements of this chapter or  
12 sales or other dispositions of firearms in violation of section  
13 922(d); or (C) when such inspection or examination may be  
14 required for determining the disposition of one or more par-  
15 ticular firearms in the course of a bona fide criminal investi-  
16 gation. The Secretary may inspect the inventory and records  
17 of a licensed collector without such reasonable cause or war-  
18 rant (A) no more than once in any twelve consecutive month  
19 period, upon reasonable notice, but no criminal charges shall  
20 be brought against such licensee based upon such inspection  
21 except for willful violations of the recordkeeping require-  
22 ments of this chapter or sales or other dispositions of firearms  
23 to prohibited persons; or (B) when such inspection or exami-  
24 nation may be required for determining the disposition of one  
25 or more particular firearms in the course of a bona fide crimi-

1 nal investigation. At the election of a licensed collector, the  
2 annual inspection of records and inventory permitted under  
3 this paragraph shall be performed at the office of the Secre-  
4 tary designated for such inspections which is located in clos-  
5 est proximity to the premises where the inventory and  
6 records of such licensed collector are maintained. The inspec-  
7 tion and examination authorized by this subsection shall not  
8 be construed as authorizing the Secretary to seize any  
9 records or other documents other than those records or docu-  
10 ments constituting material evidence of a violation of law. If  
11 the Secretary seizes such records or documents, copies shall  
12 be provided the licensee within a reasonable time. The Secre-  
13 tary may make available to any Federal, State, or local law  
14 enforcement agency any information which he may obtain by  
15 reason of the provisions of this chapter with respect to the  
16 identification of persons prohibited from purchasing or receiv-  
17 ing firearms or ammunition who have purchased or received  
18 firearms or ammunition, together with a description of such  
19 firearms or ammunition and he may provide information to  
20 the extent such information may be contained in the records  
21 required to be maintained by the provisions of this chapter,  
22 when so requested by any Federal, State, or local law en-  
23 forcement agency.

24       “(2) Each licensed collector shall maintain in a bound  
25 volume the nature of which the Secretary may by regulations

1 prescribe, records of the receipt, sale, or other disposition, of  
2 firearms. Such records shall include the name and addresses  
3 of any person to whom the collector sells or otherwise dis-  
4 poses of a firearm. Such collector shall not be required to  
5 submit to the Secretary reports and information with respect  
6 to such records and the contents thereof, except as expressly  
7 required by this section.

8       “(3)(A) Within thirty days of the absolute discontinu-  
9 ance of the business of a licensee, any records maintained by  
10 such licensee under this chapter shall be delivered to the joint  
11 custody of the Archivist of the United States and the Secre-  
12 tary to be stored in a records center maintained and operated  
13 by the Archivist, unless State law or local ordinance requires  
14 delivery to another authority, in which event the Archivist  
15 and the Secretary may arrange for delivery to such authority.

16       “(B) The Secretary shall have access to records stored  
17 under this paragraph solely for the purposes of determining  
18 from whom a licensee acquired a firearm and to whom such  
19 licensee disposed of such firearm, organizing and preserving  
20 such records, and certifying to facts on the basis of such  
21 records in any court or any administrative proceeding of the  
22 United States or of any State. The Secretary may remove  
23 such records from the record center maintained by the Archi-  
24 vist only in connection with proceedings in any court or any

1 administrative proceeding of the United States or of any  
2 State.

3       “(C) The Archivist may promulgate regulations govern-  
4 ing the storage, processing and servicing of records stored  
5 under this paragraph: *Provided*, That no such regulations  
6 may restrict the authority of the Secretary under this para-  
7 graph to have access to or to remove such records.

8       “(D) Notwithstanding any other provision of law, the  
9 Archivist shall dispose of records kept by licensed dealers and  
10 licensed collectors, and records relating to the disposition of  
11 firearms kept by manufacturers and importers, and stored  
12 under this paragraph twenty years after such records are re-  
13 ceived by the Archivist and the Secretary.

14       “(4)(A) Each licensee shall, when required by letter  
15 issued by the Secretary, and until notified to the contrary in  
16 writing by the Secretary, submit on a form specified by the  
17 Secretary, for the periods and at the times specified in such  
18 letter, all record information required by this chapter or such  
19 lesser record information as the Secretary in his letter may  
20 specify.

21       “(B) The Secretary may authorize the information to be  
22 submitted in a manner other than that prescribed in subpara-  
23 graph (A) of this paragraph when it is shown by a licensee  
24 that an alternate method of reporting is reasonably necessary

1 and will not unduly hinder the effective administration of this  
2 chapter.

3       “(C) No warrant shall issue nor shall any criminal  
4 charges be brought against the licensee based solely upon  
5 information provided pursuant to the provisions of this para-  
6 graph.

7       “(5)(A) Each licensee shall prepare a report of multiple  
8 sales or other disposition whenever the licensee sells or oth-  
9 erwise disposes of, at one time or during any five consecutive  
10 business days, two or more pistols, or revolvers, or any com-  
11 bination of pistols and revolvers totaling two or more, to an  
12 unlicensed person. The report shall be prepared on a form  
13 specified by the Secretary and forwarded to the office speci-  
14 fied thereon not later than the close of business on the day  
15 that the multiple sale or other disposition occurs.

16       “(B) Ten years after receiving any report submitted  
17 under subparagraph (A) of this paragraph, the Secretary shall  
18 deliver such report to the joint custody of the Archivist of the  
19 United States and the Secretary to be stored in a records  
20 center maintained and operated by the Archivist, subject to  
21 the provisions of sections 923(g)(3) (B) and (C) of this title.  
22 Notwithstanding any other provision of law, the Archivist  
23 shall dispose of records stored under this subparagraph ten  
24 years after such records are received by the Archivist and the  
25 Secretary.

1       “(C) No record, form, or information delivered, submit-  
2       ted, or forwarded pursuant to this paragraph or paragraph (3)  
3       or (4) of this subsection may be kept by the Secretary at a  
4       centralized location, nor shall it be entered into a computer  
5       for storage or retrieval.”; and

6               (7) by amending subsection (j) to read as follows:

7       “(j) A licensed importer, licensed manufacturer, or li-  
8       censed dealer may, under regulations prescribed by the Sec-  
9       retary, conduct business temporarily at a location other than  
10      the location specified on the license if such temporary loca-  
11      tion is the location for a gun show or event sponsored by any  
12      national, State, or local organization, or any affiliate of any  
13      such organization devoted to the collection, competitive use,  
14      or other sporting use of firearms, or an organization or asso-  
15      ciation that sponsors events devoted to the collection, com-  
16      petitive use or other sporting use of firearms in the communi-  
17      ty, and such location is in the State which is specified on the  
18      license. Records of receipt and disposition of firearms trans-  
19      actions conducted at such temporary location shall include  
20      the location of the sale or other disposition and shall be en-  
21      tered in the permanent records of the licensee and retained  
22      on the location specified on the license. Nothing in this sub-  
23      section shall authorize any licensee to conduct business in or  
24      from any motorized or towed vehicle. Notwithstanding the  
25      provisions of subsection (a) of this section, a separate fee shall

1 not be required of a licensee with respect to business con-  
 2 ducted under this subsection. Except for records directly re-  
 3 lated to receipts, sales, or other dispositions of firearms made  
 4 at the temporary premises within the period of time the li-  
 5 censed importer, licensed manufacturer, or licensed dealer  
 6 conducted the business of which such receipts, sales, or other  
 7 dispositions were a part, nothing in this subsection shall be  
 8 construed to authorize the Secretary to inspect or examine  
 9 the inventory or records of a licensed importer, licensed man-  
 10 ufacturer, or licensed dealer at any location other than the  
 11 location specified on the license. Nothing in this subsection  
 12 shall be construed to diminish in any manner any right to  
 13 display, sell or otherwise dispose of firearms or ammunition  
 14 which is in effect prior to the date of enactment of the Act  
 15 entitled 'An Act to protect firearms owners' constitutional  
 16 rights, civil liberties, and rights to privacy'."

17 AMENDMENTS TO SECTION 924

18 SEC. 104. Section 924 of title 18, United States Code,  
 19 is amended—

20 (1) by amending subsection (a) to read as follows:

21 "(a) Whoever—

22 "(A) other than a licensed dealer, licensed import-  
 23 er, licensed manufacturer, or licensed collector know-  
 24 ingly makes any false statement or representation with  
 25 respect to the information required by the provisions of

1 this chapter to be kept in the records of a person li-  
2 censed under the provisions of this chapter;

3 “(B) knowingly makes any false statement or rep-  
4 resentation in applying for any license or exemption or  
5 relief from disability under the provisions of this  
6 chapter;

7 “(C) knowingly violates subsection (a)(4), (a)(6),  
8 (f), (g), (h), (i), (j), or (k) of section 922;

9 “(D) knowingly imports or brings into the United  
10 States or any possessor thereof any firearm or ammu-  
11 nition in violation of section 922(l);

12 “(E) knowingly violates any provision of this sec-  
13 tion; or

14 “(F) willfully violates any other provision of this  
15 chapter,

16 shall be fined not more than \$5,000, or imprisoned not more  
17 than five years, or both, and shall become eligible for parole  
18 as the Board of Parole shall determine.

19 “(2) Any licensed dealer, licensed importer, licensed  
20 manufacturer, or licensed collector who knowingly—

21 “(A) makes any false statement or representation  
22 with respect to the information required by the provi-  
23 sions of this chapter to be kept in the records of a  
24 person licensed under this chapter, or

25 “(B) violates subsection (m) of section 922,

1 shall be fined not more than \$1,000, or imprisoned not more  
2 than one year, or both, and shall become eligible for parole as  
3 the Board of Parole shall determine."

4 (2) by amending subsection (c) to read as follows:

5 "(c)(1) Whoever, during and in relation to any felony  
6 described in the Controlled Substances Act (21 U.S.C. 801 et  
7 seq.), the Controlled Substances Import and Export Act (21  
8 U.S.C. 951 et seq.), or section 1 of the Act of September 15,  
9 1980 (94 Stat. 1159; 21 U.S.C. 855a), or any crime of vio-  
10 lence, including a crime of violence which provides for an  
11 enhanced punishment if committed by the use of a deadly or  
12 dangerous weapon or device, for which he may be prosecuted  
13 in a court of the United States, uses a firearm, or carries a  
14 firearm in furtherance of any such crime of violence, shall, in  
15 addition to the punishment provided for such felony described  
16 in the Controlled Substances Act (21 U.S.C. 801 et seq.), the  
17 Controlled Substances Import and Export Act (21 U.S.C.  
18 951 et seq.), or section 1 of the Act of September 15, 1980  
19 (94 Stat. 1159; 21 U.S.C. 855a), or crime of violence, be  
20 sentenced to imprisonment for a term of five years. In the  
21 case of his second or subsequent conviction under this subsec-  
22 tion, such person shall be sentenced to imprisonment for a  
23 term of ten years. Notwithstanding any other provision of  
24 law, the court shall not place on probation or suspend the  
25 sentence of any person convicted of a violation of this subsec-

1 tion, nor shall the term of imprisonment imposed under this  
2 subsection run concurrently with any other term of imprison-  
3 ment including that imposed for the felony described in the  
4 Controlled Substances Act (21 U.S.C. 801), the Controlled  
5 Substances Import and Export Act (21 U.S.C. 951), or sec-  
6 tion 1 of the Act of September 15, 1980 (94 Stat. 1159; 21  
7 U.S.C. 855a), or crime of violence in which the firearm was  
8 used or carried. No person sentenced under this subsection  
9 shall be eligible for parole during the term of imprisonment  
10 imposed herein: *Provided*, That no person shall be sentenced  
11 under this subsection if he establishes to the satisfaction of  
12 the court that the use of the firearm was to protect his person  
13 or the person of another from perceived immediate danger,  
14 other than the danger which was the direct result of the com-  
15 mission of or attempt to commit a felony by either such  
16 person, and the court finds that the perceived immediate  
17 danger was so perceived in good faith and that a sentence  
18 under this section would constitute a severe and substantial  
19 miscarriage of justice. The court must provide in writing each  
20 finding of fact and law necessary to establish the applicability  
21 of this proviso.

22       “(2) For purposes of this subsection the term ‘crime of  
23 violence’ means an offense that is a felony and—

1           “(A) has as an element the use, attempted use, or  
2           threatened use of physical force against the person or  
3           property of another, or

4           “(B) that by its nature, involves a substantial risk  
5           that physical force against the person or property of  
6           another may be used in the course of committing the  
7           offense.”.

8           (3) by amending subsection (d) to read as follows:

9           “(d)(1) Any firearm or ammunition involved in or used  
10          in any knowing violation of subsection (a)(4), (a)(6), (f), (g),  
11          (h), (i), (j), or (k) of section 922, or knowing importation or  
12          bringing into the United States or any possession thereof any  
13          firearm or ammunition in violation of section 922(l), or know-  
14          ing violation of section 924, or willful violation of any other  
15          provision of this chapter or any rule or regulation promulgat-  
16          ed thereunder, or any violation of any other criminal law of  
17          the United States, or any firearm or ammunition intended to  
18          be used in any offense referred to in paragraph (3) of this  
19          subsection, where such intent is demonstrated by clear and  
20          convincing evidence, shall be subject to seizure and forfeit-  
21          ure, and all provisions of the Internal Revenue Code of 1954  
22          relating to the seizure, forfeiture, and disposition of firearms,  
23          as defined in section 5845(a) of that Code, shall, so far as  
24          applicable, extend to seizures and forfeitures under the provi-  
25          sions of this chapter: *Provided*, That upon acquittal of the

1 owner or possessor, or dismissal of the charges against him  
2 other than upon motion of the Government prior to trial, the  
3 seized firearms or ammunition shall be returned forthwith to  
4 the owner or possessor or to a person delegated by the owner  
5 or possessor unless the return of the firearms or ammunition  
6 would place the owner or possessor or his delegate in viola-  
7 tion of law. Any action or proceeding for the forfeiture of  
8 firearms or ammunition shall be commenced within one hun-  
9 dred and twenty days of such seizure.

10       “(2)(A) In any action or proceeding for the return of  
11 firearms or ammunition seized under the provisions of this  
12 chapter, the court shall allow the prevailing party, other than  
13 the United States, a reasonable attorney’s fee, and the  
14 United States shall be liable therefor.

15       “(B) In any other action or proceeding under the provi-  
16 sions of this chapter, the court, when it finds that such action  
17 was without foundation, or was initiated vexatiously, frivo-  
18 lously, or in bad faith, shall allow the prevailing party, other  
19 than the United States, a reasonable attorney’s fee, and the  
20 United States shall be liable therefor.

21       “(C) Only those firearms or quantities of ammunition  
22 particularly named and individually identified as involved in  
23 or used in any violation of the provisions of this chapter or  
24 any rule or regulation issued thereunder, or any other crimi-  
25 nal law of the United States, or as intended to be used in any

1 owner or possessor, or dismissal of the charges against him  
2 other than upon motion of the Government prior to trial, the  
3 seized firearms or ammunition shall be returned forthwith to  
4 the owner or possessor or to a person delegated by the owner  
5 or possessor unless the return of the firearms or ammunition  
6 would place the owner or possessor or his delegate in viola-  
7 tion of law. Any action or proceeding for the forfeiture of  
8 firearms or ammunition shall be commenced within one hun-  
9 dred and twenty days of such seizure.

10       “(2)(A) In any action or proceeding for the return of  
11 firearms or ammunition seized under the provisions of this  
12 chapter, the court shall allow the prevailing party, other than  
13 the United States, a reasonable attorney’s fee, and the  
14 United States shall be liable therefor.

15       “(B) In any other action or proceeding under the provi-  
16 sions of this chapter, the court, when it finds that such action  
17 was without foundation, or was initiated vexatiously, frivo-  
18 lously, or in bad faith, shall allow the prevailing party, other  
19 than the United States, a reasonable attorney’s fee, and the  
20 United States shall be liable therefor.

21       “(C) Only those firearms or quantities of ammunition  
22 particularly named and individually identified as involved in  
23 or used in any violation of the provisions of this chapter or  
24 any rule or regulation issued thereunder, or any other crimi-  
25 nal law of the United States, or as intended to be used in any

1 offense referred to in paragraph (3) of this subsection, where  
2 such intent is demonstrated by clear and convincing evidence,  
3 shall be subject to seizure, forfeiture, and disposition.”.

4 “(3) The offenses referred to in paragraphs (1) and  
5 (2)(C) of this subsection are—

6 “(A) any crime of violence, as that term is defined  
7 in section 924(c)(2) of this title;

8 “(B) any offense punishable under the Controlled  
9 Substances Act (21 U.S.C. 801 et seq.) or the Con-  
10 trolled Substances Import and Export Act (21 U.S.C.  
11 951 et seq.);

12 “(C) any offense described in section 922(a)(1),  
13 922(a)(3), 922(a)(5), or 922(b)(3) of this title, where the  
14 firearm or ammunition intended to be used in any such  
15 offense is involved in a pattern of activities which in-  
16 cludes a violation of any offense described in section  
17 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title;

18 “(D) any offense described in section 922(d) of  
19 this title where the firearm or ammunition is intended  
20 to be used in such offense by the transferor of such  
21 firearm or ammunition;

22 “(E) any offense described in section 922(i),  
23 922(j), 922(l), 922(n), or 924(b) of this title; and

1           “(F) any offense which may be prosecuted in a  
2           court of the United States which involves the exporta-  
3           tion of firearms or ammunition.”.

4                                AMENDMENTS TO SECTION 925

5           SEC. 105. Section 925 of title 18, United States Code,  
6 is amended—

7                       (1) in subsection (c)—

8                               (A) by deleting the words “has been convict-  
9                               ed of a crime punishable by imprisonment for a  
10                              term exceeding one year (other than a crime in-  
11                             volving the use of a firearm or other weapon or a  
12                             violation of this chapter or of the National Fire-  
13                             arms Act)” and inserting in lieu thereof the words  
14                             “is prohibited from possessing, shipping, trans-  
15                             porting, or receiving firearms or ammunition”;

16                            (B) by inserting the word “transportation”  
17                            after the word “shipment”;

18                            (C) by deleting the words “and incurred by  
19                            reason of such conviction,”; and

20                            (D) by adding after the words “the public in-  
21                            terest.” the words “Any person whose application  
22                            for relief from disabilities is denied by the Secre-  
23                            tary may file a petition with the United States  
24                            district court for the district in which he resides  
25                            for a judicial review of such denial. In a proceed-  
26                            ing conducted under this subsection, the scope of

1           judicial review shall be governed by section 706  
2           of title 5, United States Code. The court may in  
3           its discretion admit additional evidence where fail-  
4           ure to do so would result in a miscarriage of jus-  
5           tice.”; and

6           (2) in subsection (d)—

7                 (A) by deleting the words “may authorize”  
8                 and inserting in lieu thereof the words “shall  
9                 authorize”;

10                (B) by deleting the words “the person im-  
11                porting or bringing in the firearm or ammunition  
12                establishes to the satisfaction of the Secretary  
13                that”; and

14                (C) by inserting before the semicolon in para-  
15                graph (3) the following: “, except in any case  
16                where the Secretary has not authorized the im-  
17                portation of the firearm pursuant to this para-  
18                graph, it shall be unlawful to import any frame,  
19                receiver, or barrel of such firearm which would be  
20                prohibited if assembled”; and

21                (D) by deleting the words “may permit” and  
22                inserting in lieu thereof the words “shall permit”.

23                    AMENDMENTS TO SECTION 926

24           SEC. 106. Section 926 of title 18, United States Code,  
25 is amended by--

1           (1) inserting "(a)" before "The Secretary" the  
2 first place it appears;

3           (2) inserting the word "only" after the word  
4 "prescribe";

5           (3) deleting the words "as he deems reasonable"  
6 and inserting in lieu thereof the words "as are";

7           (4) deleting the words "The Secretary shall give  
8 reasonable public notice, and afford interested parties  
9 opportunity for hearing, prior to prescribing such rules  
10 and regulations" and inserting in lieu thereof the  
11 words: "*Provided*, That no such rule or regulation pro-  
12 mulgated after the effective date of this Act may re-  
13 quire that records required to be maintained under this  
14 chapter or any portion of the contents of such records,  
15 be recorded at or transferred to a facility owned, man-  
16 aged, or controlled by the United States or any State  
17 or any political subdivision thereof, nor that any  
18 system of registration of firearms, firearms owners, or  
19 firearms transactions or dispositions be established:  
20 *Provided further*, That nothing in this section shall be  
21 deemed to expand or restrict the Secretary's authority  
22 to inquire into the disposition of one or more firearms  
23 pursuant to a criminal investigation."; and

24           (5) inserting at the end thereof the following:



1 eighty days after the date of enactment of this Act. At that  
2 time the Secretary shall publish and provide to all licensees a  
3 compilation of the State laws and published ordinances of  
4 which licensees are presumed to have knowledge pursuant to  
5 chapter 44 of title 18, United States Code, as amended by  
6 this Act. All amendments to such State laws and published  
7 ordinances as contained in the aforementioned compilation  
8 shall be published in the Federal Register, revised annually,  
9 and furnished to each person licensed under chapter 44 of  
10 title 18, United States Code, as amended by this Act.

11 (2) The provisions of sections 103(5)(C), 104(2), 105,  
12 and 107 of this Act shall be applicable to any action, petition,  
13 or appellate proceeding pending on the effective date of this  
14 Act. In considering any petitions for Presidential pardons  
15 submitted by persons convicted of violations of chapter 44 of  
16 title 18, United States Code, prior to the effective date of this  
17 Act, the Congress recommends that consideration be given to  
18 whether the violation would have been punishable under this  
19 Act, and to the purposes and findings contained in the pream-  
20 ble thereto.

21 **TITLE II—AMENDMENTS TO TITLE VII OF THE**  
22 **OMNIBUS CRIME CONTROL AND SAFE**  
23 **STREETS ACT OF 1968**

24 **SEC. 201.** Title VII of the Omnibus Crime Control and  
25 Safe Streets Act of 1968 (sections 1201, 1202, and 1203 of

1 the appendix to title 18, United States Code) is hereby  
2 amended to read as follows:

3       "SEC. 1201. (a) In the case of a person who violates  
4 section 922(g) of title 18, United States Code, and who has  
5 three previous convictions by any court referred to in section  
6 922(g)(1) of title 18, United States Code, for robbery or bur-  
7 glary, or both, such person shall be fined not more than  
8 \$25,000 and imprisoned not less than fifteen years, and, not-  
9 withstanding any other provision of law, the court shall not  
10 suspend the sentence of, or grant a probationary sentence to,  
11 such person with respect to the conviction under section  
12 922(g) of title 18, United States Code, and such person shall  
13 not be eligible for parole with respect to the sentence im-  
14 posed under this subsection.

15       "(b) As used in this title—

16               "(1) 'robbery' means any crime punishable by a  
17 term of imprisonment exceeding one year and consist-  
18 ing of the taking of the property of another from the  
19 person or presence of another by force or violence, or  
20 by threatening or placing another person in fear that  
21 any person will imminently be subjected to bodily  
22 injury; and

23               "(2) 'burglary' means any crime punishable by a  
24 term of imprisonment exceeding one year and consist-  
25 ing of entering or remaining surreptitiously within a

1 building that is property of another with intent to  
2 engage in conduct constituting a Federal or State  
3 offense.”.

Passed the Senate July 9 (legislative day, July 8),  
1985.

Attest:

JO-ANNE L. COE,  
*Secretary.*

# Alaska State Legislature

CO-CHAIRMAN  
FINANCE COMMITTEE

907-465-3740

JAN FAIKS  
POUCH V  
CAPITOL BUILDING  
JUNEAU ALASKA 99811

## Senate

March 17, 1986

### MEMORANDUM

TO: Senator Rodey, Chairman  
Senate Judiciary Committee

FROM: Senator Jan Faiks

SUBJECT: Background on Senate Joint Resolution 41,  
proposing amendments to the Constitution of the  
State of Alaska relating to an appropriation  
limit.

This resolution will allow the voters to amend the current appropriation limit contained in Article IX, Section 16 of the Alaska Constitution.

The present constitutional section limits annual appropriations to \$2.5 billion. It provides for several exceptions to this limit and allows it to rise according to changes in population and inflation which have occurred since 1981.

The present limit can be exceeded for capital projects only if the expenditure is approved by the voters. The present limit will be reconsidered by the voters during the 1986 elections.

SJR 41 will change the basis for calculating the appropriation limit. It provides both a spending and a revenue component. The spending component would tie the appropriation limit to the previous year's appropriation plus a population and inflation adjustment factor. The revenue component would tie the limit to the unrestricted revenue forecast plus a population and inflation adjustment factor. For any fiscal year, the lesser of the two components would become the appropriation limit.

OUT OF SESSION

1024 WEST SIXTH AVENUE, SUITE 302 ANCHORAGE, ALASKA 99501 907-274-6611

The resolution will also expand the safety valve provision. If the voters approve, the limit can be exceeded for an operational appropriation as well as a capital one.

Otherwise, the SJR 41 has the same features as the present law. One-third of the annual appropriation would continue to be reserved for capital projects and loans. Permanent fund dividends, revenue bond proceeds, debt service, and non-state restricted revenues would continue to be excluded from the limit, and it will be resubmitted to the voters at the 1990 election. If passed this year, the new limit will apply to FY 88 and to budgets thereafter.

Passage of this amendment to our Constitution will stretch out the period for dissipating current windfalls and surpluses. At the present time, there is approximately a \$1 billion surplus outside of the Permanent Fund. Spending and unrestricted revenues are now about equal. By keeping them in close proximity, current surpluses will last longer. If we want to dip into surpluses for future needs, any such action will have to be approved by the voters.

Secondly, this amendment will add discipline to our budgeting process. The process will become more predictable, and this will be an improvement to our current system.

Finally, if revenues begin to increase, the amendment will restrain future spending growth. When revenues increase from one year to the next, spending will be limited by the previous year's expenditures, provided they are less than the projected new revenues. To spend beyond the previous adjusted year, voter approval will be required.

I believe that this amendment is essential for the long-term fiscal health of of Alaska's state and local governments. Thank you for considering it.



# alaska judicial council

1031 W. Fourth Avenue, Suite 301, Anchorage, Alaska 99501 (907) 279-2526

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CHAIRMAN, EX OFFICIO  
Jay A. Rabinowitz  
Chief Justice  
Supreme Court

February 3, 1986

Senator Patrick Rodey  
Chairman  
Senate Judiciary Committee  
P.O. Box V  
State Capitol  
Juneau, Alaska 99811

Dear Senator Rodey:

The Alaska Judicial Council and the Commission on Judicial Conduct, to assist the Judicial Council in its evaluation of judges up for retention, seek to amend Sec. 2. AS 22.30.011(f). The proposed amendment would allow private reprimands to be provided to the Judicial Council by the Commission on Judicial Conduct, enabling the Council to make informed recommendations on questions of judicial retention.

Proposed that Sec. 2. AS 22.30.011(f) be amended to read:

If the commission decides to reprimand a judge privately, the commission shall forward the reprimand to the judge. A copy of the reprimand shall be sent to the chief justice of the supreme court and to the judicial council. A private reprimand is confidential.

Thank you for your assistance. If I can provide any additional information, please do not hesitate to write or call.

SINCERELY,

MARLA N. GREENSTEIN  
STAFF ATTORNEY

MG/jz

# Alaska State Legislature

CO-CHAIRMAN  
FINANCE COMMITTEE

907-465-3730



JAN FAIKS  
POLCH V  
CAPITOL BUILDING  
JUNEAU ALASKA 99811

## Senate

February 25, 1986

### MEMORANDUM

TO: Senator Mitch Abood, Chairman  
Senate State Affairs Committee

FROM: Senator Jan Faiks

SUBJECT: Background Information on Senate Bill 412, an Act relating to claims against the state

Alaska Statutes 44.77.010 - 070 establish procedures for a person who wishes to file a claim for labor, services, materials, or supplies furnished to the State.

The claim must first be submitted to an administrative or executive officer. If the officer denies his claim, then the claimant may obtain review of the denial by the Department of Administration.

Only if both the officer and the Department deny the claim, or the latter takes no action on the request for one year, may the person seek judicial review of the State's decision. In that event, the current law says that a person can file a legal action in Superior Court. There, his claim would be governed by the procedures for introducing evidence and all of the other formalities of a civil lawsuit.

Section 1 and 2 of this bill will change this system by entitling the person to a judicial review according to simpler procedures which are now contained in our Administrative Procedure Act. Rather than beginning anew with the issue, the court would be able to review the evidence already presented on the claim and then judge the State's decisions accordingly.

OUT OF SESSION

1024 WEST SIXTH AVENUE, SUITE 302 ANCHORAGE, ALASKA 99501 907-274-6611

These amendments were suggested by the Alaska Supreme Court in order to further judicial economy without significantly impairing the rights of claimants. These persons will still have full court review of their denied claims. However, they will avoid the expense and delay of having to present these claims in the context of a formal, civil lawsuit.

Section 3 deals with the consequences of a November, 1985, court decision. In the case of State v. Dupere, the Supreme Court decided that the claims procedure applied not only to the executive branch, but also to the legislative and judicial branches.

Currently, AS 44.77.070 exempts from this system any department in the executive branch which has adopted its own mandatory claims and appeal procedure.

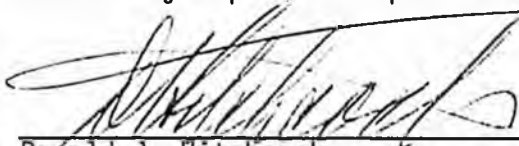
Section 3 of the bill will extend this exemption to departments of the legislative and judicial branches once they adopt a claims and appeals procedure. By allowing the judicial and legislative branches to adopt their own system and to avoid a review of their matters by a department of the executive branch, the bill will further the principle of separation of powers.

POSITION PAPER

SB 412


SB 412 provides an alternate appeal process although the impact on the State is virtually the same. Additionally, the bill brings the legislative and judicial branches under the caveat of deferral to that agency or branch of government if they have their own mandatory claims and appeal procedure.

Risk Management's position on SB 412 is neutral as its passage will not materially impact our operations.



Donald J. Hitchcock  
Director  
Division of Risk Management  
Department of Administration

2-26-86  
Date



Commissioner Eleanor Andrews  
Department of Administration

2/26/86  
Date

STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: 2/24/86

REQUEST  
Bill/Resolution No.: SB 412  
Title: An act relating to claims  
against the State.

FISCAL DETAIL  
Agency Affected: Administration  
BRU: \_\_\_\_\_

Sponsor: Jan Faiks  
Requestor: \_\_\_\_\_  
Date of Request: 2/21/86

Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
OPERATING						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Don Hitchcock  
Division: Risk Management

Phone: 465-2180  
Date: 2/24/86

Approved by Commissioner: Eleanor Andrews  
Agency: Department of Administration

Date: 2/26/82

Distribution (by Agency preparing fiscal note):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

# Memorandum

Alaska Court System

TO: Arthur H. Snowden, II  
Administrative Director

DATE : March 5, 1986

FROM:

Karla L. Forsythe *Karla L. Forsythe*  
Staff Counsel

SUBJECT: SB 412 - Analysis

You asked me to outline the provisions of SB 412, an act relating to claims against the state, and to compare the proposed changes with existing law.

Under current law, a person who has a claim against the state for reimbursement for money, or for compensation for labor, materials or supplies furnished or services given to or for the state, must first submit the claim to the appropriate administrative officer. If that officer disallows all or part of the claim, the person may seek review through the Department of Administration. If the Department of Administration disallows the claim, the person must file a new action in superior court in order to pursue the claim.

Sections 1 and 2 of SB 412 would change this procedure by eliminating the requirement that a claimant file a completely new lawsuit. Instead, the person would follow the judicial review provisions of the administrative procedure act (AS 44.62.560-.570) by filing a notice of appeal with the superior court. The court would review the hearing record compiled by the Department of Administration, and could overturn the decision if it found that the agency did not have jurisdiction, that the hearing was not fair, or that there was a prejudicial abuse of discretion. Court resources would be used more efficiently by handling these claims as administrative appeals rather than new lawsuits.

Under current law, an executive branch agency can establish a claims procedure which is independent from the Department of Administration. However, under a recent Alaska supreme court decision interpreting AS 44.77.070, claims against the legislative and judicial branches must be submitted through the Department of Administration (State v. Dupere, No. 2995, November 22, 1985). Section 3 of SB 412 would permit the legislative and judicial branches to establish separate claims procedures, giving them the same option available under current law to executive branch agencies.

KF/k1

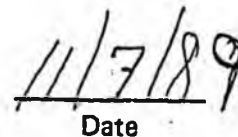


# RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

  
Signature of Camera Operator

  
Date

HB

2



HB2 - ACCESS TO MEDICAL HISTORY OF ADOPTED PERSONS

HB2 amends the Vital Statistics Act (AS 18.50) by allowing adoptive parents or adopted person access to medical history of biological parents. Requires the Department of Health and Social Services, child adoption agency, or person who places child for adoption to furnish the state registrar with required information.

CSHB2 (HESS) requires a person or agency petitioning for adoption to attempt to obtain medical information from parents of adopted child (original bill simply required person or agency to obtain the information.) Also deletes language that stated a person "authorized by law" to place a person for adoption to furnish information (now a person placing a person for adoption would be required to furnish information.)

CSHB2 (JUD) changes statute numerical references in the bill, but makes no substantive change.

CSHB2 (JUD) pass the House on March 18 by vote of 39-0-1.

AP



Finance Committee  
Oil and Gas Committee

# Alaska State Legislature

House of Representatives

Representative Mike Szymanski

11920 Johns Road  
Anchorage, Alaska 99515  
Phone (907) 349-3373

While in Session:  
Pouch V

State Capitol  
Juneau, Alaska 99811  
(907) 465-4978/4979

March 8, 1985

TO: HOUSE FINANCE COMMITTEE  
FROM: Representative Mike Szymanski  
SUBJECT: HB 2, relating to adoption medical records

This legislation, which I first introduced two years ago, has been endorsed by both the Alaska Department of Health and Social Services and the Alaska Court System.

Under present statute, there is no provision which would make it mandatory for an adopted child's medical history and records to be made available to both the adopted child and the adoptive parents. While, in fact, such information is often obtained and provided by the person or agency placing the child, there are many instances, especially in the area of private adoptions, where this information is not provided, nor is an attempt made to obtain the information.

A constituent of mine had contacted me because her adopted child had developed an illness which was "predictable" had the child's medical history/records been available.

It is the intent of this legislation to accomplish the following:

1. the legislation would require that information relating to the medical history of an adopted child be collected and recorded on a form provided by the Department of Health and Social Services and attached to the adoption records at the time of adoption. This would be for all adoptions -- through a private individual such as an attorney, a private agency or a state agency.
2. For those adoptions which have occurred prior to the effective date of this legislation, the Department of Health and Social Services would now be required to obtain this information, if it is available, and if requested by the child or the adoptive parents.

3. This legislation would make the information available upon request to the adoptive parents and to the adopted child.

4. It is the intent of the legislation that the information which will be included will be nonidentifying information.

This bill has had hearings in the House HESS Committee and the House Judiciary Committee. In both cases, a committee substitute was adopted and changes were made that were technical in nature, to "clean up" the language of the legislation. An explanation follows of the changes:

CSHB 2 (HESS), changed the language on Page 1, lines 18 & 28 from "a person authorized by law to place a person for adoption" to "a person placing a person for adoption". The reasoning for this is that not all persons placing a child for adoption are required to be authorized by law. It is also consistent with the wording on Page 1, line 26 and Page 2, line 1. Additionally, the HESS CS changes the wording on Page 2, line 24 from "a person or agency petitioning for adoption shall obtain " to "shall attempt to obtain" in recognition of the fact that there will be times when this information is simply not available.

CSHB 2(Judiciary) Changes the statute reference in Section 1 from AS 18.50.500 and AS.50.510 and to AS 18.50.214, AS 18.50.216, respectively and changes the statute reference for the Definitions from AS 18.50.520 to AS 18.50.370 where it was deemed more appropriate.

The Department of Health and Social Services is supportive of these changes.

I appreciate the Committee's consideration of this legislation.

POSITION PAPER

HOUSE BILL NO. 2

"An Act relating to adoption medical records"

House Bill No. 2 amends the Vital Statistics Act and the adoption statute to require collection of nonidentifying information on the health history of each biological parent, adopted person, and blood relatives of each biological parent, if available.

The Department agrees that this information should be collected because of its usefulness to adoptees and adoptive parents, but much of that information, particularly about blood relatives, has not been collected for past adoptions mainly because the majority of adoptions in Alaska are not handled through agencies.

The Department proposes the following changes to Page 1, lines 18 and 28 from "a person authorized by law to place a person for adoption" to "a person placing a person for adoption". This change is suggested because not all persons placing a person for adoption are required to be authorized by law. An example would be an attorney who handles only one or two adoptions a year. This change is consistent with the wording on Page 1, line 26 and Page 2, line 1.

With these changes, the Department of Health and Social Services would support passage of House Bill No. 2.

RECOMMENDED BY: Joan P. Brooks  
JOAN P. BROOKS  
STATE REGISTRAR OF VITAL STATISTICS

DATE: January 17, 1985

RECOMMENDED BY: Newton Chase  
NEWTON CHASE  
ACTING DIRECTOR  
DIVISION OF PLANNING

DATE: 1/17/85

APPROVED BY: John R. Pugh  
JOHN R. PUGH  
COMMISSIONER

DATE: 1/20/85

**STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE**

Revision Date: \_\_\_\_\_

**REQUEST**

Bill/Resolution No.: ASH B 2 (JWP)  
Title: Adoption Medical Records

**FISCAL DETAIL**

Agency Affected: Health & Social Services  
Program Category Affected: Health

Sponsor: Szymanski, Goll & Roucher  
Requestor: \_\_\_\_\_  
Date of Request: 1/17/85

BRU, Program or Subprogram(s) Affected: \_\_\_\_\_  
Div. of Planning, Bureau of Vital Statistics

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES			7			
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>		0	0	0	0	0

<b>CAPITAL</b>						
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<b>REVENUE</b>						
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

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

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

Prepared By: John P. Brooks (C)  
Division: Planning/Bureau of Vital Statistics

Phone: 465-3391  
Date: 1/17/85

Approved by Commissioner: John R. Payne  
Agency: HEALTH + SOCIAL SERVICES

Date: 1/21/85 JCC

**Distribution (by Agency preparing fiscal note):**

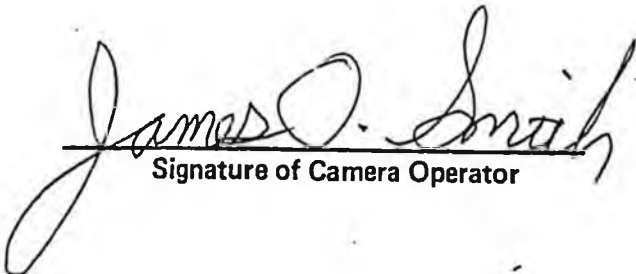
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget

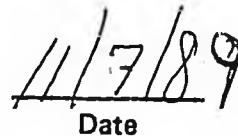


# RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

  
Signature of Camera Operator

  
Date

L

I

B

H





TONY KNOWLES  
MAYOR

# ANCHORAGE POLICE DEPARTMENT

625 C STREET • ANCHORAGE, ALASKA 99501-3599  
TELEPHONE (907) 279-1441



BRIAN S. PORTER  
CHIEF

January 25, 1985

Senator Patrick M. Rodey  
Pouch V  
Juneau, Alaska 99811

RE: House Bill No. 17  
"An Act Relating to Multiple Convictions for Motor Vehicle Theft  
and Joyriding"

Dear Senator Rodey,

Alaska Statute 11.46.484 (a)(2) Criminal Mischief in the Third Degree causes a person who has been previously convicted of this offense, or the old Title 28.35.010 (Driving a vehicle without owner's consent) to be charged with a Class "C" Felony.

Since the enactment of this Statute [11.45.484(a)(2)] in 1982, several problems have been encountered that have severely limited the felony prosecution for this offense. This Statute fails to take into consideration:

1. Convictions for the like offense of "Joyriding" (Driving a vehicle without the owner's consent). Other states and jurisdictions have Statutes or Ordinances for the offense of "Driving a vehicle without the owner's consent"(Joyriding), but with the restrictive language of AS 11.46.484(a)(2) prior convictions in other states and jurisdictions may not be used in determining an upgraded charge(felony).
2. Convictions of AS 11.46.482(a)(4) Criminal Mischief in the Second Degree, involving a stolen motor vehicle. The only difference between Criminal Mischief in the Second Degree [AS 11.46.482(a)(4)](Felony) and Criminal Mischief in the Third Degree [AS 11.46.484(a)(2)](Misdemeanor), is if the owner of the stolen vehicle incurs expenses in the amount of \$500 or more the Criminal Mischief in the Second Degree is charged.
3. Convictions of AS 11.46.100-190 Theft in the First-Third Degree. Not all people charged with stealing a motor vehicle are charged under the Criminal Mischief Statutes, depending on what they ultimately do to or with the vehicle, they can be charged under the Theft Statutes.

The Theft Statutes are utilized when it can be shown that the thief had the intent to permanently deprive the owner of his stolen vehicle, such as altering the vehicle identification numbers or dismantling the vehicle.

Anchorage accounts for 44% of the vehicles registered in Alaska, and 83% of the vehicle thefts.

Registered vehicles (Anchorage)

1982	150,973
1983	172,911
1984	186,744

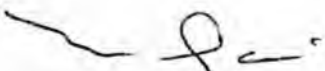
Auto Thefts (Anchorage)

		Dollar Amount
1982	1120 vehicles	\$2,563,800
1983	1433 vehicles (+28%)	3,744,000
1984	1562 vehicles (+ 9%)	4,634,000

In Anchorage, during 1984, your chance of having your vehicle stolen was "1" out of "119". The National average was "1" out of 158 and Seattle only had a rate of "1" out of 335.

I strongly urge your support for House Bill No. 17. I have worked as an auto theft investigator for the past 12 years and I feel that this Bill will help to reduce auto theft in Alaska. House Bill No. 17 is also supported by the Alaska Chiefs of Police, Alaska Peace Officers Association and the Anchorage Police Department Employees Association.

Sincerely,

  
Investigator Lyle L. Davis  
Anchorage Police Department  
Auto Theft Unit

LLD:vka  
Attachments

Cy No. 465-4750

to Affair - LANE

to: ANCH - Municipal Code

Lt. Carlson: NA of the Code

Municipal Attorney: 264-4545

Sgt. Liba  
MUNICIPALITY  
OF ANCHORAGE

POLICE  
DEPARTMENT

MUNICIPAL CRIMINAL CODE  
(ARRESTABLE OFFENSES  
FROM TITLE 9 INCLUDED)

JANUARY 1984

receipt issued for and accompanied by the article or articles of merchandise or thing or things of value. (Adapted from GAAB 18.05.040.)

#### 8.05.560 Solicitation to Illegal Act.

It is unlawful to solicit a person for the purpose of committing any illegal act. (GAAB 18.05.010R.)

#### 8.05.580 Switchblade Knives.

It is unlawful for a person to sell, offer for sale, display or carry about his person, a knife which has a blade which can be opened by a spring mechanism, exertion of pressure on the handle, or by gravity. This section does not apply to any officer of the United States, the State of Alaska or the municipality whose carrying or displaying of such a knife is necessary in the course of his official duties. (Adapted from CAC 8.50.010 and new.)

#### 8.05.590 Telephones — Illegal Use of.

It is unlawful for any person to anonymously or repeatedly telephone another person for the purpose of annoying, molesting, or abusing through patently offensive and profane language, or harassing that person or his family. (Adapted from AS 11.45.035, am AO 82-134.)

#### 8.05.600 Theft of Vehicle and Joyriding.

Any person who drives or takes a motor vehicle not his own without the consent of the owner thereof, and with intent to either permanently or temporarily deprive the owner thereof of his possession of the vehicle, whether with or without intent to steal the same, or any person who is a party or accessory to or an accomplice in the driving or unauthorized taking or stealing, is guilty of a misdemeanor. The consent of the owner of a vehicle to its taking or driving shall not in any case be presumed or implied because of such owner's consent on a previous occasion to the taking or driving of the vehicle by the same or a different person. (Adapted from CVC 10851 Calif. Vehicle Code.)

#### 8.05.610 Unauthorized Duplication of Keys.

It is unlawful for any person to make a duplicate of a key bearing the inscription "do not duplicate" or "it is unlawful to duplicate this key," unless authorized to do so by the owner of the lock which the key fits. (CAC 8.32.010.)

#### 8.05.620 Unauthorized Entry.

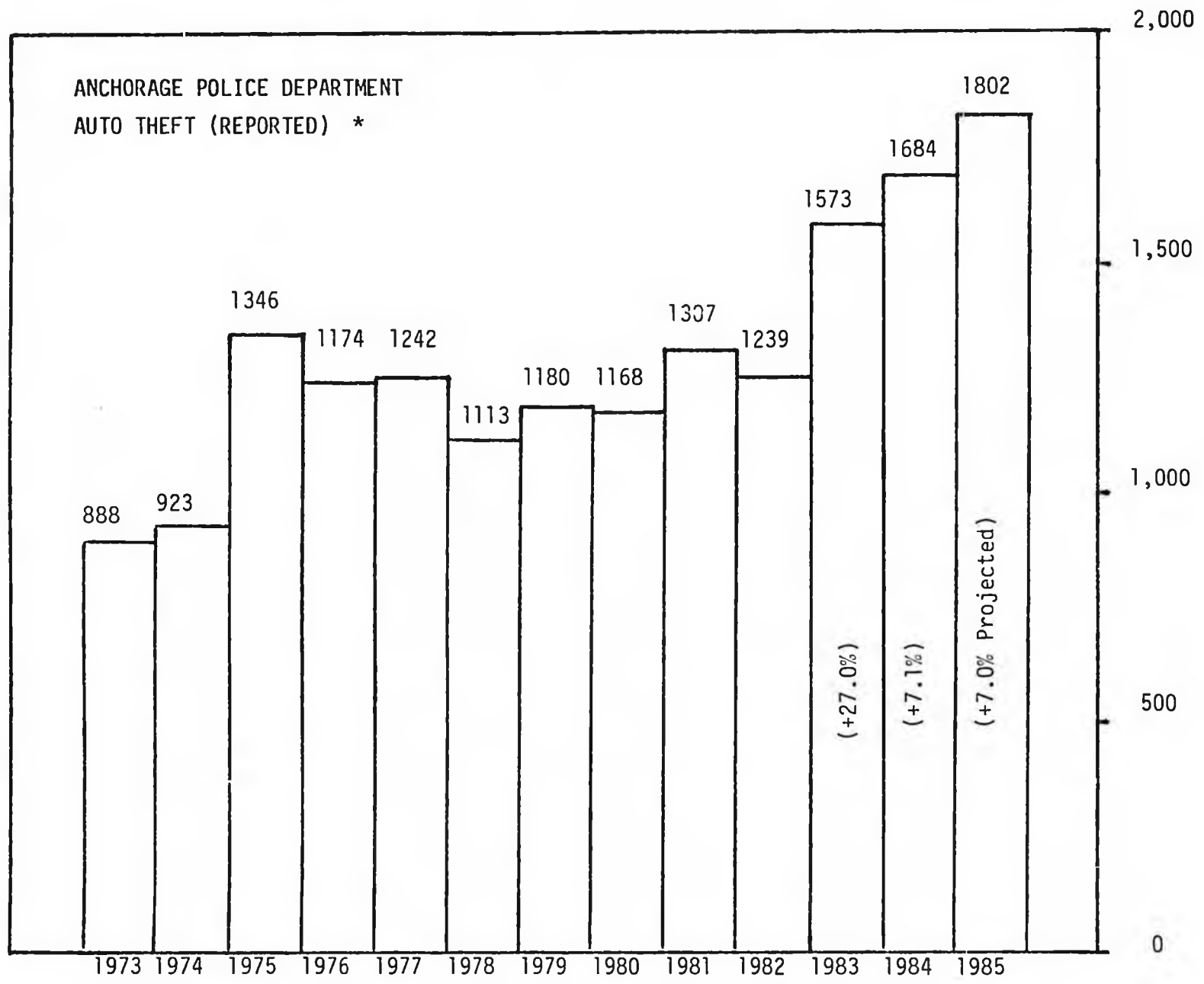
A. It is unlawful for any person to enter, use or occupy any occupied or unoccupied dwelling, house, tent, hotel, office, store, shop, warehouse, barn, factory or other building, boat, ship, railroad car or structure, or apartment, cottage, clubhouse, bathhouse, hunting or fishing lodge, garage or any other structure or use any personal property therein, except with the consent of the owner of the facility or his agent. However, a person may enter, use or occupy an unoccupied structure specified in this section without the consent of the owner if:

1. the entry, use or occupancy of the facility is for an emergency in the case of immediate and dire need; and
2. the person contacts the owner or agent within 15 days after using the facility or, if the owner is unknown, the Anchorage Police Department, and makes a report of the time of entry, use or occupancy of the facility and any damage to the facility or personal property, unless a notice waiving the necessity for such report is posted in the facility by the owner or his agent.

B. In this section, "occupied" means that the premises is being used by one or more persons entitled to its enjoyment and use, and this includes actual as well as constructive occupancy. (Adapted from AS 11.20.135.)

#### 8.05.660 Vehicle — Tampering With.

It is unlawful for any person, either individually or in concert with one or more other persons, willfully to



\* (includes reports later found to be false)

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

<u>REQUEST</u> SCSCS HB17 Bill/Resolution No.: (State Affairs) Title: "...vehicle theft and joyriding." Sponsor: <u>Repr. Uehling</u> Requestor: <u>Senate Judiciary</u> Date of Request: <u>3/13/85</u>	<u>FISCAL DETAIL</u> Agency Affected: <u>Department of Law</u> Program Category Affected: _____ <u>Administration of Justice</u> BRU, Program or Subprogram(s) Affected: <u>Prosecution</u>	
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EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>						
<b>REVENUE</b>						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

The latest committee substitute adds language to specify and clarify the circumstances whereby prior convictions can be used in determining whether a subsequent conviction will result in a class C felony. These circumstances were included in the original version by statutory reference. Because there have been no substantive changes, the comments contained in our fiscal note of January 29, 1985, remain unchanged.

Prepared By: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Date: 3/15/85  
 Approved by Commissioner: Norman C. Gorsuch Date: 3/15/85  
 Agency: Department of Law

Distribution (by Agency preparing fiscal note):

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

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: SCSCSHB 17(SA)  
 Title: "An Act relating to  
 multiple convictions...."  
 Sponsor: Senate State Affairs  
 Requestor: Senate Judiciary  
 Date of Request: 3-14-85

FISCAL DETAIL

Agency Affected: Public Safety  
 Program Category Affected: Administration of Justice  
 BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-

<b>CAPITAL</b>						
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<b>REVENUE</b>						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Paul Conger  
 Division: Administrative Services

Phone: 465-4338  
 Date: 3-14-85

Approved by Commissioner: *[Signature]*  
 Agency: Public Safety

Date: 3/15/85

Distribution (by Agency preparing fiscal note):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

DEPARTMENT OF PUBLIC SAFETY  
POSITION PAPER -- SCSHB 17(SA)

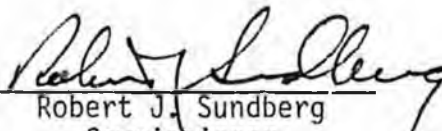
Support

March 28, 1985

SCSHB 17(SA) - "An Act relating to multiple convictions for motor vehicle theft and joyriding."

This legislation broadens the parameters of criminal activity that are to be considered in determining previous convictions involving joyriding.

This wording change will allow more serious charges to be brought against joyriding suspects which should bring the importance of this crime to the public's attention and thus lessen the number of occurrences due to the fear of prosecution as a more serious crime.

  
Robert J. Sundberg  
Commissioner

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: February 15, 1985

**REQUEST:**

Bill/Resolution No.: H.B. 17  
 Title: "An Act relating to multiple convictions for motor vehicle theft and joyriding"  
 Sponsor: Representative Uehling  
 Requestor: (H) Judiciary  
 Date of Request: February 1, 1985

**FISCAL DETAIL:**

Agency Affected: DEPARTMENT OF CORRECTIONS  
 Program Category Affected: \_\_\_\_\_  
 Administration of Justice  
 BRU, Program or Subprogram(s) Affected: Offender Confinement, Reformation, and Supervision

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		17.9	18.8	19.7	20.7	21.7
400 SUPPLIES		14.6	15.3	16.1	16.9	17.8
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>32.5</b>	<b>34.1</b>	<b>35.8</b>	<b>37.6</b>	<b>39.5</b>

<b>CAPITAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
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<b>REVENUE</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND	-0-	32.5	34.1	35.8	37.6	39.5
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>-0-</b>	<b>32.5</b>	<b>34.1</b>	<b>35.8</b>	<b>37.6</b>	<b>39.5</b>

**POSITIONS:**

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

**ANALYSIS:** Attach a separate page if necessary.

See attached narrative.

Prepared By: William W. Ladwig  
 Division: Deputy Commissioner for Administration  
 Approved by Commissioner: Roger V. Enchell  
 Agency: DEPARTMENT OF CORRECTIONS

Phone: 465-3376  
 Date: February 15, 1985  
 Date: February 15, 1985

Distribution (by Agency preparing fiscal note):

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

ANALYSIS

I. Assumptions:

Based upon statistics provided by Anchorage Police Officer Davis, the following assumptions have been made:

1. Anchorage accounts for 83% of the annual arrests for auto theft.
2. The arrests have averaged 100 per year.
3. Of all 100 arrests for all types of auto theft, 15 are for joyriding.
4. Of the 15 arrestees, 3 have prior offenses.
5. Projecting the Anchorage area statistics to the statewide level results in 120 arrests per year for all auto theft crimes with 4 people being subject to this legislation.
6. It is assumed that the number of persons incarcerated under this bill would be 4.
7. It is assumed that incarceration of these 4 persons will require no additional bed space.
8. It is assumed that the cost of living will increase by 5% per year.

II. Program Summary:

A. The annual cost of care is computed as follows:

4 X 365 X 22.28	=	32,500
32.5 X 1.05	=	34.1
34.1 X 1.05	=	35.8
35.8 X 1.05	=	37.6
37.6 X 1.05	=	39.5
Total	=	179.5

III. Economic Impact:

Enactment of this bill will not have a significant impact on the State's economy.

IV. Impact on Local Government:

This bill has no apparent impact on local government units.

HB 17 - JOYRIDING

- This is not a new and different concept. Existing law already provides that anyone convicted of joyriding, who has previously been convicted of a joyriding offense under State law, is guilty of a class C felony.
- This bill amends existing law to close a gaping loophole. Existing law would not allow consideration of a previous conviction for joyriding under municipal ordinances or under another state's law. To allow this situation to continue will result in continued inconsistent treatment of similar offenders. E.g., their penalty would depend on whether they were previously convicted under Anchorage municipal law or state law.
- The significant change in the law is the inclusion of previous convictions for related crimes. That is, a previous conviction for theft of a motor vehicle or a previous conviction of joyriding where \$500 or more of property damage was caused will also be counted to incur the class C felony treatment.
- Although the result of the bill will be increased felony convictions, there is no presumptive term for a first time class C felony conviction. The only time the presumptive scheme will come into play is when that person has previous felony convictions (2 years for a second felony conviction and 3 years for a third felony conviction).

STATE OF ALASKA 1985 LEGISLATIVE FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: HB 17  
 Title: "An Act relating to multiple convictions...for motor vehicles..."  
 Sponsor: Repr. Uehling  
 Requestor: House Judiciary  
 Date of Request: 1/24/85

FISCAL DETAIL

Agency Affected: Department of Law  
 Program Category Affected: Administration of Justice  
 BRU, Program or Subprogram(s) Affected: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>			-			
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-

<b>CAPITAL</b>						
----------------	--	--	--	--	--	--

<b>REVENUE</b>						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

This bill amends AS 11.46.484(c) to provide that a person convicted under (a)(2) of that section who has been previously convicted of an offense having similar elements or of an offense involving the theft of a motor vehicle under AS 11.46.100-11.46.190 is guilty of a class C felony. The effect of the amendment is to provide for the inclusion of convictions of similar offenses in other jurisdictions in arriving at the offense level for repeat offenses in Alaska.

Prepared By: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Date: 1/29/85  
 Approved by Commissioner: Norman C. Gorsuch Date: 1/29/85  
 Agency: Department of Law

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST  
 Bill/Resolution No.: HB 17  
 Title: "...multiple convictions  
 for joyriding."  
 Sponsor: Rep. Uenling  
 Requestor: House Judiciary  
 Date of Request: 2-6-85

FISCAL DETAIL      Public Safety  
 Agency Affected: \_\_\_\_\_  
 Program Category Affected: \_\_\_\_\_  
                                  Administration of Justice  
 BRU, Program or Subprogram(s) Affected: \_\_\_\_\_  
                                  Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>	0	0	0	0	0	0
<b>REVENUE</b>						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

See attached analysis.

Prepared By: Francis C. Allan <sup>G.C.A.</sup>      Phone: 269-5691  
 Division: Alaska State Troopers      Date: 2-1-85  
 Approved by Commissioner P. J. Sundberg      Date: 2-6-85  
 Agency: Department of Public Safety

Distribution (by Agency preparing fiscal note):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

7/1/84

REP. RICK UEHLING  
TESTIMONY TO HOUSE JUDICIARY COMMITTEE  
REGARDING HOUSE BILL 17

MR. CHAIRMAN,

DURING THE INTERIM, IT WAS BROUGHT TO MY ATTENTION BY MEMBERS OF THE ANCHORAGE POLICE DEPARTMENT THAT CERTAIN DEFICIENCIES EXIST IN THE CURRENT LAWS UNDER WHICH A PERSON IS CHARGED WITH AS 11.46.484(a)(2) CRIMINAL MISCHIEF IN THE THIRD DEGREE (INVOLVING THE THEFT OF A MOTOR VEHICLE.)

UNDER THE CURRENT LAW, FELONY PROSECUTIONS HAVE BEEN LIMITED FOR THIS OFFENSE BY ITS RESTRICTIVE LANGUAGE. THE STATUTE DOES NOT ALLOW OUR POLICE AND PROSECUTORS THE ABILITY TO TAKE INTO CONSIDERATION THE FOLLOWING:

1. VIOLATIONS OF MUNICIPAL ORDINANCES FOR THE CRIME OF "JOYRIDING" (DRIVING A VEHICLE WITHOUT THE OWNER'S CONSENT)
2. CONVICTIONS IN OTHER JURISDICTIONS (OTHER STATES) FOR A LIKE OFFENSE
3. CONVICTIONS OF AS 11.46.482(a)(d) CRIMINAL MISCHIEF IN THE SECOND DEGREE, INVOLVING A STOLEN MOTOR VEHICLE.
4. CONVICTIONS OF AS 11.46.100-190 THEFT IN THE FIRST THROUGH THIRD DEGREE, AS 11.46.100-190 INVOLVING THE THEFT OF A MOTOR VEHICLE.

AUTO THEFT IN ANCHORAGE IS GROWING AT AN INCREASING RATE. IN 1983 THERE WAS A 28% INCREASE IN AUTO THEFTS AND IN 1984, A 9% INCREASE. THE TOTAL VALUE OF ALL CARS STOLEN IN 1984 WAS 4.6 MILLION DOLLARS.

WE NEED TO GIVE OUR POLICE THE TOOLS NECESSARY TO DEAL WITH THIS PROBLEM. I UNDERSTAND THAT THE ATTORNEY GENERAL'S OFFICE MAY HAVE CHANGES THAT THEY WANT TO MAKE. I HAVE NO PROBLEM WITH THAT. I AM WILLING TO WORK WITH MEMBERS OF THE COMMITTEE, THE CHAIRMAN, AND THE ATTORNEY GENERAL'S OFFICE TO SOLVE OUT ANY PROBLEMS. INVESTIGATOR LYLE DAVIS & ANN NEWELL ARE HERE TO TESTIFY AND I AM CERTAIN THAT THEY CAN BETTER ANSWER ANY SPECIFIC QUESTIONS THAT YOU MAY HAVE. THANK YOU.

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - HB 17

Support

February 1, 1985

HB 17 - "An Act relating to multiple convictions for motor vehicle theft and joyriding."

This legislation broadens the parameters of criminal activity that are to be considered in determining previous convictions involving joyriding.

This wording change will allow more serious charges to be brought against joyriding suspects which should bring the importance of this crime to the public's attention and thus lessen the number of occurrences due to the fear of prosecution as a more serious crime.

  
Robert J. Sundberg  
Commissioner



# Alaska State Legislature

## House

Official Business

Pouch V  
State Capitol  
Juneau, Alaska 99811

### MEMORANDUM

To: Rep. Mike Miller, Chair  
House Judiciary

From: Rep. Rick Uehling *RUE*

Subject: HB 17 "An Act relating to multiple convictions for motor vehicle theft and joyriding."

Date: January 28, 1985

Attached are two letters from Investigator Lyle Davis, of the Anchorage Police Department setting forth specific problems with the current Alaska Statute 11.46.484(a)(2), "Criminal mischief in the third degree, involving a stolen motor vehicle." House Bill 17 "An Act relating to multiple convictions for motor vehicle theft and joyriding," is an attempt to correct the problems that exist in the current law.

In the past two years in Anchorage, auto theft has increased by 31%. I believe that by expanding the statute to allow prosecutors to use previous convictions, of crimes involving the theft of stolen motor vehicles, in order to upgrade what would be Misdemeanor charges to Felony charges that repeat offenders can be stopped. We must seek to end the upward trend in the growth of the number of stolen motor vehicles.

{ Investigator Lyle Davis will be here in Juneau to testify on HB 17 before the House Judiciary Committee on Friday.

I have included additional background information for your consideration.

Taking, and pledging or pawning, another's property as larceny, 82 ALR2d 863.

Stolen money or property as subject of larceny, 89 ALR2d 1435.

Larceny in connection with application for, or receipt of, public relief or welfare payments, 92 ALR2d 429.

Attempts to commit offenses of larceny by trick, confidence game, false pretenses, and the like, 6 ALR3d 241.

Entrapment or consent, 10 ALR3d 1121.

Computer programs as property subject to theft, 18 ALR3d 1121.

Single or separate larceny predicated upon stealing property from different owners at the same time, 37 ALR3d 1407.

Criminal liability in connection with rental of motor vehicles, 38 ALR3d 949.

Purse snatching as robbery or theft, 42 ALR3d 1381.

Criminal prosecution based upon breaking into or taking money or goods from vending machine or other coin operated machine, 45 ALR3d 1286.

Series of takings over a period of time as involving single or separate larcenies, 53 ALR3d 398.

Larceny as within disorderly conduct statute or ordinance, 71 ALR3d 1156.

What constitutes larceny "from a person," 74 ALR3d 271.

Receiver of stolen goods as accomplice of thief for purposes of corroboration, 74 ALR3d 560.

What conduct amounts to an overt act or acts done toward commission of larceny so as to sustain charge of attempt to commit larceny, 76 ALR3d 842.

Retaking of money lost at gambling as robbery or larceny, 77 ALR3d 1363.

Criminal liability for wrongfully obtaining unemployment benefits, 80 ALR3d 1280.

Embezzlement, larceny, false pretenses or allied criminal fraud by a partner, 82 ALR3d 822.

Coercion, compulsion, or duress as defense to charge of robbery, larceny, or related crime, 1 ALR4th 481.

Retailer's failure to pay to government sales or use tax funds as constituting larceny or embezzlement, 8 ALR4th 1068.

**Sec. 11.46.100. Theft defined.** A person commits theft if

(1) with intent to deprive another of property or to appropriate property of another to oneself or a third person, the person obtains the property of another;

(2) the person commits theft of lost or mislaid property under AS 11.46.160;

(3) the person commits theft by deception under AS 11.46.180;

(4) the person commits theft by receiving under AS 11.46.190;

(5) the person commits theft of services under AS 11.46.200;

(6) the person commits theft by failure to make required disposition of funds received or held under AS 11.46.210. (§ 4 ch 166 SLA 1978)

Cross references. — For definitions, see AS 11.46.990.

**NOTES TO DECISIONS**

- I. General Consideration.
- II. Larceny.

**I. GENERAL CONSIDERATION.**

**Indictment sufficient.** — Indictment charging defendant with theft adequately informed him of offense with which he was charged, although it did not allege a specific theory of theft. *Williams v. State*,

Ct. App. Op. No. 106 (File No. 5993), 648 P.2d 603 (1982).

**Receiving stolen property.** — It was not error to instruct on offense of receiving stolen property, even though evidence tended to show that he was the thief and

Disorderly conduct  
ALR3d 1156.  
Penalty "from a per-

As an accomplice  
corroboration, 74

As to an overt act or  
commission of larceny so  
attempt to commit

As to gambling as  
ALR3d 1363.  
Wrongfully obtain-  
benefits, 80 ALR3d

By, false pretenses  
by a partner, 82

By or duress as  
larceny, or  
481.  
By to government  
constituting lar-  
ALR4th 1068.

Left if  
Appropriate prop-  
erty obtains the

Property under AS

1.46.180;  
1.46.190;  
16.200;  
and disposition  
(6 SLA 1978)

No. 5993), 648

Property. — It was  
in use of receiving  
enough evidence  
as to the thief and

had not received the property from anyone.  
*Williams v. State*, Ct. App. Op. No. 106  
(File No. 5993), 648 P.2d 603 (1982). *Gant*  
*v. State*, Ct. App. Op. No. 171 (File No.  
6161), 654 P.2d 1325 (1982).

**Applied in** *Andrew v. State*, Ct. App.  
Op. No. 164 (File No. 6468), 653 P.2d 1063  
(1982).

**Quoted in** *Frankson v. State*, Ct. App.  
Op. No. 92 (File No. 6029), 645 P.2d 225  
(1982).

**Cited in** *Law v. State*, Sup. Ct. Op. No.  
2301 (File No. 4552), 624 P.2d 284 (1981);  
*Leuch v. State*, Sup. Ct. Op. No. 2419 (File  
No. 5255), 633 P.2d 1006 (1981); *Namen v.*  
*State*, Ct. App. Op. No. 264 (File No. 5662),  
665 P.2d 557 (1983).

**II. LARCENY.**

**Editor's notes.** — The cases cited in the  
notes below were primarily decided under  
former AS 11.20.140.

The "property of another" phrase in  
larceny statutes ordinarily refers to pos-  
session, not title, because the gravamen of  
the offense is the interference with an-  
other's possession of property. *Pulakis v.*  
*State*, Sup. Ct. Op. No. 649 (File No. 1108),  
476 P.2d 474 (1970).

**Proof of ownership not required.** —  
The state need not prove, as an essential  
element of the crime of larceny, ownership  
of the property allegedly stolen. *Pulakis v.*  
*State*, Sup. Ct. Op. No. 649 (File No. 1108),  
476 P.2d 474 (1970).

The property in question must  
belong to another person. *Howard v.*  
*State*, Sup. Ct. Op. No. 1707 (File No.  
3089), 583 P.2d 827 (1978).

**Effect of owner's consent.** — Proof of  
the owner's or possessor's consent to the  
taking would render the taking  
nontrespassory, and there could be no lar-  
ceny conviction. Nevertheless, proof of  
nonconsent need not be by direct evidence  
only. *Randall v. State*, Sup. Ct. Op. No.  
1691 (File No. 3260), 583 P.2d 196 (1978).

**Establishing nonconsent.** — Non-  
consent of the owner or possessor of the  
item taken may be established by circum-  
stantial evidence. *Randall v. State*, Sup.  
Ct. Op. No. 1691 (File No. 3260), 583 P.2d  
196 (1978).

**Definition of "goods" under former  
larceny statute.** — Natural gas was  
included within the meaning of the word  
"goods." *Selman v. State*, Sup. Ct. Op. No.  
302 (File No. 527), 406 P.2d 181 (1965),  
overruled on other grounds in *Whitton v.*  
*State*, Sup. Ct. Op. No. 661 (File No. 1153),  
479 P.2d 302 (1970).

Electricity is included within the  
meaning of the word "goods." *Selman v.*  
*State*, Sup. Ct. Op. No. 302 (File No. 527),  
406 P.2d 181 (1965), overruled on other  
grounds in *Whitton v. State*, Sup. Ct. Op.  
No. (File No. 1153), 479 P.2d 302 (1970).

Electricity can be the subject of larceny.  
*Selman v. State*, Sup. Ct. Op. No. 302 (File  
No. 527), 406 P.2d 181 (1965), overruled on  
other grounds in *Whitton v. State*, Sup. Ct.  
Op. No. (File No. 1153), 479 P.2d 302  
(1978).

**Former section required felonious  
intent on which to base a conviction.**  
*Bowlby v. Daniels*, 17 Alaska 768 (1958).

**Grand larceny was a specific intent  
crime.** *Howard v. State*, Sup. Ct. Op. No.  
1707 (File No. 3089), 583 P.2d 827 (1978).

A necessary element of the crime of  
grand larceny was that defendant have the  
specific intent to deprive the owner of his  
property at the time the taking and  
carrying away takes place, and unless  
such intent so exists, the crime of larceny  
is not committed. *Howard v. State*, Sup.  
Ct. Op. No. 1707 (File No. 3089), 583 P.2d  
827 (1978).

**Property stolen need not be for use  
of thief.** — Nothing on the face of the  
former larceny section stated that the  
stolen property had to have been stolen for  
the use of the thief. *Perkins v. United*  
*States*, 16 Alaska 471, 237 F.2d 857 (9th  
Cir. 1956).

The wrongful taking of property of an-  
other constituted larceny although not  
shown to be conversion for the use of the  
thief. *Perkins v. United States*, 16 Alaska  
471, 237 F.2d 857 (9th Cir. 1956).

**Larceny of electricity and diversion  
of electricity not the same.** — A count  
charging larceny of electricity under the  
former larceny section was not a duplica-  
tion of a charge contained in a count of  
unauthorized use or diversion of electricity  
under AS 42.20.030. *Selman v. State*, Sup.  
Ct. Op. No. 302 (File No. 527), 406 P.2d  
181 (1965), overruled on other grounds in  
*Whitton v. State*, Sup. Ct. Op. No. 661  
(File No. 1153), 479 P.2d 302 (1970).

**As the former required proof of  
intent.** — Where a count charged larceny  
of electricity, the state was obligated to  
prove a taking of electric current with the  
intent to permanently deprive the owner  
thereof. *Selman v. State*, Sup. Ct. Op. No.  
302 (File No. 527), 406 P.2d 181 (1965),  
overruled on other grounds in *Whitton v.*  
*State*, Sup. Ct. Op. No. (File No. 1153), 479  
P.2d 302 (1970).

**Conviction for grand larceny and  
removal of aircraft parts did not**

constitute double jeopardy. — See *Catlett v. State*, Sup. Ct. Op. No. 1752 (File No. 3213), 585 P.2d 553 (1978).

**Larceny of salmon from fish trap.** — In a prosecution for larceny of salmon from a fish trap the question of whether there was ownership in the fish depended upon proofs at the trial since the fish when reduced to possession were subject to ownership. *Klemm v. United States*, 22 F.2d 977 (9th Cir. 1927).

**Sufficiency of evidence.** — The prosecution's evidence, which sufficiently established that the ring in question was taken without the consent of its possessor, was sufficient under Alaska's larceny statute. *Pulakis v. State*, Sup. Ct. Op. No. 649 (File No. 1108), 476 P.2d 474 (1970). See *Howard v. State*, Sup. Ct. Op. No. 1707 (File No. 3089), 583 P.2d 827 (1978).

There was ample circumstantial evidence to support a finding by the jury that defendant took the item stolen from a truck without consent of the possessor where the evidence showed the stealthful manner of the taking, defendant's leaving the box containing the item at an elevator upon his discovery by a security guard, defendant's flight, and the terms upon which the owner of the truck loaned his truck to the possessor. *Randall v. State*, Sup. Ct. Op. No. 1691 (File No. 3260), 583 P.2d 196 (1978).

**Sentence upheld.** — See *Morgan v. State*, Sup. Ct. Op. No. 1664 (File No. 3179), 582 P.2d 1030 (1978); *Gottschalk v. State*, Sup. Ct. Op. No. 1961 (File No. 3721), 602 P.2d 448 (1979), cert. denied, 447 U.S. 920, 100 S. Ct. 3010, 65 L. Ed. 2d 1114 (1980); *Larson v. State*, Sup. Ct. Op.

No. 2122 (File No. 4473), 613 P.2d 1251 (1980); *Smith v. State*, Sup. Ct. Op. No. 2314 (File No. 5227), 625 P.2d 310 (1981); *Hicks v. State*, Ct. App. Op. No. 29 (File No. 5303), 636 P.2d 81 (1981).

**Sentence for grand larceny upheld.** — See *Williams v. State*, Sup. Ct. Op. No. 2147 (File No. 3901), 614 P.2d 1384 (1980); *Sundberg v. State*, Ct. App. Op. No. 142 (File No. 6322), 652 P.2d 113 (1982).

**Sentence reversed.** — See *Law v. State*, Sup. Ct. Op. No. 2301 (File No. 4552), 624 P.2d 284 (1981).

**For cases construing former AS 11.20.150, relating to larceny in building or vessel, see** *Widermyre v. State*, Sup. Ct. Op. No. 122 (File No. 243), 377 P.2d 536 (1963); *Mahle v. State*, Sup. Ct. Op. No. 218 (File No. 433), 392 P.2d 19 (1964); *Stewart v. State*, Sup. Ct. Op. No. 457 (File No. 826), 438 P.2d 387 (1968); *Sidney v. State*, Sup. Ct. Op. No. 607 (File No. 1146), 468 P.2d 960 (1970); *Pulakis v. State*, Sup. Ct. Op. No. 649 (File No. 1108), 476 P.2d 474 (1970); *Mead v. State*, Sup. Ct. Op. No. 731 (File Nos. 1225, 1281), 489 P.2d 738 (1971); *State v. Wortham*, Sup. Ct. Op. No. 1171 (File No. 2452), 537 P.2d 1117 (1975); *State v. Taylor*, Sup. Ct. Op. No. 1457 (File No. 3119), 566 P.2d 1016 (1977); *Hansen v. State*, Sup. Ct. Op. No. 1689 (File No. 3412), 582 P.2d 1041 (1978); *Hunter v. State*, Sup. Ct. Op. No. 1800 (File No. 3557), 590 P.2d 888 (1979); *Gant v. State*, Ct. App. Op. No. 171 (File No. 6161), 654 P.2d 1325 (1982).

**Applied in** *Andrew v. State*, Ct. App. Op. No. 164 (File No. 6468), 653 P.2d 1063 (1982).

**Sec. 11.46.110. Consolidation of theft offenses: Pleading and proof.** (a) Each instance of conduct defined as theft under AS 11.46.100 constitutes theft in the first, second, third, or fourth degree.

(b) An accusation of theft is sufficient if it alleges that the defendant committed theft of property or services of the nature or value required for the commission of the crime charged without designating the particular way or manner in which the theft was committed.

(c) Proof that the defendant engaged in conduct constituting theft as defined in AS 11.46.100 is sufficient to support a conviction based upon any indictment, information, or complaint for theft. (§ 4 ch 166 SLA 1978)

## NOTES TO DECISIONS

**Editor's notes.** — Most of the cases cited in the notes below were decided under former AS 11.20.140.

**Aiding and abetting conviction precludes receiving stolen property conviction.** — Defendant who was convicted strictly on a theory of aiding or abetting a theft offense could not also be convicted of receiving or concealing the same stolen property. *Sundberg v. State*, Ct. App. Op. No. 22 (File No. 5270), 636 P.2d 619 (1981).

**Efficiency of indictment.** — Indictment charging defendant with theft adequately informed him of offense with which he was charged, although it did not allege a specific theory of theft. *Williams v. State*, Ct. App. Op. No. 106 (File No. 5993), 648 P.2d 603 (1982).

An indictment under the former larceny section was held sufficient if as a practical matter it stated the elements of the offense clearly enough to enable the defense to prepare for trial and to plead a judgment in bar of a future prosecution for the same offense. Prejudice to the defendant was a controlling consideration. *Stapleton v. United States*, 17 Alaska 713, 260 F.2d 415 (9th Cir. 1958).

An indictment charging violation of the former section was not required to set out all those elements of the offense which must be found by the jury before they may find the accused guilty. It was sufficient that the necessary facts appear in any form, or by fair construction could be found within the terms of the indictment. *Stapleton v. United States*, 17 Alaska 713, 260 F.2d 415 (9th Cir. 1958).

Where indictment alleged a willful taking with intent permanently to deprive the owner of the property, lack of consent was implicit in the language. *Stapleton v. United States*, 17 Alaska 713, 260 F.2d 415 (9th Cir. 1958).

**Burden of proof.** — The burden was not on a defendant under the former larceny section to prove his innocence since the burden rested upon the prosecution to establish every element of the crime of larceny to a moral certainty and beyond reasonable doubt. *Karn v. United States*, 11 Alaska 225, 158 F.2d 568 (9th Cir. 1946).

Under the former larceny section, it was essential that the prosecution prove beyond a reasonable doubt, as an essential element of its case, that defendant took the property with the intent permanently to deprive the owner of its possession, and

furthermore, once sufficient evidence had been adduced either by defendant(s) concerning the owner's purported abandonment of the property, it then became incumbent upon the prosecution as part of its overall burden of proof to demonstrate beyond a reasonable doubt that the property was not abandoned at the time the alleged larceny was perpetrated. If the property was in fact abandoned, then it was neither owned by nor in the possession of another person or entity and thus could not be the subject of a larceny. *Howard v. State*, Sup. Ct. Op. No. 1707 (File No. 3089), 583 P.2d 827 (1978).

**Possession of stolen property merely a circumstance tending to show guilt.** — Where the accused was unable to explain his possession of recently stolen property, such possession was merely a circumstance tending to show guilt, and to instruct a jury that such evidence was prima facie proof of guilt, and, unless satisfactorily explained, may be of controlling weight, was clearly erroneous under the law of Alaska, which prohibits a judge from instructing a jury with reference to the facts. *Fosse v. United States*, 44 F.2d 915 (9th Cir. 1930).

**Identity of property had to be shown.** — It was true that actual possession of stolen property could be shown under the former larceny section, but it was equally true that the prosecution must also prove, beyond a reasonable doubt, that the property found in possession of the accused was, in truth and in fact, the identical property which was stolen. A bare assertion that property in the hands of accused was similar property or property that looked like it, was not sufficient to establish such property as the stolen property. *Karn v. United States*, 11 Alaska 225, 158 F.2d 568 (9th Cir. 1946).

**Requirements as to circumstantial evidence.** — Where prosecution relied entirely upon circumstantial evidence for a conviction under the former larceny section, under such circumstances the evidence must not only be consistent with guilt, but inconsistent with every reasonable hypothesis of innocence. The evidence should be required to point so surely and unerringly to the guilt of the accused as to exclude every reasonable hypothesis but that of guilt. *Karn v. United States*, 11 Alaska 225, 158 F.2d 568 (9th Cir. 1946).

In a prosecution under the former larceny section the evidence, while circum-

stantial, was clearly adequate and measured up to the standards which the court of appeals has laid down in such cases. *Yoho v. United States*, 14 Alaska 174, 202 F.2d 241 (9th Cir. 1953).

Prosecution could waive felony and prosecute for misdemeanor. — If on trial a misdemeanor (e.g., larceny) turned

out to be a felony (e.g., robbery), then the prosecution could in such cases waive the felony, and prosecute only for the constituent misdemeanor, supposing the misdemeanor be proved. *Perkins v. United States*, 16 Alaska 471, 237 F.2d 557 (9th Cir. 1956).

**Sec. 11.46.120. Theft in the first degree.** (a) A person commits the crime of theft in the first degree if the person commits theft as defined in AS 11.46.100 and the value of the property or services is \$25,000 or more.

(b) Theft in the first degree is a class B felony. (§ 4 ch 166 SLA 1978)

#### NOTES TO DECISIONS

**Sentence upheld.** — Trial court did not err in sentencing defendant to 10 years imprisonment with five years suspended and ordering her to pay \$300,000 restitution upon her conviction of embezzlement by an employee for money taken prior to January 1, 1950, and of theft in the first degree for money taken after January 1, 1950, the effective date for the revised criminal code. *Karr v. State*, Ct. App. Op. No. 230 (File No. 7011), 660 P.2d 450 (1983).

While no violence was involved, trial court properly found that appellant's

embezzlement of \$140,000 from her employer over a one-year period was among the most serious conduct prescribed by the statute and served to distinguish it from prior cases in which substantial sentences for embezzlement were disapproved, and eight-year sentence with four years suspended was not excessive. *Brezenoff v. State*, Ct. App. Op. No. 226 (File No. 7117), 653 P.2d 1359 (1983).

Cited in *Putnam v. State*, Sup. Ct. Op. No. 2251 (File No. 3475), 629 P.2d 35 (1950).

**Sec. 11.46.130. Theft in the second degree.** (a) A person commits the crime of theft in the second degree if the person commits theft as defined in AS 11.46.100 and

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

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

(3) the property is taken from the person of another.

(b) Theft in the second degree is a class C felony. (§ 4 ch 166 SLA 1978)

#### NOTES TO DECISIONS

**Failure to preserve evidence.** — Convictions for second-degree theft were reduced to convictions for third-degree theft where the state failed to preserve the scrap copper which was the object of the theft. *Hatfield v. State*, Ct. App. Op. No. 257 (File Nos. 6371, 6732), 663 P.2d 987 (1983).

Applied in *Nell v. State*, Ct. App. Op.

No. 77 (File No. 5565), 642 P.2d 1361 (1982); *Williams v. State*, Ct. App. Op. No. 106 (File No. 5993), 648 P.2d 603 (1982).

Quoted in *Frankson v. State*, Ct. App. Op. No. 92 (File No. 6029), 645 P.2d 225 (1982).

Stated in *Leuch v. State*, Sup. Ct. Op. No. 2419 (File No. 5255), 633 P.2d 1006 (1981).

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Cited in Williams v. State, Sup. Ct. Op. (File No. 6870), 655 P.2d 1319 (1982);  
No. 2147 (File No. 3901), 614 P.2d 1384 (1980); Namen v. State, Ct. App. Op. No. 264 (File  
P.S. v. State, Ct. App. Op. No. 194 No. 5662), 665 P.2d 557 (1983).

**Sec. 11.46.140. Theft in the third degree.** (a) A person commits the crime of theft in the third degree if the person commits theft as defined in AS 11.46.100 and

(1) the value of the property or services is \$50 or more but less than \$500; or

(2) the property is a credit card.

(b) Theft in the third degree is a class A misdemeanor. (§ 4 ch 166 SLA 1978)

#### NOTES TO DECISIONS

**Failure to preserve evidence.** — Convictions for second-degree theft were reduced to convictions for third-degree theft where the state failed to preserve the scrap copper which was the object of the theft. Hatfield v. State, Ct. App. Op. No. 257 (File Nos. 6371, 6732), 663 P.2d 937 (1983).

**Remand for vacation of sentence.** — Where defendant appealed from convictions and sentences simultaneously entered for the offenses of first-degree robbery and theft by taking in the third degree on the ground that all of the elements involved in his conviction of theft by taking in the third degree were necessarily included in his conviction for the of-

fense of first-degree robbery and thus, the imposition of separate sentences on the theft and robbery charges was precluded by double jeopardy, and on appeal the state confessed error as to this issue and requested that the judgment and commitment entered as to the lesser offense of theft be vacated upon remand to the superior court, the court remanded for that purpose. Dunn v. State, Ct. App. Op. No. 158 (File Nos. 5567, 5697), 653 P.2d 1071 (1982).

Cited in Law v. State, Sup. Ct. Op. No. 2301 (File No. 4552), 624 P.2d 284 (1981); Wasson v. State, Ct. App. Op. No. 141 (File No. 6072), 652 P.2d 117 (1982).

**Sec. 11.46.150. Theft in the fourth degree.** (a) A person commits the crime of theft in the fourth degree if the person commits theft as defined in AS 11.46.100 and the value of the property or services is less than \$50.

(b) Theft in the fourth degree is a class B misdemeanor. (§ 4 ch 166 SLA 1978)

**Sec. 11.46.160. Theft of lost or mislaid property.** (a) A person commits theft of lost or mislaid property if the person obtains property of another knowing that the property was lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient and the person fails to take reasonable measures to restore the property to the owner with intent to deprive the owner of the property.

(b) As used in this section "reasonable measures" includes notifying the identified owner or a peace officer. (§ 4 ch 166 SLA 1978)

(b) Failure to control or report a dangerous fire is a class A misdemeanor. (§ 4 ch 166 SLA 1978)

**Sec. 11.46.480. Criminal mischief in the first degree.** (a) A person commits the crime of criminal mischief in the first degree if, having no right to do so or any reasonable ground to believe the person has such a right,

(1) with intent to cause a substantial interruption or impairment of a service rendered to the public by a utility or by an organization which deals with emergencies involving danger to life or property, the person damages or tampers with property of that utility or organization and causes substantial interruption or impairment of service to the public;

(2) with intent to damage property of another by the use of widely dangerous means, the person damages property of another in an amount exceeding \$100,000 by the use of widely dangerous means; or

(3) the person intentionally damages an oil or gas pipeline or supporting facility.

(b) Criminal mischief in the first degree is a class B felony. (§ 4 ch 166 SLA 1978)

**Cross references.** — For liability for destruction of property by minors, see AS 34.50.020.

#### NOTES TO DECISIONS

Stated in *Wertz v. State*, Sup. Ct. Op. No. 2069 (File No. 4653), 611 P.2d 3 (1980).

**Collateral references.** — 52 Am. r. 2d, Malicious Mischief, § 1 et seq.

**Sec. 11.46.482. Criminal mischief in the second degree.** (a) A person commits the crime of criminal mischief in the second degree if, having no right to do so or any reasonable ground to believe the person has such a right,

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

(2) the person tampers with an oil or gas pipeline or supporting facility or an airplane or helicopter with reckless disregard for the risk of harm to or loss of the property;

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

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(4) the person drives, tows away, or takes the propelled vehicle of another and the vehicle or any other property of another is damaged or the owner incurs reasonable expenses as a result of the loss of use of the vehicle in a total amount of \$500 or more.

(b) Criminal mischief in the second degree is a class C felony. (§ 4 ch 166 SLA 1978; am § 13 ch 102 SLA 1980)

**Cross references.** — For liability for destruction of property by minors, see AS 34.50.020.

**Effect of amendments.** — The 1980 amendment rewrote paragraph (4) in subsection (a).

**Legislative history reports.** — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 29, 1980.

## NOTES TO DECISIONS

For case construing former AS 11.20.520, making malicious destruction of property a crime, see *Hensel v. State*, Sup. Ct. Op. No. 1983 (File No. 2432), 604 P.2d 222 (1979).

For case construing former AS 11.20.525, making stealing, removing or damaging parts of an aircraft a crime, see *Catlett v. State*, Sup. Ct. Op. No. 1752 (File No. 3213), 555 P.2d 553 (1978).

**Sentence upheld.** — See *Austin v. State*, Ct. App. Op. No. 18 (File No. 5341), 627 P.2d 657 (1981).

Applied in *Deal v. State*, Ct. App. Op. No. 209 (File No. 6812), 657 P.2d 404 (1983).

Stated in *Wertz v. State*, Sup. Ct. Op. No. 2069 (File No. 4683), 611 P.2d 8 (1980).

Cited in *State v. Grozan*, Sup. Ct. Op. No. 2356 (File No. 5199), 625 P.2d 570 (1981); *Tritt v. State*, Ct. App. Op. No. 009 (File No. 4983), 625 P.2d 832 (1981); *Deal v. State*, Ct. App. Op. No. 225 (File No. 6776), 659 P.2d 625 (1983).

**Collateral references.** — 52 Am. Jur. 2d, Malicious Mischief, § 1 et seq.

**Sec. 11.46.484. Criminal mischief in the third degree.** (a) A person commits the crime of criminal mischief in the third degree if, having no right to do so or any reasonable ground to believe the person has such a right

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

(2) the person drives, tows away, or takes the propelled vehicle of another;

(3) having custody of a propelled vehicle under a written agreement with the owner of the vehicle which includes an agreement to return the vehicle to the owner at a specified time, the person knowingly retains or withholds possession of the vehicle without the consent of the owner for so long a period beyond the time specified as to render the retention or possession of the vehicle an unreasonable deviation from the agreement; or

(4) the person tampers with a fire protection device in a building which is a public place.

(b) Except as provided in (c) of this section, criminal mischief in the third degree is a class A misdemeanor.

(c) A person convicted under (a)(2) of this section who has been previously convicted under that paragraph or under former AS 28.35.010 is guilty of a class C felony. (§ 4 ch 166 SLA 1978; am § 1 ch 18 SLA 1979; am §§ 7, 8 ch 143 SLA 1982)

**Cross references.** — For liability for destruction of property by minors, see AS 34.50.020.

**Effect of amendments.** — The 1979 amendment added paragraph (4) to subsection (a).

The 1982 amendment added "Except as provided in (c) of this section, criminal" to the beginning of subsection (b) and added subsection (c).

#### NOTES TO DECISIONS

**Restitution in excess of \$500.** — A person pleading guilty to criminal mischief in the third degree can be required, pursuant to AS 12.55.045 and AS 12.55.100(a), to pay an amount of restitution in excess of \$500 so long as the payment is made to an aggrieved party and the amount does not exceed the actual damages or loss caused by the crime for which conviction was had. *Fee v. State*, Ct. App. Op. No. 187 (File No. 6951), 656 P.2d 1202 (1982).

**Separate punishment where defendant fired at cabin and truck.** — Separate punishment upon conviction of two counts of misconduct involving weapons in the second degree, and two counts of criminal mischief in the third degree, where the evidence established that defendant had fired a rifle at a cabin and a pickup truck did not violate the double jeopardy provisions of this section since there were sufficient and significant differences between the intent and the two firings.

*Leonard v. State*, Ct. App. Op. No. 168 (File No. 5989), 655 P.2d 766 (1982).

For case construing former AS 11.20.525, making stealing, removing or damaging parts of an aircraft a crime, see *Catlett v. State*, Sup. Ct. Op. No. 1752 (File No. 3213), 585 P.2d 553 (1979).

For case construing former AS 28.35.010, prohibiting driving a vehicle without owner's consent, see *State v. G.L.P.*, Sup. Ct. Op. No. 1786 (File No. 3213), 585 P.2d 65 (1979); *Bell v. State*, Ct. App. Op. No. 1855 (File No. 3612), 598 P.2d 66 (1979); *Sheakley v. State*, Ct. App. Op. No. 87 (File No. 4936), 644 P.2d 864 (1982).

Applied in *Blackmon v. State*, Ct. App. Op. No. 160 (File No. 6141), 653 P.2d 669 (1982).

Quoted in *Frankson v. State*, Ct. App. Op. No. 92 (File No. 6029), 645 P.2d 225 (1982).

**Collateral references.** — 52 Am. Jur. 2d, Malicious Mischief, § 1 et seq.

**Sec. 11.46.486. Criminal mischief in the fourth degree.** (a) A person commits the crime of criminal mischief in the fourth degree if, having no right to do so or any reasonable ground to believe the person has such a right,

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

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BILL CONTACT/ACTION

DATE	CONTACT/ACTION
4/17	1st hearing - Council 11:30
	Held over
4/15	Passed out

STATE OF ALASKA  
THE LEGISLATURE

POUCH V STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 22, 1985

SUBJECT: Sectional analysis of CSHB 19 (Judiciary)  
TO: Representative Randy Phillips  
FROM: Edward H. Hein *E.H.*  
Legislative Counsel

Section 1 deletes a reference to AS 47.10.140(f). This is necessitated by the repeal of that subsection in section 3 of the bill.

Section 2 adds a new statute that requires law enforcement agencies to make reasonable efforts to locate missing children after receiving a request to locate the minor. The law enforcement agency must immediately complete a missing person report and, within 24 hours, transmit the report for entry into the Alaska Public Safety criminal information computer system and the FBI's National Crime Information Center computer system. Within 24 hours after learning that the minor has been found, the law enforcement agency must request that the information be removed from the computer systems. When a runaway or minor who is otherwise missing from the minor's custodian is found, a peace officer must take the minor into protective custody and either return the minor home or take the minor to an office specified by the Department of Health and Social Services, or to another suitable location if the community does not have an office specified by the department. The choice is the minor's. While under protective custody of the police, the minor may not be placed in a jail or detention facility. The officer who takes the minor into protective custody must advise the minor of the right to services from the Department of Health and Social Services and must notify the minor's legal custodian that the minor has been taken into protective custody.

Section 3 repeals AS 47.10.140(f) and (g), which are rewritten as AS 47.10.141 in section 2 of the bill.

EHH:csh  
c3/059

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: CSHB 19 (JUD)  
 Title: "An Act relating to runaway  
 and missing minors"  
 Sponsor: Judiciary Committee  
 Requestor: Senate Judiciary  
 Date of Request: 4/9/85

FISCAL DETAIL

Agency Affected: Public Safety  
 Program Category Affected: Administration of Justice  
 BRU, Program or Subprogram(s) Affected: DPS Administration -  
 Data/Word Processing

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES		34.4	24.3	25.8	27.3	28.9
200 TRAVEL						
300 CONTRACTUAL		5.7	4.9	5.2	5.5	5.8
400 SUPPLIES		1.0	1.1	1.2	1.3	1.4
500 EQUIPMENT		.8				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>		<b>41.9</b>	<b>30.3</b>	<b>32.2</b>	<b>34.1</b>	<b>36.1</b>

<b>CAPITAL</b>						
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<b>REVENUE</b>						
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FUNDING: (Thousands of Dollars)

GENERAL FUND		41.9	30.3	32.2	34.1	36.1
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		<b>41.9</b>	<b>30.3</b>	<b>32.2</b>	<b>34.1</b>	<b>36.1</b>

POSITIONS:

FULL-TIME						
PART-TIME		1	1	1	1	1
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

(See attached page)

Prepared By: Marcia Lynn McKenzie  
 Division: Administrative Services

Phone: 465-4349  
 Date: 4/11/85

Approved by Commissioner: Robert J. Sundberg  
 Agency: Department of Public Safety

Date: 4/12/85

Distribution (by Agency preparing fiscal note):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

7/1/84

Fiscal Note  
CSHB 19 (JUD)

A 6% inflation factor has been used for FY 87 and beyond.

We assume that the Department of Health & Social Services will fund the costs of transportation, lodging, food, and necessary medical care required by this legislation. Also, any charges by the Department of Administration for data processing resources have not been included due to the unavailability of estimates at this time.

Note: A similar position was included in fiscal notes for SB 219 and HB 330 (Missing & Criminally Exploited Children). Should either of those fiscal notes be funded, this position would no longer be needed.