

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
5348 SJUD HB 386 - HB 461 920

In a part of the state where bootlegging is rampant and prosecution often ineffective or non-existent, the case of Fancyboy and Larry Ledlow is more than the story of a tragic young man who fell apart under pressure, or of a middle-aged man who got lucky. It is an illustration of the frustrations faced by the people who want to combat the effects of alcohol as an agent of death and despair in the Bush.

"It's demoralizing the community, because nothing can be done," says St. Marys Mayor Andrew Paukan. "We know who the people are, but we can't get them."

Ledlow, a pilot with his own plane, is chief among them, Paukan said.

St. Marys is a regional hub on the Yukon-Kuskokwim Delta, a village of 563 people with a huge barge dock on the Yukon River, a jetport five miles out of town, two general stores, a three-man police force, one state trooper and a courthouse staffed by a part-time, resident magistrate.

It is also a place where the sale and importation of alcoholic beverages have been banned since a village-wide referendum on Sept. 22, 1981.

"I don't miss any chance I get to flaunt that law, because I don't believe in it," Ledlow says. "No matter what the authorities do in attempting to enforce importation, you can't take just a small area, like the village of St. Marys, and surround it with a barbed wire fence and keep all the avenues of approach out. When people want it, they'll find ways to get it."

'EXCITING DAYS'

Six months after the charges against him were dismissed, Ledlow was wintering with his family in a small town near Montgomery, Ala., while others were taking care of his business in St. Marys.

In a telephone interview, he said the charges against him were unjustified because he doesn't sell booze. But over the years, his name has been associated with whiskey.

Ledlow, 55, is the son of a Baptist minister. Both his parents are teetotalers. He arranged to be interviewed at a pay phone so his parents wouldn't overhear him talking about whiskey and his trouble with the law.

He first came to Alaska during the post-war years as an Air Force signals specialist. As a civilian, he followed the military White Alice communications system to Aniak. The place was booming and wide open, two conditions that appealed to Ledlow.

"Yeah, those were exciting days. When I first came there, there was only one or two marshals for the whole area. I tell you what, a man could do about anything he was man enough to defend his ground on."

That's just what he was doing in 1969 or 1970, when a preacher armed with a movie camera tried to get evidence he was bootlegging. Ledlow had just returned from a booze run to the Red Devil liquor store upriver when he saw the preacher "tip-toeing" around his plane, trying to film the liquor inside.



Larry Ledlow's home in St. Marys



St. Marys Police Chief Bob Bullard with evidence seized when Larry Ledlow was arrested.

"I went out and hollered at him. When I saw what he was doing, I was going to get the camera and bust it up. I started chasing him and he took a swing at me with the camera, and the strap on the camera broke from his wrist. The camera hit the ground, so I gave it a couple kicks and figured that was probably good enough."

Ledlow moved to St. Marys in 1971. He set up an air taxi service and eventually a commuter airline to Bethel. The Internal Revenue Service seized his business in 1983 for failure to pay taxes. He hasn't worked a regular job since.

On July 2, 1985, just before the big Fourth of July weekend and the usual drunken bashes that accompany it, a cargo supervisor at the Seair terminal in Bethel noticed some damaged baggage come off a flight from Anchorage. There were five large Styrofoam containers labeled frozen foods, and they were checked by a passenger flying on to St. Marys.

Three of the containers were smashed. The supervisor looked inside. They were filled with R-R Canadian whiskey, one of the popular Bush brands. He called the troopers.

SMUGGLING CHARGE

Ledlow turned out to be the passenger who had checked in the whiskey, but he denied it was his. The troopers didn't believe him, and he was charged with smuggling liquor into St. Marys, a misdemeanor punishable by up to a year in jail.

The trial was originally set for Nov. 12, 1985. But Ledlow complained of ailments and the trial was reset and reset again. On Oct. 15, 1986, the charges were dismissed by the district attorney's office when, two days before trial, prosecutors realized they didn't know how to find one of their main witnesses, an ex-trooper.

People in town marvel at the luck and economic well-being of a man whose sole apparent business is a one-car taxi company and some rental property. Said Bob Bullard, the village police officer: "He has no employment, his wife doesn't work. They just put new siding up on the house. He owns his own plane, a (Cessna) 207. He just remodeled the apartment. He owns six houses, including his own. In '85, he went overseas to visit some relatives, and he took his whole family there."

Ledlow acknowledges his reputation as the biggest bootlegger on the Yukon Delta. "I go about my business and let those rumors go right on over my head," he said. He agrees that he seems to be well off for someone who doesn't work. He says the airplane belongs to his brother-in-law, though his brother-in-law doesn't have a pilot's license. Ledlow attributes his well-being to frugality, "a subsistence-style life," and state assistance programs that subsidize energy consumption for Bush residents. Because he still owes about \$70,000 to the IRS, he said, he wouldn't provide any details of his personal finances.

"It all just adds up from all over," he said. "I always got some kind of little something going on."

SETTING UP A BUST

The authorities in town suspect Ledlow made as many as two booze flights a week, bringing in five to 10 cases of whiskey at a time, perhaps from Nome or Galena, maybe from as far away as Anchorage. At \$60 a bottle, the going price in St. Marys and surrounding villages, that would produce a gross weekly profit of \$3,000 to \$6,000. Ledlow is hard to bust, Bullard said, because he only sells through intermediaries, and they sell only to people they know.

That's where Willie Fancyboy fit in. On Nov. 19, 1986, St. Marys' then-city manager, Gary Oba, got a tip from the vice mayor, Wilfred Stevens, that Ledlow was off on a booze run. Oba told police officer Bullard, who drove to the airport and confirmed that Ledlow's Cessna was gone.

Bullard passed on the tip to Trooper Craig Macdonald in Bethel.

That night, Fancyboy was busted for consuming alcohol as a minor. Sometime before daylight, Ledlow's plane landed at the airport.

Macdonald flew to St. Marys. He met privately with Fancyboy, and asked where he got his booze. When the conversation was over, Fancyboy had agreed to make a buy for the police.

The operation was set up for that afternoon. Bullard hid in the magistrate's office, across the street from the house of Paul Johnson Jr., 25, a suspected runner for Ledlow. Macdonald stationed himself on a hill. Another officer watched Ledlow's place.

Fancyboy had \$60 in marked money when he walked into Johnson's house at 5:40 p.m. Johnson took the money, and said he would get the whiskey, according to affidavits. The police watched Johnson get on his three-wheeler and drive over to Ledlow's house. He was inside, then came out carrying a camouflage pack. Johnson drove back to his house and handed Fancyboy a bottle of R&R.

Two hours later, Fancyboy bought a second bottle from Johnson, the police say.

Ledlow and Johnson were arrested the next day and charged with two felony counts each of selling liquor to a minor. Ledlow also was charged with importing alcohol into a dry village. They spent two days in jail before making bail.

Normal police procedure is to conceal the identity of the "buy agent" in narcotics or bootleg busts as long as possible. But if Johnson or Ledlow had any doubt about who turned them in, it would have been erased when they were handed the criminal complaint. The police agent was identified as "W.F." Fancyboy's picture might just as well have been pasted to the complaint.

Francine Ella, a junior at the Catholic Mission High School, was out of town on a school trip when the bust occurred. When she returned, she didn't understand why people were saying bad things about her boyfriend Fancyboy.

"They were the guys who are friendly with Ledlow. They'd say things like, 'You'd going with a narc. How could you do that?' I wouldn't say anything. I'd just walk off."

They were saying it to Fancyboy's face, too. But it was more than just words. Fancyboy's snowmachine was vandalized. First the wires were ripped out. Then, in succession, the windshield was smashed, the seat cut, his helmet stolen.

Fancyboy wanted it to stop. He talked to the St. Marys magistrate. Can I change my mind about testifying, he asked. He called up Ledlow. I'm sorry, he said. He spoke to Johnson. I apologize, he said.

But mostly he would talk about it, not to his girlfriend, not to the people at work.

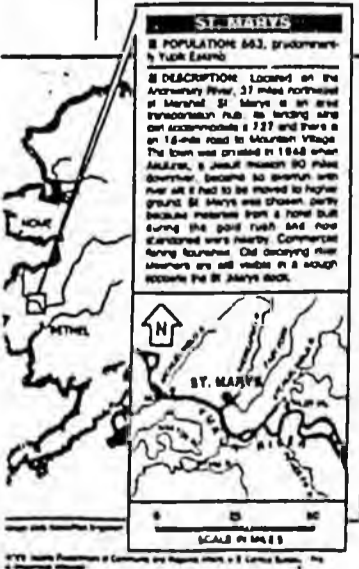
NO PLACE TO TURN

Before the bust Fancyboy thought poorly of himself, his girlfriend said, and he withdrew deeper with each passing day.

No one offered him counseling, and because he lived in neighboring Pitkas Point, he didn't have the protection of St. Marys police. Fancyboy was struggling with alcohol too. Francine said. Still, he held a responsible job — assistant grocery manager at the Yukon Traders general store.

At the same time, the bust was starting to go wrong in January, the police said.

See Page A-11, ST. MARYS



Continued from Page A-10

witnesses assembled in Bethel for a session before the grand jury. The troopers were seeking a felony indictment against Ledlow and Johnson.

"Everyone was there and was sober," Macdonald said. But five minutes before the case was to be presented, District Attorney Bryan Schuler walked into the room and announced that it would be prosecuted as a misdemeanor, Macdonald said. Schuler gave no reason, he recalled.

In a recent interview from his new home in Honolulu, Schuler said he couldn't remember why he reduced the charge.

The case went back to St. Marys, and the DA's office promptly forgot about it.

Magistrate Denise Beans, a non-lawyer, re-arrested the pair on the misdemeanors on Feb. 18. She set a trial date in April. She didn't realize that April was too late under Alaska's speedy trial rule.



Willie Fancyboy

Beans said she thought the speedy-trial clock started ticking when the pair was arraigned on the reduced charges. No one told her she was wrong — that the clock starts with the initial arrest. In this case, November. When the defense attorneys brought it up, it was too late to fix. The charges were dismissed April 20.

"We should track those kinds of things, but we were handling 1,300 cases a year," Schuler said.

Ledlow said he would have won the case anyway. There was no evidence he sold whiskey to anyone, he said.

In an interview, Johnson said he was drunk and couldn't remember what happened that day.

A DEADLY OUTBURST

On May 2, Wilfred Stevens, the vice mayor who provided the tip on Ledlow, committed

suicide. He was Francine Ella's brother-in-law and a good friend of Fancyboy's. Stevens had been severely depressed since his brother Eddie drowned the year before. Eddie's birthday would have been the next day.

"It was hard on Willie," Francine said. "After that happened, he hardly ever talked."

Two weeks later, on a night that was supposed to be a celebration, a grand reunion for graduates of the St. Marys Mission School, Fancyboy got terribly drunk and frightfully angry. He shoved his girlfriend into the dirt, went home and threatened his family with a shotgun. Then he turned the weapon on himself and blew out his guts.

How much of a part did the Ledlow bust play in his death? The troopers, police and officials who have an opinion say it played a role, but no one knows how much.

Ledlow blames Fancyboy's death entirely on the police. "They forced him into doing something, he didn't want to do," he said. "They should have put him in a counseling program and accepted the fact that he's underage. They ultimately caused him to get in such a mental state that he ended up committing suicide."

The failure of either of the Ledlow cases to even reach trial has proved frustrating for St. Marys officials. Bethel-based troopers say the problems encountered in St. Marys are repeated all over the huge region they patrol.

Trooper Simon Brown, who investigated Fancyboy's death, said most agents used by police to buy alcohol and drugs don't understand the depth of the problems they will face, even if those problems are explained beforehand.

"A lot of men I talk to, they'll never talk to a cop again after they make a buy. It turns them off to police, to the whole system, and we lost them."

PROBLEMS IN DA'S OFFICE

Macdonald said police agents frequently are harassed by the subjects of a bust, or their friends who no longer have a source of liquor or drugs. "They're well aware that if they can keep the informant from talking, they can walk." Law enforcement in the Bush is so thin that there is little protection for an informant who remains in a village.

Other followers of the case harshly criticize Schuler, who held the post of DA from February 1985 until he was caught shoplifting more than \$100 worth of stereo tapes on



Mayor Andrew Paukan: "We know who the people are, but we can't get them."



Anchorage Daily News/BOB HANSEN

A mistake by Magistrate Denise Beans resulted in freedom for Larry Ledlow.

July 2, 1987. The city of St. Marys twice complained to the attorney general's office about his conduct in office, but got no serious response, said Mayor Paukan and Gary Oba, the former city manager.

"There was a consistent dissatisfaction with his reluctance or refusal to prosecute cases coming out of St. Marys," said Oba, now in the foreign service of the U.S. State Department. "In the early stages, it seemed to be friction between Mr. Schuler

and our police officer. We worked with Mr. Bullard and attempted to get him to follow the procedures that Mr. Schuler set down, and it didn't seem to make any further difference."

Schuler seemed to demand such high standards of evidence gathering that he would take only sure cases, "nothing that would require any effort to prosecute," Oba said.

The problems in the DA's office were not lost on

criminal defendants. "You see, these people are getting smart," Ledlow said. "They know now there's only so many cases that can be tried in the Yukon-Kuskokwim Delta. And so they're entering a plea of not guilty, no matter whether they're guilty or not. This puts a further load on the district attorney's office. If they end up with the ones they can plea bargain away, well they do, and the ones that they can't, a lot of times they go and dismiss them, and the ones they can take to trial, they do."

Schuler said his office went from a three-attorney staff in 1985 to just himself in 1986. That made a tough job tougher.

"We had historically about 10 times the national homicide rate. We had no roads. Not only did a lot of our witnesses not speak English, a lot of jurors don't speak English. It's not their fault, but it's not exactly like being in rural Indiana," Schuler said.

For the St. Marys residents trying to follow the example set in 1981 by Patrick Beans Sr., who initiated the movement to make it a dry village, the recent past has been filled with frustration.

"We'd like to see it dry, but the bootleggers are bringing the booze in," said Mayor Paukan. "We're helpless in getting the bootleggers caught because they're so smart. We're frustrated about the law. We can't do nothing."

State law allows communities to restrict flow of booze

By DON HUNTER
Daily News reporter

Carrying a hip flask of brandy — or any kind of liquor, wine or beer — into many Alaska villages can get you up to a \$1,000 fine or a year in jail.

The penalties are the product of a decade of legislative wrangling with Alaska's No. 1 rural public safety problem: alcohol abuse and the self-destruction it brings to Bush villages.

In 1980, lawmakers passed a bill that allowed villages to control alcohol use in four ways:

- The community can select a particular private licensee to sell liquor;
 - The village government can set up a government store to sell liquor;
 - The village can forbid the sale of alcoholic beverages, but still allow liquor to be brought in for private use; or
 - The village can vote to prohibit both the sale and importation of alcoholic beverages.
- In 1986, the law was expanded. Now, villages can vote to forbid even the

possession of alcoholic beverages.

To date, more than 60 villages have prohibited importation of alcohol. At least eight — Anaktuvuk Pass, Atkasuk, Fort Ledge, Gambell, Mekoryuk, Nulqsu, Nunipatchuk and Togiak — have gone dry. An exception is made for wine for religious purposes, but even that must be limited and closely controlled.

Once a village votes to ban alcohol, the state Alcoholic Beverage Control Board, which regulates alcohol sales in Alaska, cannot issue, renew

or transfer a liquor license to the village, or to an unincorporated area within five miles of the village.

Violations of the local option laws are Class A misdemeanors, punishable by a maximum sentence of a year in jail and a \$1,000 fine.

The crime escalates to a Class C felony, however, if the importer or seller brings more than 12 liters of liquor or wine, or more than 45 liters of beer, into a dry village. Class C felonies carry penalties of up to five years in prison and a maximum fine of \$50,000.

Violating the possession ban is a civil offense — similar to a speeding ticket — punishable by a fine up to \$1,000. The violator may pay off the fine through community work at a rate of \$5 an hour.

Subsequent convictions for the same offense are still misdemeanors, unless the amount of liquor involved exceeds the 12-liter ceiling.

The local option law also allows the state to seize cars, boats, airplanes or any other equipment or materials used to make, transport, sell or store liquor.

ALCOHOL IN ALASKA: A CHRONOLOGY

■ Late 1700s-Early 1800s: Initial contacts between Natives and Russian traders and American whalers, who often use alcohol as a trading commodity with Alaska Native people.

■ 1867: The United States buys Alaska from Russia.

■ 1884: The First Organic Act specifically prohibits the importation, manufacture and sale of liquor in Alaska. But in practice whites do not prosecute other whites for violations. The Alaska Commercial Co. continues to trade liquor for furs and successfully undermines the prohibition by withholding supplies from enforcement personnel.

■ 1885: A territorial Indian police force is established to promote "cleanliness, sobriety and good order among the Indians."

■ Late 1880s: For whites, prohibition is replaced by high license fees, but Natives, intoxicated persons or habitual drunkards are still prohibited from buying or selling liquor.

■ 1915: The territory of Alaska votes approval of the "Bone Dry Law," primarily because of the problems of Natives. The same year, the

territorial legislature passes a law making it a misdemeanor to sell or give alcohol to a Native.

■ 1919: The National Prohibition Amendment passes. It forbids manufacture, importation, exportation, transportation, or sale of alcoholic beverages anywhere in the United States.

■ 1933: National prohibition is repealed. The 1915 territorial law forbidding the sale or gift of liquor to Natives remains in effect.

■ 1933: Federal laws prohibiting drinking by Indians are abolished. (From the purchase of Alaska by the U.S. in 1867 until 1953, alcoholic beverages were banned in villages, Alaska was treated as an Indian reservation.)

■ 1980: The Alaska Legislature passes a local option law that allows villages to vote to prohibit the sale of alcohol, prohibit the sale and importation of alcohol, limit liquor licenses, or limit alcohol sales to community-owned liquor stores.

■ 1986: Legislature passes a law allowing villages to vote to impose a complete ban on alcohol.

A PEOPLE IN PERIL SERIES AT A GLANCE

Sunday	Anaktuvuk, the village that endured a terrible series of suicides
Monday	Death and despair touch every corner of Alaska
Tuesday	Flaeg and alcohol launch the 15-year-old boy into a multiple killer. A death brings temporary harmony to Steenbak
Wednesday	First Alcohol Syndrome victim in the urban
Thursday	The edge river of booze to the Bush. Alaska's effort to restrict the flow of booze
TODAY	Willie Fancyboy, Larry Ledlow: One is dead, 60' other a line man. How bootleggers get booze to the Bush
Saturday	Veneta has taught the importance of liquor for years. Three communities — one wet, one dry, one damp
Sunday	For 12,000 Native residents, Anchorage is a different village. Five lines that show the diverse experience of Anchorage's Natives
Monday	"Close sobriety" leaves Alaska a troubled town. Alutsk Lake and the long hard road to sobriety
Tuesday	A sobriety movement grips throughout Alaska

HB

387

STATE OF ALASKA



LYMAN F. HOFFMAN
REPRESENTATIVE

P. O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4530, 465-4453

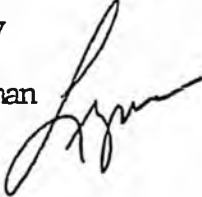
HOUSE OF REPRESENTATIVES

DISTRICT 25

AKIACHAK
AKIAK
ATMAUTLUAK
BETHEL
CHEFORNAK
EEK
GOODNEWS BAY
KASIGLUK
KIPNUK
KONGIGANAK
KWETHLUK
KWIGILLINGOK
MEKORYUK
NAPAKIAK
NAPASKIAK
NEWTOK
NIGHTMUTE
NUNAPITCHUK
OSCARVILLE
PLATINUM
QUINHAGAK
TOKSOOK BAY
TUNTUTLIAK
TUNUNAK

MEMORANDUM

TO: Senator Jay Kerttula
Chairman, Senate Judiciary

FROM: Representative Lyman Hoffman 

DATE: March 23, 1988

RE: Scheduling of CS HB 386/387

Attached please find complete backup for CS HB 386/387.

Please schedule this alcohol legislation at your earliest convenience.

If there are any questions concerning this information or the legislation, please do not hesitate to contact my office.

Thank you.

BACKUP INFORMATION FOR CS HB 386 and CS HB 387

- 1) HB 386 and HB 387
- 2) CS HB 386(Judiciary) and CS HB 387(Judiciary)
- 3) February 24th House Judiciary Committee Report
- 4) March 14th House Finance Committee Report
- 5) March 21st House Floor Action CSHB386/CSHB387
- 6) Summary analysis for CS HB 386/387
- 7) Public Safety description of W.A.A.N.T.
- 8) Public Safety Fiscal Note/Position Paper
- 9) Health/Social Services Fiscal Note/Position Paper
- 10) ABC Board Fiscal Note
- 11) Newsweek article, "Alaska's Suicide Epidemic"
- 12) Anchorage Daily News articles,
"Haven for Bootleggers"
"St. Marys loses a life in frustrating battle"

HB 237

against a child, but also to homicides where the victim is a child and to cases involving unlawful exploitation of children."

HB 237 is in the Finance Committee.

HB 386

The Judiciary Committee has considered:

HOUSE BILL NO. 386

"An Act relating to rewards to promote the apprehension and conviction of certain offenders; and providing for an effective date."

and recommends it be replaced with the following committee substitute:

CS FOR HOUSE BILL NO. 386 (Judiciary)

"An Act relating to enforcement of alcoholic beverage control laws; and providing for an effective date."

Recommending do pass (7): Sund (Chairman), Ulmer, Gruenberg, Barnes, Navarre, Cotten, Taylor

A zero fiscal note was published February 24, 1988.

HB 386 was referred to the Finance Committee.

HB 387

The Judiciary Committee has considered:

HOUSE BILL NO. 387

"An Act making a special appropriation to the Department of Public Safety for a reward program to promote the apprehension and conviction of persons who violate certain alcohol control laws; and providing for an effective date."

and recommends it be replaced with the following committee substitute:

CS FOR HOUSE BILL NO. 387 (Judiciary)

"An Act making a special appropriation to the Department of Public Safety for enforcement of alcoholic beverage control laws and for a reward program to promote the apprehension and conviction of persons who violate certain alcohol control laws; and providing for an effective date."

Recommending do pass (7): Sund (Chairman), Ulmer, Gruenberg, Barnes, Navarre, Cotten, Taylor

HB 387 was referred to the Finance Committee.

HB 386

The Finance Committee has considered:

HOUSE BILL NO. 386

"An Act relating to rewards to promote the apprehension and conviction of certain offenders; and providing for an effective date."

March 14, 1988

HOUSE JOURNAL

2557

HB 386

and recommends it be replaced with the following committee substitute:

CS FOR HOUSE BILL NO. 386 (Judiciary)
(page 2333)

Recommending do pass (6): Pourchot (Vice-chairman), Goll, Swackhammer, Boyer, Rieger, Wallis

A zero fiscal note with analysis was published March 14, 1988.

HB 386 was referred to the Rules Committee for placement on the calendar.

HB 387

The Finance Committee has considered:

HOUSE BILL NO. 387

"An Act making a special appropriation to the Department of Public Safety for a reward program to promote the apprehension and conviction of persons who violate certain alcohol control laws; and providing for an effective date."

and recommends it be replaced with the following committee substitute:

CS FOR HOUSE BILL NO. 387 (Judiciary)
(page 2333)

Recommending do pass (6): Pourchot (Vice-chairman), Goll, Swackhammer, Boyer, Rieger, Wallis

HB 387 was referred to the Rules Committee for placement on the calendar.

HB 386

The following was read the second time:

HOUSE BILL NO. 386

"An Act relating to rewards to promote the apprehension and conviction of certain offenders; and providing for an effective date."

with the:

Judiciary Committee report	p. 2333
Zero fiscal note published 2/24/88	p. 2333
Finance Committee report	p. 2556
Zero fiscal note with analysis published 3/14/88	p. 2557

Representative Gruenberg moved and asked unanimous consent that the following committee substitute be adopted in lieu of the original bill:

CS FOR HOUSE BILL NO. 386 (Judiciary)

"An Act relating to enforcement of alcoholic beverage control laws; and providing for an effective date."

There being no objection, it was so ordered.

CSHB 386(Jud)

Representative Gruenberg moved and asked unanimous consent that CSHB 386(Jud) be considered engrossed, advanced to third reading and placed on final passage. There being no objection, it was so ordered.

CSHB 386(Jud) was read the third time.

The question being: "Shall CSHB 386(Jud) pass the House?"
The roll was taken with the following result:

CSHB 386(JUD)

Yeas: 39 Adams, Barnes, Boucher, Boyer,
Brown, Cato, Cotten, Davidson,
Davis, Donley, Ellis, Frank,
Furnace, Goll, Gruenberg,
Grussendorf, Hanley, Herrmann,
Hoffman, Hudson, Koponen, Larson,
Martin, Menard, Miller, Navarre,
Pearce, Pettyjohn, Phillips,
Pourchot, Rieger, Shultz,
Springer, Sund, Swackhammer,
Taylor, Ulmer, Wallis, Zawacki

Nays: 0

Excused: 1 Collins

Absent: 0

And so, CSHB 386(Jud) passed the House.

Representative Gruenberg moved and asked unanimous consent that the roll call on the passage of the bill be considered the roll call on the effective date clause. There being no objection, it was so ordered.

CSHB 386(Jud) was referred to the Chief Clerk for engrossment.

HB 187

The following was read the second time:

HOUSE BILL NO. 387

"An Act making a special appropriation to the Department of Public Safety for a reward program to promote the apprehension and conviction of persons who violate certain alcohol control laws; and providing for an effective date."

HB 387

with the:

Judiciary Committee report	p. 2333
Finance Committee report	p. 2557

Representative Gruenberg moved and asked unanimous consent that the following committee substitute be adopted in lieu of the original bill:

CS FOR HOUSE BILL NO. 387 (Judiciary)

"An Act making a special appropriation to the Department of Public Safety for enforcement of alcoholic beverage control laws and for a reward program to promote the apprehension and conviction of persons who violate certain alcohol control laws; and providing for an effective date."

There being no objection, it was so ordered.

CSHB 387(Jud)

Representative Gruenberg moved and asked unanimous consent that CSHB 387(Jud) be considered engrossed, advanced to third reading and placed on final passage. There being no objection, it was so ordered.

CSHB 387(Jud) was read the third time.

The question being: "Shall CSHB 387(Jud) pass the House?"
The roll was taken with the following result:

CSHB 387(JUD)

Yeas:	38	Adams, Barnes, Boucher, Boyer, Brown, Cato, Cotten, Davidson, Davis, Donley, Ellis, Frank, Furnace, Goll, Gruenberg, Grussendorf, Hanley, Herrmann, Hoffman, Hudson, Koponen, Larson, Martin, Menard, Miller, Navarre, Pearce, Phillips, Pourchot, Rieger, Shultz, Springer, Sund, Swackhammer, Taylor, Ulmer, Wallis, Zawacki
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Nays:	0
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March 21, 1988

HOUSE JOURNAL

2653

CSHB 387(Jud)

Excused: 1 Collins

Absent: 1 Pettyjohn

And so, CSHB 387(Jud) passed the House.

Representative Gruenberg moved and asked unanimous consent that the roll call on the passage of the bill be considered the roll call on the effective date clause. There being no objection, it was so ordered.

CSHB 387(Jud) was referred to the Chief Clerk for engrossment.

SUMMARY ANALYSIS

CS HB 386 (Judiciary)

- Section 1. Will include alcohol with drug enforcement. Will primarily focus on investigation, apprehension, and conviction of bootleggers in local option communities.
An annual detailed report will be delivered to the Legislature on the activities of drugs and alcohol enforcement.
- Section 2. The establishment of a reward program, and grant system for villages for reward programs, leading to apprehension and conviction of bootleggers who violate local option laws.
- Section 3. Effective date - July 1, 1988.

SUMMARY ANALYSIS

CS HB 387 (Judiciary)

- Section 1. An appropriation of \$250,000 from the general fund for enforcement of local option laws.
- Section 2. Unused funds would lapse to general fund 6-30-89.
- Section 3. This Act will take effect on the effective date of CS HB 386 (Judiciary).

X

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Description of Combined Drug and Alcohol Enforcement Unit

There is presently a program within the Alaska State Troopers that is responsible for providing assistance to local agencies and villages in Western Alaska with their drug enforcement efforts. The program is called the Western Alaska Narcotics Team (W.A.N.T.). One state trooper drug investigator is responsible for coordinating primarily narcotics investigations; he assists in bootlegging investigations as time and resources allow. W.A.N.T. was established in late 1982.

Based on the area of responsibility and the vast travel requirements, the W.A.N.T. trooper investigator works out of Anchorage. The W.A.N.T. area includes communities located along the Alaska Peninsula and the Aleutian Islands, and those communities in Bristol Bay, the Kuskokwim Delta, Norton Sound, Seward Peninsula, and the Kotzebue Sound. The investigator's role is to provide leadership, guidance, assistance, direction, informants, undercover agents, buy money, expense funds, and to act in undercover capacities whenever possible. The investigator's office is located at the Anchorage airport, which allows increased effectiveness in disrupting the flow of drugs to Western Alaska.

In the five years of its existence, the Western Alaska team has seized over a million dollars worth of drugs and made over 300 arrests for drug and alcohol violations in its area.

Because a single trooper is responsible for covering such a large area, he can give his attention to a certain area for only a short period of time. He must divide his efforts so as to provide, on a rotating basis, enforcement in as many different communities as possible. Generally, his concentration has been on drugs first and alcohol second. In either case, he encourages those communities with enforcement resources to conduct their own investigations with his assistance and some AST funding. Consistent and continuous clandestine investigative pressure on drug and alcohol violators is simply not possible under current staffing levels, even though such an effort is badly needed.

The alcohol problems in Western Alaska need to be addressed on a full-time basis, and in combination with full-time drug enforcement efforts. The procedures for conducting investigations for either type of violation are very similar. The best way to address this problem would be the development of a team of investigators who can concentrate 100 percent on west coast alcohol and drug problems. The

team members should be capable of working undercover either together or singly, be able to deal with interdiction at the airports, provide assistance and guidance in clandestine operations, share intelligence information, conduct training for law enforcement officers, VPSOs, and VPOs, and participate in school and other prevention programs.

A joint drug and alcohol investigative unit would support local law enforcement efforts. A no-cost alcohol and drug information hot line could be established to receive confidential tips from citizens. This information can be evaluated, and payment from a "reward fund" awarded to individuals based on their participation and the reliability of their information.

We suggest the creation of a full-time Western Alaska Alcohol and Narcotics Team (W.A.A.N.T.). We suggest the addition of one trooper investigator and a clerk typist to the existing one-trooper W.A.N.T. unit. The scope of the unit's enforcement efforts would then be expanded to include full-time ongoing investigation of alcohol violations.

The desirability of having two investigators dealing with related problems and working in the same area of Alaska was well illustrated by the recently concluded enforcement effort in Western Alaska. That effort was conducted by the W.A.N.T. unit trooper investigator, local officers, local troopers, a VPSO, VPOs, and two additional state trooper narcotics investigators temporarily assigned to assist the W.A.N.T. unit.

The following costs are anticipated (based upon the level of funding now proposed in HB 386):

Personal Services:

A. Investigator I (PFT - Range 77A)		
Salary	\$42,880	
Overtime (225 hours per year)	7,250	
Benefits	<u>18,211</u>	
Investigator I Cost		68.4
B. Clerk Typist II (PFT - 7A)		
Salary	\$18,540	
Overtime (150 hours per year)	2,150	
Benefits	<u>9,185</u>	
Clerk Typist II Cost		<u>30.0</u>
Total Personal Services		\$98.4

Travel:

Extensive travel would be necessary to conduct investigations, oversee undercover operatives, and coordinate with local law enforcement authorities.

In-State Transportation	10.0	
In-State Per Diem	<u>10.0</u>	
Total Travel		20.0

Contractual:

Much of the unit's activities will involve conducting undercover operations. Costs include informant pay, buy funds, establishing a reward program for alcohol related information, and expense funds. These costs are paid outside the normal state purchasing system to assure the confidentiality of the operations.

Professional Services	100.8	
Communications (telephone, etc.)	6.0	
Printing/binding - training and school instruction material	8.0	
Miscellaneous (clothing allowance, etc.)	<u>2.0</u>	
Total Contractual		116.8

Supplies:

Office supplies (stationery, etc.)	4.0	
Professional supplies (ammunition, etc.)	3.0	
Miscellaneous	<u>1.0</u>	
Total Supplies		8.0

Equipment: (First Year Cost Only)

Desks (2)	1.1	
Chairs (3)	1.0	
Bookcase	0.4	
File cabinet	0.6	
Firearms	0.7	
Word Processor (shared)	<u>3.0</u>	
Total Equipment		<u>6.8</u>

Total Cost		\$250.0
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FISCAL NOTE

REQUEST

Revision Date: 1/29/88
Title: "An Act relating to alcohol."
Sponsor: Rep. Hoffman
Requestor: House Rules

Agency Affected: Public Safety
BRU: Alaska State Troopers
Components: Detachments

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY88	FY89	FY90	FY91	FY92	FY93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

JNR KS
2/19/88

Prepared by: Francis C. Allan *G.C.A.*
Division: Alaska State Troopers

Phone: 269-5691

Date: 1/29/88

Approved by Commissioner: Arthur English *D.A.H.*
Agency: Public Safety

Date: 1/29/88

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

FEB 26 1988

BILL NO: CSHB 386 (Jud) and
CSHB 387 (Jud)

DATE: 2/25/88

TITLE: "An Act relating to
enforcement of alcoholic
beverage control laws..."

CONTACT: Arthur English
Commissioner
465-4322

Bob

"An Act making a special
appropriation for
enforcement of alcoholic
beverage control laws..."

DEPARTMENT OF
PUBLIC SAFETY

The Department of Public Safety strongly supports CSHB 386 (Jud), An Act relating to enforcement of alcoholic beverage control laws, and its companion bill CSHB 387 (Jud), An Act making a special appropriation to the Department of Public Safety for enforcement of alcoholic beverage control laws and for a reward program.

The illicit importation and sale of alcoholic beverages in communities which have adopted "local option" laws to restrict the sale or possession of alcoholic beverages is a major law enforcement and public safety concern in many parts of rural Alaska. The consumption of alcohol and illicit drugs is a contributing factor in a very high percentage of the crimes committed in rural Alaska, especially violent crimes. The consumption of "bootlegged liquor" has contributed in many cases to abuse and neglect of children, disruption of the family unit, suicide, fatal accidents, assaults, and murder.

CSHB 386 (Jud) would broaden the scope of the present Alaska State Trooper's statewide Drug Investigative Unit to include both drugs and alcoholic beverages. The bill also authorizes the Department to establish and administer, and provide grants to municipalities and villages to establish and administer, reward programs for persons who provide information leading to the arrest and conviction of bootleggers.

CSHB 387 (Jud) makes a special appropriation to the Department to carry out the investigative duties and reward program described in CSHB 386 (Jud). A detailed description of the combined Alcohol and Drug Investigative Unit, and the way in which the appropriation would be spent, is attached.

The Department believes that passage of CSHB 386 (Jud) and CSHB 387 (Jud) will provide the State Troopers with valuable tools that can be used to help curtail the destructive flow of bootleg liquor to rural Alaska.


Arthur English, Commissioner

POSITION PAPER
ON
HOUSE BILL NO. 386

"An Act relating to rewards to promote the apprehension and conviction of certain offenders; and providing for an effective date."

The Department of Health and Social Services is fully supportive of House Bill 386. The human and financial costs associated with illegal alcohol sales in rural Alaska are significant, and have been repeatedly documented by a variety of sources. According to the Department of Public Safety 1986 Crime in Alaska Report, 1800 persons age 18 and over, and 1039 persons under age 18 were arrested for liquor law violations. Bootlegging arrests are included as liquor law violations in this report.

Providing a financial incentive for reporting illegal alcohol sales should improve upon the present situation. Because of the vast distances in rural Alaska, the capability of law enforcement officers is limited. In hub communities the problem becomes overwhelming; bootleggers are smart, and arrests with sufficient evidence for convictions are frequently difficult to obtain.

House Bill 387 is a companion bill to House Bill 386 and will provide a \$250,000 appropriation to the Department of Public Safety to establish this program.

Myra M. Munson

Myra M. Munson
Commissioner

Matthew C. Felix by Lynn Munson

Matthew C. Felix
Coordinator

2/18/88

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

Bill Version: House Bill 386
Publish Date: _____

REQUEST: _____

Revision Date: _____
Title: "An Act relating to rewards to promote the apprehension and conviction of certain offenders; and providing for an effective date."

Agency Affected: Health & Social Services
BRU: Alcoholism & Drug Abuse

Sponsor: Hoffman
Requestor: N/A

Components: Alcohol Abuse Grant

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
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						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Matthew Felix by George Mundell Phone: 586-6201
Division: Alcoholism and Drug Abuse Date: 2/16/88

Approved by Commissioner: *Mina M. Munson* Date: 2-17-88
Agency: *Matthew Felix by George Mundell*

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
Senate Secretary

FISCAL NOTE

REQUEST:

Revision Date: 03/01/88
Title: "An Act relating to enforcement of alcoholic beverage control laws; ed
Sponsor: House Judiciary
Requestor: House Finance

Agency Affected: Revenue
BRU: ABC BOARD
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 89	FY 90	FY 91	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Patrick L. Sharrock, Director Phone: 277-8638
Division: Alcoholic Beverage Control Division Date: 03/02/88
Approved by Commissioner: Hugh Malone Date: 03/02/88
Agency: Department of Revenue

Distribution (by preparer):

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

FISCAL NOTE

REQUEST:

Revision Date: 03/02/88
 Title: "An Act making a special approp. to the Department of Public Safety for enforcement of alcoholic beverage control laws and for a reward program to promote the apprehension and conviction of persons who violate certain alcohol control laws; prov. for effective date.
 Sponsor: house Judiciary
 Requestor: House Finance

Agency Affected: Revenue
 BRU: ABC BOARD

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Patrick L. Sharrock, Director Phone: 277-8638
 Division: Alcoholic Beverage Control Division Date: 03/02/88

Approved by Commissioner: Hugh Malone Date: 03/02/88
 Agency: Department of Revenue

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

"Moonlighting's" producers won't divulge what specific 3-D tricks they have in mind; odds are good, however, that someone will throw an object toward the viewer, an effect that has graced every 3-D movie from Three Stooges shorts to "Kiss Me Kate." The proclivity for projectiles, in fact, may explain the appeal of the newest 3-D gadget. The SegaScope 3-D video game comes with rakish black wrap-around liquid-crystal glasses, which plug into the game console and render the on-screen action 3-D. The effect is convincing: in "3-D Missile Defense," for example, attacking missiles seem to zoom straight from the screen and explode dramatically when blasted.

Robot eyes: Many experts doubt that 3-D will become more than a novelty. "You might put on glasses to watch 'House of Wax' for a couple of hours," says Glenn Kenny, an editor with Video Review, "but as a way of life, it's not going to work." But there are some practical applications for 3-D video. Lenny Lipton, president of StereoGraphics in San Rafael, Calif., has invented a sophisticated 3-D television camera that provides the eyes for a robot now cleaning up the Three Mile Island power plant. He also sells 3-D computer monitors to engineers and scientists for drawing aircraft or analyzing scientific data.

Lipton, who has written a textbook on 3-D cinema, is a true believer: He's convinced that eventually 3-D will become as accepted on the screen as stereo sound is in high-fidelity equipment. "We could have 3-D television in the home the day after tomorrow, if only an RCA or a Sony would get behind it." But he is realistic enough to know that a poor showing on "Moonlighting" next May could set his cause back another decade.

MICHAEL ROGERS



BERNARD GOTTFRYD—NEWSWEEK

A controversial drug: Ritalin

Alaska's Suicide Epidemic

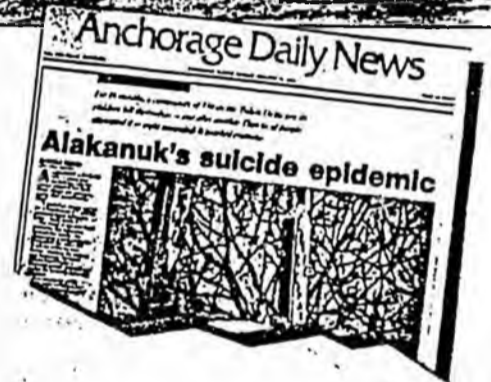
BY MICHAEL PENN—ANCHORAGE DAILY NEWS

The obituaries led to the story

It was an old story, the kind to which most editors didn't give a second thought. After all, Alaska is frontier country, and alcoholism—with its attendant ills—comes with the territory. But all that changed last winter, when a new report by the state epidemiologist revealed massive underreporting of Alaska's suicide statistics, particularly in rural areas. About the same time, several reporters from the Anchorage Daily News followed up that study by re-examining the ostensibly routine obituaries of Alaskan Eskimos, Indians and Aleuts. After they discovered that many had not died of natural causes, managing editor Howard Weaver put almost every reporter he had on the story. The extraordinary effort paid off. For 10 days last month, the paper held the state's attention with a searing series of reports describing the epidemic of largely liquor-induced suicide, crime and violence that was wreaking havoc on rural Alaska.

As with all good reporting, the impact of the series grew out of the powerful accumulation of details. The paper showed how in one 16-month period, the small village of Alakanuk (population: 550) suffered eight suicides, dozens of attempted suicides, two murders and four drownings. In 44 separate stories, the News described the widespread despair and self-destruction: native men 20 to 24 committed suicide at 10 times the national average; alcoholism was rampant; so was the sexual assault of children. "It's a wrenching series," says Howard Simons, the head of Harvard's Neiman Foundation who also publishes a small Alaskan weekly. "For the paper to pick this tab and expose it is stunning."

'Stiff price': It's the kind of gritty reporting that Weaver hoped to direct when he became editor in 1983, replacing Katherine Fanning, who left to run the Christian Science Monitor. He spared no resources: 30 reporters and photographers—almost the entire reporting staff—traveled 28,000 miles across Alaska to piece together the tragedy afflicting the close-knit native population. "It was a stiff price," says Weaver. "The news reporting was thinner for a period of about six months." That kind of reporting has paid commercial dividends.



'Wrenching series': Checking for bootlegging (top), dramatic front page

With the solid backing of the McClatchy Newspapers chain, which bought the daily in 1979, the News has steadily raised its circulation from 12,000 to 55,000, surpassing its rival The Anchorage Times in 1983 to become the largest paper in the state.

Judging by the hundreds of calls and letters, nine to one in favor of the series, Alaskans were shocked but profoundly moved by what they read. Two days after the series began, Gov. Steve Cowper rewrote his annual state-of-the-state speech to address the "unconscionable" rate of suicide, alcohol and drug abuse in the rural areas. The Alaska Legislature is considering new laws raising penalties for bootlegging, prohibiting mail-order liquor sales and increasing funding for alcoholism programs. But most important, according to Doug Modig, an Anchorage alcohol-abuse counselor, the News series has opened the problem up for discussion and change. "Instead of holding the shame inside, people are beginning to talk," says Modig. "When you don't talk about living in terror in your own villages, you cannot heal."

JENNIFER CONANT with bureau rep' ts

Anchorage Daily News

VOL. XLIII, NO. 15 80 PAGES

ANCHORAGE, ALASKA, FRIDAY, JANUARY 15, 1988

A SPECIAL REPORT

Moving booze to the Bush can mean big profits if you know how to play the game and don't spend much time fretting about the well-being of your clientele.

Haven for bootleggers

By HAL BERTON
Daily News reporter

BETHEL — On a damp Sunday in October, two youthful brothers from a village along the Kuskokwim River motored up to Bethel for whiskey to drink with the second game of the World Series. To make the bootleg buy, they didn't have far to go.

They pulled up their boat on a beach littered with empty plastic bottles of Windsor Canadian and walked across a sandy boardwalk to a collection of plywood shacks and A-frame huts.

One of the two disappeared into a hut, then reappeared a few minutes later. He had a bottle hidden under his clothes, his brother said. They hopped back into the boat and turned downriver for the half-hour trip home.

Such sales are the mainstay of Alaska's bootleg liquor industry, and Bethel is its capital. Bootleggers find the city's tentative approach to prohibition — allowing the importation of alcohol, but not its sale — and its role as an air and river crossroads, an ideal climate.

The cases of liquor that arrive each day from Anchorage are sold, bottle by bottle, from riverfront shacks, the trunks of taxi cabs, abandoned freezer vans or the backpacks of teen-agers. Law enforcement

officials estimate the illegal trade at \$2 million to \$5 million a year.

"Right now we see pallets, literally pallets of alcohol arrive at the airport," said Bethel Police Chief Kevin Clayton. "We know where it's going. We know what's going to happen with it, but we're powerless to stop it."

Much of the liquor is sold to local residents or the people who visit Bethel from the villages that dot the broad delta of the Yukon and Kuskokwim rivers. Some are social drinkers, but many are binge alcoholics unwilling to wait for liquor to arrive by air freight from Anchorage. They want their whiskey immediately, and will pay up to \$40 for a \$7 bottle of it.

Other bootleggers use Bethel as a base from which to smuggle booze into villages where both importation and sale are banned. In the "dry" villages, that same \$7 bottle can sell for \$120.

Aniak, a village along the middle Kuskokwim River that also allows unlimited importation of liquor, is another distribution hub for bootleggers. Cargo and passenger planes bring in daily shipments of booze, which a half-dozen bootleggers sell to local clients or send up and down the river.



Anchorages Daily News/Don Price
A bottle near the Bethel camera

See Page A-3, BOOTLEGS



Anchorages Daily News/Don Price
With the village of St. Marys in the background, Francine Ella holds a picture of her boyfriend, Willie Fancyboy, who committed suicide.

St. Marys loses a life in frustrating battle

By RICHARD MAUER
Daily News reporter

ST. MARYS — Nov. 22, 1986, was a Saturday that seemed like a turning point for St. Marys.

Larry Ledlow, an Alabamian reputed to be one of western Alaska's biggest bootleggers, was sitting in jail on felony liquor sale charges. In the cell with him was his alleged runner, Paul Johnson Jr.

Willie Fancyboy, a 20-year-old with a responsible job, a future, a girlfriend and an alcohol problem he was

starting to control, had put them there.

Come the following May, everything was upside-down. Ledlow and Johnson were walking the streets as free men, all charges dismissed because of error and inattention by officials.

And Willie Fancyboy was dead, the victim of months of harassment, of neglect by the authorities he helped, and finally of a shotgun he himself wielded.

See Page A-10, ST. MARYS

A PEOPLE



IN PERIL

TODAY

Though more than 70 villages have sought to control alcohol consumption by enacting dry laws, their efforts are often foiled by bootleggers. Our stories for Feb. 15th day of the Daily News 10-day series on bootlegging in the Bush are part of the "The Law" — "Background Industry, a Foreword to the Prohibition Era."

Reporter Hal Berton focuses on Bethel, Western Alaska's regional hub, where bootleggers operate with impunity from freezer vans, trucks and sheds around town. From St. Marys, a dry village on the Yukon River, reporter Richard Mauer tells of how the justice system is spinning its wheels in a never-ending bootlegging game, leaving one young man dead and a village shunned in its efforts to control whiskey.

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Anchorage Daily News/Bob Halverson

Brass Buckle nightclub only sells soft drinks, but it is still a major gathering place for drinkers in Bethel.

Continued from Page A-1

In both towns, the bootleggers operate just out of sight, often using "runners," some as young as 12 years old, to make the actual sales. The runners dispense bottles from small packs, then turn over the cash, minus a \$5- to \$10-a-bottle commission, to the bootleggers.

Bootleggers who sell directly to customers protect themselves by refusing to deal with strangers.

In the early '80s, some of the biggest bootleggers were ethnic Albanians from Yugoslavia.

"I remember when Albanians from Bethel came in they would buy about 10 cases of Windsor whiskey in plastic bottles," recalls Edith Turkington, a former employee of Party Time Liquor in Anchorage. "That is 10 cases for each person."

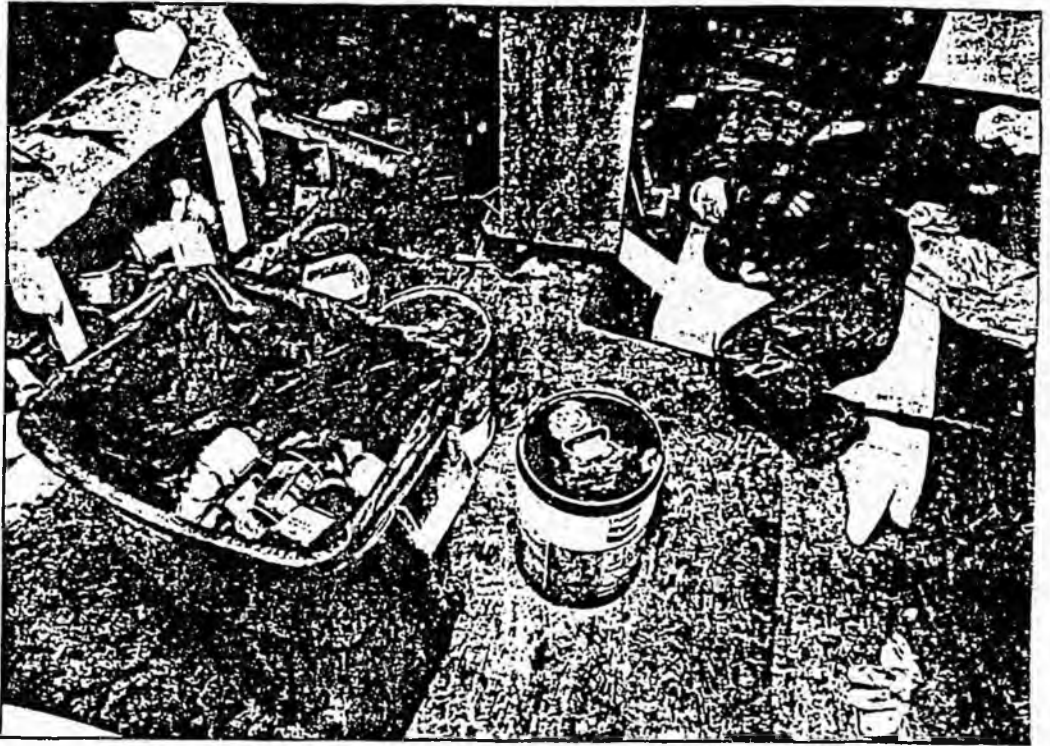
A BIG MARKET

"There's plenty of business for all," said one bootlegger in his early 20s, who agreed to be interviewed only if his name were withheld. He is a handsome man who would look more at home on a California surfing beach than the snowy tundra of the delta. He had a 9-to-5 job, he said, but bootlegging proved more alluring, first as a way to earn quick cash, and then as a full-time occupation. Today he peddles whiskey from a small freezer van in the seedy section of town known as Bootlegger's Alley.

"I just kind of got into this and things started working out real good," he said.

He spoke on a Friday evening while at the Bethel airport awaiting a shipment of beer. The order was for another bootlegger, who planned to smuggle it into a dry village.

The young man said he



Anchorage Daily News/Bob Halverson

The party is over: A man sleeps on the floor of a house in Bethel where a party had been going on.

launched his bootlegging operation two years ago with a special introductory offer: \$25-a-bottle whiskey, which he hoped would quickly attract a core of customers. The price created "quite a bit of conflict" with other bootleggers, he said, so he raised it to \$30.

Now, in a good day, he may sell two 12-bottle cases of whiskey at a profit of more than \$500. Less enterprising bootleggers, the ones he calls "subsistence bootleggers," order only a half-dozen bottles at a time, earning just enough to support their own alcohol habits.

At first, he said, he used his van as both an illicit liquor store and a tiny, one-room apartment. But last fall he finally tired of drunken clients pestering him through the night — even after the booze was all gone — and moved out. Now he operates only part of the day from a different van. But that approach has caused him other hassles: "I've had problems with break-ins three or four times. And my windows have been shot up."

He also had trouble with alcoholic runners who drank his booze instead of selling it. Now he uses only sober ones. In early October, his three runners were aged 16, 17 and 25.

Despite the problems, he estimates he earned more than \$20,000 last year. "When I didn't drink," he said, "it was really quite profitable."

Sales of bootleg booze peak in July as hundreds of fishermen converge on Bethel to sell their catches. On the Fourth of July alone, he said, he earned more than \$2,000. Demand stays strong through the summer, then drops off sharply as villagers stalk moose in September. As permanent fund dividends begin to arrive in October, business picks up again and remains brisk through New Year's.

On a typical weekend, he gathers with other bootleggers in the parking lot of the town shopping mall. They smoke, drink, talk and watch for potential clients across the street at the Brass Buckle, a low, ranch-style building that serves as the delta's only nightclub. By midnight, the Brass Buckle is jammed with Eskimo, Indian and white rock 'n' rollers.

The bar can't sell alcohol, just soft drinks, but that isn't obvious from the customers. Many are staggeringly drunk. On the crowded dance floor, two women argue over a man; across the room, two men fight over a woman, or would, if they were sober enough to manage a serious scuffle.

"It's a hot spot," the bootlegger said. "People don't go there unless they're really f---ed up."

At 1:30 a.m., as closing time approaches, the action shifts outside. Around the back of the building, amid a clutter of 55-gallon drums and fuel

tanks, a young Eskimo woman sips from a cup. "I'm getting drunk and looking for a good piece of a—," she says with a laugh.

Out front, the parking lot of the Brass Buckle looks like a giant block party. "I'm on shruums," says one woman who apparently has been eating psilocybin mushrooms. A young man standing nearby pulls out a plastic bottle of Windsor Canadian "from his blue-jean jacket. When he draws a few stares, the bottle quickly disappears behind his back.

A half-dozen cabs ring the parking lot, the drivers ready to make quick runs for booze, and the ever-present, backpack-clad runners wander through the crowd.

The bootleggers stay as long as there is money to be made.

THERE'S NO FUTURE

"People will beg you and beg you," the bootlegger said. "They pay in food stamps... everything they got. One guy gave \$65 in food stamps for one bottle." Sometimes they trade ivory.

Asked whether he worries about the ravages of alcohol on his customers and their community, he replied: "When it gets to the younger neighborhood kids, that makes you feel kind of bad. Knowing you are f---ing these kids' lives up."

Briefly last summer, he said, he feared a police bust.

Then the heat slackened off. "Bootleggers are winning the war now... It seems like nobody cares," he said.

Does he ever think about quitting? "I just got into this and things started working out real good." He thought about it some more. "This is so easy... But there's no future."

THE 'BUSH AIR COMPLEX'

Carl Berger spends much of his time trying to heal the wounds caused by alcohol. The Yukon-Kuskokwim Health Corp., which he directs, provides suicide prevention and rape counseling, and helps villages cope with accidental death and acts of violence.

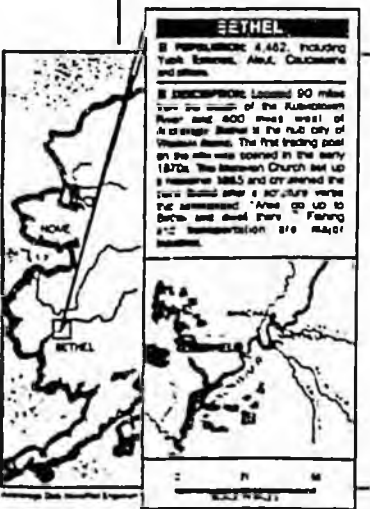
From the second-story window of his riverfront office, Berger can look down at the beachfront conglomeration of A-frames and shacks with a reputation as one of the town's most notorious bootlegging sites.

Locals call it "the Bush Air complex" because of the air taxi headquartered there.

During the fishing season, Berger recalled, he watched in frustration as village seiners, their pockets stuffed with cash from salmon sales, lined up to buy bootleg whiskey and then scattered up and down the river to drink.

Some headed down the beach toward the neighborhood of state Sen. John Binkley, a forceful

See Page A-9, BOOTLEG



SOURCE: Alaska Department of Commerce, Community and Consumer Affairs, "The State of Alaska 1988"

In a part of the state where bootlegging is rampant and prosecution often ineffective or non-existent, the case of Fancyboy and Larry Ledlow is more than the story of a tragic young man who fell apart under pressure, or of a middle-aged man who got lucky. It is an illustration of the frustrations faced by the people who want to combat the effects of alcohol as an agent of death and despair in the Bush.

"It's demoralizing the community, because nothing can be done," says St. Marys Mayor Andrew Paukan. "We know who the people are, but we can't get them."

Ledlow, a pilot with his own plane, is chief among them, Paukan said.

St. Marys is a regional hub on the Yukon-Kuskokwim Delta, a village of 563 people with a huge barge dock on the Yukon River, a jetport five miles out of town, two general stores, a three-man police force, one state trooper and a courthouse staffed by a part-time, resident magistrate.

It is also a place where the sale and importation of alcoholic beverages have been banned since a village-wide referendum on Sept. 22, 1981.

"I don't miss any chance I get to flaunt that law, because I don't believe in it," Ledlow says. "No matter what the authorities do in attempting to enforce importation, you can't take just a small area, like the village of St. Marys, and surround it with a barbed wire fence and keep all the avenues of approach out. When people want it, they'll find ways to get it."

'EXCITING DAYS'

Six months after the charges against him were dismissed, Ledlow was wintering with his family in a small town near Montgomery, Ala., while others were taking care of his business in St. Marys.

In a telephone interview, he said the charges against him were unjustified because he doesn't sell booze. But over the years, his name has been associated with whiskey. Ledlow, 55, is the son of a Baptist minister. Both his parents are teetotalers. He arranged to be interviewed at a pay phone so his parents wouldn't overhear him talking about whiskey and his trouble with the law.

He first came to Alaska during the post-war years as an Air Force signals specialist. As a civilian, he followed the military White Alice communications system to Aniak. The place was booming and wide open, two conditions that appealed to Ledlow.

"Yeah, those were exciting days. When I first came there, there was only one or two marshals for the whole area. I tell you what, a man could do about anything he was man enough to defend his ground on."

That's just what he was doing in 1969 or 1970, when a preacher armed with a movie camera tried to get evidence he was bootlegging. Ledlow had just returned from a booze run to the Red Devil liquor store upriver when he saw the preacher "tip-toeing" around his plane, trying to film the liquor inside.



Larry Ledlow's home in St. Marys



St. Marys Police Chief Bob Bullard with evidence seized when Larry Ledlow was arrested.

"I went out and hollered at him. When I saw what he was doing, I was going to get the camera and bust it up. I started chasing him and he took a swing at me with the camera, and the strap on the camera broke from his wrist. The camera hit the ground, so I gave it a couple kicks and figured that was probably good enough."

Ledlow moved to St. Marys in 1971. He set up an air taxi service and eventually a commuter airline to Bethel. The Internal Revenue Service seized his business in 1983 for failure to pay taxes. He hasn't worked a regular job since.

On July 2, 1985, just before the big Fourth of July weekend and the usual drunken bashes that accompany it, a cargo supervisor at the Seair terminal in Bethel noticed some damaged baggage come off a flight from Anchorage. There were five large Styrofoam containers labeled frozen foods, and they were checked by a passenger flying on to St. Marys.

Three of the containers were smashed. The supervisor looked inside. They were filled with R&R Canadian whiskey, one of the popular Bush brands. He called the troopers.

SMUGGLING CHARGE

Ledlow turned out to be the passenger who had checked in the whiskey, but he denied it was his. The troopers didn't believe him, and he was charged with smuggling liquor into St. Marys, a misdemeanor punishable by up to a year in jail.

The trial was originally set for Nov. 12, 1985. But Ledlow complained of ailments and the trial was reset and reset again. On Oct. 15, 1986, the charges were dismissed by the district attorney's office when, two days before trial, prosecutors realized they didn't know how to find one of their main witnesses, an ex-trooper.

People in town marvel at the luck and economic well-being of a man whose sole apparent business is a one-car taxi company and some rental property. Said Bob Bullard, the village police officer: "He has no employment, his wife doesn't work. They just put new siding up on the house. He owns his own plane, a Cessna 207. He just remodeled the apartment. He owns six houses, including his own. In '85, he went overseas to visit some relatives, and he took his whole family there."

Ledlow acknowledges his reputation as the biggest bootlegger on the Yukon Delta. "I go about my business and let those rumors go right on over my head," he said.

He agrees that he seems to be well off for someone who doesn't work. He says the airplane belongs to his brother-in-law, though his brother-in-law doesn't have a pilot's license. Ledlow attributes his well-being to frugality, "a subsistence-style life," and state assistance programs that subsidize energy consumption for Bush residents. Because he still owes about \$70,000 to the IRS, he said, he wouldn't provide any details of his personal finances.

"It all just adds up from all over," he said. "I always got some kind of little something going on."

SETTING UP A BUST

The authorities in town suspect Ledlow made as many as two booze flights a week, bringing in five to 10 cases of whiskey at a time, perhaps from Nome or Galena, maybe from as far away as Anchorage. At \$60 a bottle, the going price in St. Marys and surrounding villages, that would produce a gross weekly profit of \$3,000 to \$6,000.

Ledlow is hard to bust, Bullard said, because he only sells through intermediaries, and they sell only to people they know.

That's where Willie Fancyboy fit in.

On Nov. 19, 1986, St. Marys then-city manager, Gary Oba, got a tip from the vice mayor, Wilfred Stevens, that Ledlow was off on a booze run. Oba told police officer Bullard, who drove to the airport and confirmed that Ledlow's Cessna was gone.

Bullard passed on the tip to Trooper Craig Macdonald in Bethel.

That night, Fancyboy was busted for consuming alcohol as a minor. Sometime before daylight, Ledlow's plane landed at the airport.

Macdonald flew to St. Marys. He met privately with Fancyboy, and asked where he got his booze. When the conversation was over, Fancyboy had agreed to make a buy for the police.

The operation was set up for that afternoon. Bullard hid in the magistrate's office, across the street from the house of Paul Johnson Jr., 25, a suspected runner for Ledlow. Macdonald stationed himself on a hill. Another officer watched Ledlow's place.

Fancyboy had \$60 in marked money when he walked into Johnson's house at 5:40 p.m. Johnson took the money, and said he would get the whiskey, according to affidavits. The police watched Johnson get on his three-wheeler and drive over to Ledlow's house. He walked inside, then came out carrying a camouflage pack. Johnson drove back to his house and handed Fancyboy a bottle of R&R.

Two hours later, Fancyboy bought a second bottle from Johnson, the police say.

Ledlow and Johnson were arrested the next day and charged with two felony counts each of selling liquor to a minor. Ledlow also was charged with importing alcohol into a dry village. They spent two days in jail before making bail.

Normal police procedure is to conceal the identity of the "buy agent" in narcotics or bootleg busts as long as possible. But if Johnson or Ledlow had any doubt about who turned them in, it would have been erased when they were handed the criminal complaint. The police agent was identified as "W.F." Fancyboy's picture might just as well have been pasted to the complaint.

Francine Ella, a junior at the Catholic Mission High School, was out of town on a school trip when the bust occurred. When she returned, she didn't understand why people were saying bad things about her boyfriend Fancyboy.

"They were the guys who are friendly with Ledlow. They'd say things like, 'You're going with a narc. How could you do that?' I wouldn't say anything, I'd just walk off."

They were saying it to Fancyboy's face, too.

But it was more than just words. Fancyboy's snowmachine was vandalized. First the wires were ripped out. Then, in succession, the windshield was smashed, the seat cut, his helmet stolen.

Fancyboy wanted it to stop. He talked to the St. Marys magistrate. Can I change my mind about testifying, he asked. He called up Ledlow. I'm sorry, he said. He spoke to Johnson. I apologize, he said.

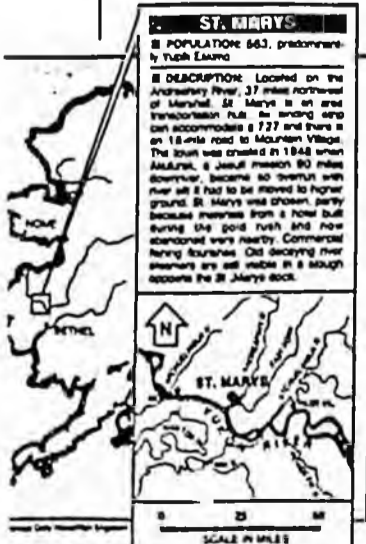
But mostly he wouldn't talk about it, not to his girlfriend, not to the people at work.

NO PLACE TO TURN

Before the bust Fancyboy thought poorly of himself, his girlfriend said, and he withdrew deeper with each passing day.

No one offered him counseling, and because he lived in neighboring Pitkas Point, he didn't have the protection of St. Marys police. Fancyboy was struggling with alcohol too. Francine said. Still, he held a responsible job — assistant grocery manager at the Yukon Traders general store.

At the same time, the bust was starting to go wrong. In January, the police and



Continued from Page A-10

witnesses assembled in Bethel for a session before the grand jury. The troopers were seeking a felony indictment against Ledlow and Johnson.

"Everyone was there and was sober," Macdonald said. But five minutes before the case was to be presented, District Attorney Bryan Schuler walked into the room and announced that it would be prosecuted as a misdemeanor, Macdonald said. Schuler gave no reason, he recalled.

In a recent interview from his new home in Honolulu, Schuler said he couldn't remember why he reduced the charge.

The case went back to St. Marys, and the DA's office promptly forgot about it.

Magistrate Denise Beans, a non-lawyer, re-arrested the pair on the misdemeanors on Feb. 18. She set a trial date in April. She didn't realize that April was too late under Alaska's speedy trial rule.



Willie Fancyboy

Beans said she thought the speedy-trial clock started ticking when the pair was arraigned on the reduced charges. No one told her she was wrong — that the clock starts with the initial arrest. In this case, November. When the defense attorneys brought it up, it was too late to fix. The charges were dismissed April 20.

"We should track those kinds of things, but we're handling 1,300 cases a year," Schuler said.

Ledlow said he would have won the case anyway. There was no evidence he sold whiskey to anyone, he said.

In an interview, Johnson said he was drunk and couldn't remember what happened that day.

A DEADLY OUTBURST

On May 2, Wilfred Stevens, the vice mayor who provided the tip on Ledlow, committed

suicide. He was Francine Ella's brother-in-law and a good friend of Fancyboy's. Stevens had been severely depressed since his brother Eddie drowned the year before. Eddie's birthday would have been the next day.

"It was hard on Willie," Francine said. "After that happened, he hardly ever talked."

Two weeks later, on a night that was supposed to be a celebration, a grand reunion for graduates of the St. Marys Mission School, Fancyboy got terribly drunk and frightfully angry. He shoved his girlfriend into the dirt, went home and threatened his family with a shotgun. Then he turned the weapon on himself and blew out his guts.

How much of a part did the Ledlow bust play in his death? The troopers, police and officials who have an opinion say it played a role, but no one knows how much.

Ledlow blames Fancyboy's death entirely on the police. "They forced him into doing something he didn't want to do," he said. "They should have put him in a counseling program and accepted the fact that he's underage. They ultimately caused him to get in such a mental state that he ended up committing suicide."

The failure of either of the Ledlow cases to even reach trial has proved frustrating for St. Marys officials.

Bethel-based troopers say the problems encountered in St. Marys are repeated all over the huge region they patrol.

Trooper Simon Brown, who investigated Fancyboy's death, said most agents used by police to buy alcohol and drugs don't understand the depth of the problems they will face, even if those problems are explained beforehand.

"A lot of men I talk to, they'll never talk to a cop again after they make a buy. It turns them off to police, to the whole system, and we lost them."

PROBLEMS IN DA'S OFFICE

Macdonald said police agents frequently are harassed by the subjects of a bust, or their friends who no longer have a source of liquor or drugs. "They're well aware that if they can keep the informant from talking, they can walk." Law enforcement in the Bush is so thin that there is little protection for an informant who remains in a village.

Other followers of the case harshly criticize Schuler, who held the post of DA from February 1985 until he was caught shoplifting more than \$100 worth of stereo tapes on



Mayor Andre Paukan: "We know who the people are, but we can't get them."



A mistake by Magistrate Denise Beans resulted in freedom for Larry Ledlow.

July 2, 1987. The city of St. Marys twice complained to the attorney general's office about his conduct in office, but got no serious response, said Mayor Paukan and Gary Oba, the former city manager.

"There was a consistent dissatisfaction with his reluctance or refusal to prosecute cases coming out of St. Marys," said Oba, now in the foreign service of the U.S. State Department. "In the early stages, it seemed to be friction between Mr. Schuler

and our police officer. We worked with Mr. Bullard and attempted to get him to follow the procedures that Mr. Schuler set down, and it didn't seem to make any further difference."

Schuler seemed to demand such high standards of evidence gathering that he would take only sure cases, "nothing that would require any effort to prosecute," Oba said.

The problems in the DA's office were not lost on

criminal defendants. "You see, these people are getting smart," Ledlow said. "They know now there's only so many cases that can be tried in the Yukon-Kuskokwim Delta. And so they're entering a plea of not guilty, no matter whether they're guilty or not. This puts a further load on the district attorney's office. If they end up with the ones they can plea bargain away, well they do, and the ones that they can't, a lot of times they go and dismiss them, and the ones they can take to trial, they do."

Schuler said his office went from a three-attorney staff in 1985 to just himself in 1986. That made a tough job tougher.

"We had historically about 10 times the national homicide rate. We had no roads. Not only did a lot of our witnesses not speak English, but it's not their fault, but it's not exactly like being in rural Indiana," Schuler said.

For the St. Marys residents trying to follow the example set in 1981 by Patrick Beans Sr., who initiated the movement to make it a dry village, the recent past has been filled with frustration.

"We'd like to see it dry, but the bootleggers are bringing the booze in," said Mayor Paukan. "We're helpless in getting the bootleggers caught because they're so smart. We're frustrated about the law. We can't do nothing."

State law allows communities to restrict flow of booze

By DON HUNTER
Daily News reporter

Carrying a hip flask of brandy — or any kind of liquor, wine or beer — into many Alaska villages can get you up to a \$1,000 fine or a year in jail.

The penalties are the product of a decade of legislative wrangling with Alaska's No. 1 rural public safety problem: alcohol abuse and the self-destruction it brings to Bush villages.

In 1980, lawmakers passed a bill that allowed villages to control alcohol use in four ways:

- The community can select a particular private licensee to sell liquor;

- The village government can set up a government store to sell liquor;

- The village can forbid the sale of alcoholic beverages, but still allow liquor to be brought in for private use; or

- The village can vote to prohibit both the sale and importation of alcoholic beverages.

In 1986, the law was expanded. Now, villages can vote to forbid even the

possession of alcoholic beverages.

To date, more than 60 villages have prohibited importation of alcohol. At least eight — Anaktuvuk Pass, Atkasuk, Fort Ledge, Gambell, Mekoryuk, Nulstok, Nuiyatchuk and Togiak — have gone dry. An exception is made for wine for religious purposes, but even that must be limited and closely controlled.

Once a village votes to ban alcohol, the state Alcoholic Beverage Control Board, which regulates alcohol sales in Alaska, cannot issue, renew

or transfer a liquor license to the village, or to an unincorporated area within five miles of the village.

Violations of the local option laws are Class A misdemeanors, punishable by a maximum sentence of a year in jail and a \$1,000 fine.

The crime escalates to a Class C felony, however, if the importer or seller brings more than 12 liters of liquor or wine, or more than 45 liters of beer, into a dry village. Class C felonies carry penalties of up to five years in prison and a maximum fine of \$50,000.

Violating the possession ban is a civil offense — similar to a speeding ticket — punishable by a fine up to \$1,000. The violator may pay off the fine through community work at a rate of \$5 an hour.

Subsequent convictions for the same offense are still misdemeanors, unless the amount of liquor involved exceeds the 12-liter ceiling.

The local option law also allows the state to seize cars, boats, airplanes or any other equipment or materials used to make, transport, sell or store liquor.

ALCOHOL IN ALASKA: A CHRONOLOGY

■ Late 1700s-Early 1800s: Initial contacts between Natives and Russian traders and American whalers, who often use alcohol as a trading commodity with Alaska Native people.

■ 1847: The United States buys Alaska from Russia.

■ 1884: The First Organic Act specifically prohibits the importation, manufacture and sale of liquor in Alaska. But in practice whites do not prosecute other whites for violations. The Alaska Commercial Co. continues to trade liquor for furs and successfully undermines the prohibition by withholding supplies from enforcement personnel.

■ 1885: A territorial Indian police force is established to promote "cleanliness, sobriety and good order among the Indians."

■ Late 1880s: For whites, prohibition is replaced by high license fees, but Natives, intoxicated persons or habitual drunkards are still prohibited from buying or selling liquor.

■ 1918: The territory of Alaska votes approval of the "Bone Dry Law," primarily because of the problems of Natives. The same year, the

territorial legislature passes a law making it a misdemeanor to sell or give alcohol to a Native.

■ 1919: The National Prohibition Amendment passes. It forbids manufacture, importation, exportation, transportation or sale of alcoholic beverages anywhere in the United States.

■ 1933: National prohibition is repealed. The 1915 territorial law forbidding the sale or gift of liquor to Natives remains in effect.

■ 1953: Federal laws prohibiting drinking by Indians are abolished. (From the purchase of Alaska by the U.S. in 1867 until 1953, alcoholic beverages were banned in villages, Alaska was treated as an Indian reservation.)

■ 1980: The Alaska Legislature passes a local option law that allows villages to vote to prohibit the sale of alcohol, prohibit the sale and importation of alcohol, limit liquor licenses, or limit alcohol sales to community-owned liquor stores.

■ 1986: Legislature passes a law allowing villages to vote to impose a complete ban on alcohol.

A PEOPLE IN PERIL: SERIES AT A GLANCE

Sunday	Assaults: the village that endured a terrible series of suicides
Monday	Death and despair reach every corner of Alaska
Tuesday	Rage and alcohol turned the 15-year-old boy into a murder killer
Wednesday	A death brings temporary harmony to Sleetmoot
Thursday	Fatal Alcohol Syndrome victimizes the urban
Friday	The legal river of booze to the Bush
Saturday	Native's effort to restrict the flow of booze
TODAY	Willie Fancyboy, Larry Ledlow: One is dead, the other a free man. How bootleggers get booze to the Bush
Sunday	Venues have fought the importation of liquor for years
Monday	Three communities — one wet, one dry, one damp
Tuesday	For 12,000 Native residents, Anchorage is a different village
Wednesday	Five lives that show the diverse customs of Anchorage natives
Thursday	"Closest sobriety" leaves Kaska a troubled town
Friday	Alutaians and the long, hard road to sobriety
Saturday	A sobriety movement grows throughout Alaska

HB

399

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 399
PUBLISH DATE: HOUSE 2/10/88

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: ... prohibiting employment
discrimination on the basis of race...
Sponsor: Goll. et al
Requestor: House Judiciary

Agency Affected: Education
BRU: _____
Components: _____

109

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

This bill has no fiscal impact on this department.

Prepared by: Steve Hole
Division: Commissioner's Office

Phone: 465-2800
Date: 2-9-88

Approved by Commissioner: William G. Demmert
Agency: Education

Date: 2-9-88

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

HB

461

REPRESENTATIVE
SAM COTTEN
DISTRICT 15



P.O. BOX 296, EAGLE RIVER, AK 99577
P.O. BOX V, JUNEAU, AK 99811

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

MEMO

TO: Senator Jalmar Kerttula
Chairman, Judiciary Committee

FROM: Rep. Sam Cotten

DATE: April 27, 1988

RE: Scheduling of HB 461

HB 461, an Act increasing penalties for repeat convictions for the crimes of theft and concealment of merchandise, has been assigned to your committee. In light of the short time remaining to this session, I would appreciate your scheduling the bill for a hearing as soon as possible.

HB 461 was introduced at the request of the Anchorage Police Department Employees Association. Repeat misdemeanor offenders are not covered by presumptive sentencing under the revised criminal code. As a result of this, sentences are increased only slightly when a person commits numerous misdemeanors in even a short period of time.

The bill addresses this problem by setting in motion a loop that will gradually increase a repeat offenders sentence. I have attached an analysis of the House Judiciary substitute.

I believe HB 461 fills a void left by the revision of the criminal code and again ask that it be scheduled before the Judiciary committee at the earliest possible date.

Thank you.

CSHB 461 (Judiciary)

An Act increasing the penalties for repeat convictions for the crimes of theft and concealment

SECTIONAL ANALYSIS

Section 1. A person who has been convicted of two Class C felonies or above and is charged with a third Class C felony within a five-year period will be sentenced with a Class B felony.

Section 2. A person who has been convicted of two Class A misdemeanors or above and is charged with a third Class A misdemeanor within a five-year period will be sentenced with a class C felony.

Section 3. A person who has been convicted of two Class B misdemeanors or above and is charged with a third Class B misdemeanor within a five-year period will be sentenced with a class A misdemeanor.

Section 4. In the case of concealment, a person who is charged with a Class A misdemeanor concealment charge and who has had two prior convictions within the past five-years of concealment of merchandise valued at \$50 or more will be sentenced with a class C felony.

A person charged with a Class B concealment charge who has been previously convicted of any two concealment charges will be sentenced with a class A misdemeanor.

Section 5. Definition of prior convictions with similar elements.

RECOMMENDED CHANGE TO HB 461

PRIOR CONVICTIONS	NEW OFFENSE AND SENTENCE	ELEVATED OFFENSE AND SENTENCE
2 theft/concealment C felonies or above	C felony involving theft/concealment 3-year presumptive for third offense/maximum 5 years	B felony 6-year presumptive for third offense/maximum 10 years
2 theft/concealment A misdemeanors or above	A misdemeanor involving theft/concealment 0 - 1 year	C felony 0 - 2 years first offense 2 years presumptive second offense 3 years presumptive third offense maximum 5 years
2 theft/concealment B misdemeanors or above	B misdemeanor involving theft/concealment 0 - 90 days	A misdemeanor 0 - 1 year

HOUSE COMMITTEE REPORT

(7)

Date referred: 2/11/88

FURTHER REFERRALS:

Finance

DATE: March 30, 1988

The Judiciary Committee has considered HB 461

"An Act increasing the penalties for repeat convictions for the crimes of theft and concealment of merchandise."

RECOMMENDS:

- replace with CS HB 461 (Jud) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

[Signature]

Alan G. [Signature]

[Signature]

Adrian L. Taylor

[Signature]

SIGNING OTHER RECOMMENDATIONS:

[Signature]

Chairman's signature

335

No.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSHB 461 (JUD)
PUBLISH DATE: HOUSE 4/13/88

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act increasing the penalties
for repeat convictions ... theft ..."
Sponsor: House Judiciary
Requestor: House Finance

Agency Affected: Department of Law
BRU: Prosecution
Components: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Richard I. Piques

Prepared by: Richard I. Piques, Director
Division: Administrative Services

Phone: 465-3672

Date: April 6, 1988

Approved by Commissioner: *Richard I. Piques*
Agency: Department of Law

Date: April 6, 1988

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

RECEIVED

APR 8 1988

LEGISLATIVE FINANCE

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No.

The committee substitute for HB 461 amends AS 11.46 to provide stiffer penalties for third-time theft offenders. For instance, a person convicted of theft of property or services with a value of \$500 or more but less than \$25,000, normally theft in the second degree, would be guilty of theft in the first degree if the person had been convicted and sentenced on two or more separate occasions within the preceding five years for the crime of theft in the second degree. Likewise, a third conviction for a crime normally constituting theft in the third degree or a third conviction for a crime normally constituting theft in the fourth degree would result in conviction at the next higher level. As a consequence, the penalty for a third conviction normally resulting in a class C felony would be raised to a class E felony. A third conviction normally resulting in a class A misdemeanor would be raised to a class C felony. A third conviction normally resulting in a class B misdemeanor would be raised to a class A misdemeanor. Repeat offenses for the crime of concealment of merchandise would be treated in a similar manner.

Because this legislation is primarily a sentencing bill it is not expected to have a fiscal impact on the Department of Law sufficient enough to warrant fiscal note costs. Some additional prosecutor time may be required to prove the repeat status of some offenders. And because of the increased penalties, prosecutors may face a more spirited defense in some cases. For the most part, however, these are cases that the department is already handling, and an appreciable additional expense is not anticipated.

34

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSHB 461 (JUD)
PUBLISH DATE: HOUSE 4/13/88

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act increasing the penalties for repeat convictions for the crimes..."
Sponsor: Judiciary Committee
Requestor: _____
Agency Affected: Department of Corrections
BRU: Statewide Operations
Components: Statewide Programs

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	-0-	348.5	349.6	348.6	348.5	348.6
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	848.6	848.6	848.6	848.6	848.6

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	848.6	848.6	848.6	848.6	848.6
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	848.6	848.6	848.6	848.6	848.6

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

See Attached

Susan E. Knighton

Prepared by: Susan E. Knighton, Director Phone: 465-3376
Division: Administrative Services Date: 4-5-88 4-6-88
Approved by Commissioner: Susan Humphrey-Barnett Date: 4-5-88
Agency: Department of Corrections

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

CONTINUATION of FISCAL NOTE ANALYSIS**For Bill/Resolution No.**ANALYSIS

This proposed legislation would increase the penalties imposed on persons who are repeatedly convicted for the crimes of theft. It would have a fiscal impact on the Department of Corrections.

To determine the effect, we have analyzed recidivism data for the State of Alaska, the number of offenders in the theft categories who are being placed in the custody of the Department, the amount of jail time currently being served and the amount of jail time proposed in this legislation.

The recidivism rates are as follows:

Theft II	33%
Theft III	39%
Theft IV	74%
Concealment	68%

This fiscal note is based upon the yearly incarceration of repeat theft offenders in Restitution Centers or Community Residential Centers. They would serve 77.5 man-years more than is currently served.

Using the Anchorage daily soft bed cost of \$30.00 per day, the estimated yearly fiscal impact is \$848,625. Using the statewide average cost of \$45.00 per day, the estimated yearly fiscal impact is \$1,272,937.

HABITUAL
THEFT OFFENDER
STATUTE



TONY KNOWLES
MAYOR

ANCHORAGE POLICE DEPARTMENT

4501 SOUTH BRAGAW STREET • ANCHORAGE, ALASKA 99507-1599
TELEPHONE (907) 786-8500



RONALD L. OTTE
CHIEF

DATE: December 8, 1987

TO: State Representative Sam Cotten

FROM: Sgt. John Grohol
Misdemeanor Crimes Investigation Unit
Anchorage Police Department

SUBJECT: Habitual misdemeanor theft offender statute

The revised Alaska Criminal Code which took effect January 1, 1980, which I understand you had a hand in revising, was a vast improvement over the old criminal code.

However, at the same time this revised code was enacted we saw the abolishment of Alaska Statutes; Sec. 12.55.050, Increased punishment for persons convicted of more than one felony, and Sec. 12.55.040, Increased punishment for the habitual criminal after conviction of petty larceny or misdemeanors involving fraud. These Statutes, as are similar statutes in other states, are commonly referred to as "Habitual Criminal" statutes and designed as a deterrent for the repeat offender.

As I understand it, these statutes were repealed or abolished as they were in essence to be replaced by presumptive sentencing. I can understand the repeal of Sec. 12.55.050, but I fail to understand why section 12.55.040 was thrown into the same category. This section referred to only misdemeanor crimes and presumptive sentencing pertains only to felony crimes.

Within the past year Officer L. T. Johnson, from my unit, developed his own computerized data file for the crime analysis of misdemeanor thefts. It wasn't until this time with his continuing investigation concerning the actions of repeat theft offenders and his attendance of monthly meetings with loss prevention officers from retail chain stores, that we began to fully realize what effect the abolishment of Sec. 12.55.040 has had on the business community. As it now stands the citizens of Alaska in general are being asked to pay for the abolishment of Sec. 12.55.040.

Having worked with the victims of misdemeanor crimes and street officers on a daily basis for the past four years, I have sensed the total frustration when the same offenders are arrested day in and day out for essentially the same crimes. All too often we are told by these same repeat offenders that this is the best way to make a living.

It is clearly apparent that current penalties are not a deterrent to the repetitive offender. These same repeat offenders find it is more profitable and less risky to; shoplift, steal an unattended purse for the money, credit cards or automated bank card, or to break into an unattended automobile to steal what ever is available, than it is to burglarize a home or rob a convenience store.

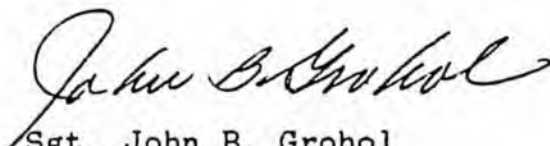
Granted, there are repeat felony offenders, however they are being dealt with under presumptive sentencing.

I believe we are long overdue in doing something positive to protect the victims of repeat misdemeanor crime offenders. I also feel the re-enactment of the "Habitual Criminal" statute, or the enactment of a similar statute, is a step in the proper direction and a must for the law enforcement community.

I have spoken with; Anchorage Police Chief Ron Otte, Anchorage Police Captain Kevin O'Leary, Anchorage Municipal Prosecutor Jim Wolf, Assistant District Attorney Steve Branchflower, The Legislative Committee of the Anchorage Police Department Employees Association and Terry Marquart, President of the Anchorage Chapter of the Alaska Peace Officers Association. All have voiced their support.

I am now soliciting your support in introducing legislation on this matter.

Respectfully,



Sgt. John B. Grohol
Misdemeanor Crimes Investigation Unit
Anchorage Police Department

Attachments

- #1. Report by Officer L. T. Johnson
- #2. Memo from Legislative Counsel Jack Chenoweth

STATE OF ALASKA
THE LEGISLATURE

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JUNEAU ALASKA 99811
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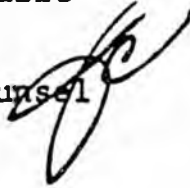
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

October 6, 1987

SUBJECT: Work order 5-1386, relating to habitual
criminal acts

TO: Representative Sam Cotten
ATTN: Julie Krafft

FROM: Jack Chenoweth
Legislative Counsel 

The characteristic of a "habitual criminal" law (sometimes referred to as a "recidivist law" or "recidivist act") is the increasingly severe penalties that are imposed on a criminal offender as a consequence of conviction for a second or subsequent criminal act.

Acts denoted or treated as "habitual criminal" laws appeared in state statutes until the 1978 revision of Alaska's criminal law took effect on January 1, 1980. The two former provisions were AS 12.55.040 and 12.55.050. Rather than set out the text of these two sections verbatim, I have enclosed copies (denoted Enclosure "A") of the last versions of each as they read just prior to their repeal by the 1978 criminal code revision.

Generally, when habitual criminal acts are found to have been applied fairly and without discrimination, the United States Supreme Court has sustained the acts against challenges that they abridge individual constitutional rights. Spencer v. Texas, 385 U.S. 554, 17 L.Ed.2d 606, 87 S.Ct. 648 (1967); reh. den. 386 U.S. 969, 18 L.Ed.2d 125, 87 S.Ct. 1015 (1967); Oyler v. Boles, 368 U.S. 448, 7 L.Ed.2d 446, 82 S.Ct. 501 (1962).

In Alaska, the second of the two habitual criminal statutes cited, AS 12.55.050, was questioned, but not ruled unconstitutional, by the Alaska Supreme Court in State v. Carlson, 560 P.2d 26 (1977). A copy of that decision is provided as Enclosure "B."

The discussion in Carlson compared the habitual criminal act to the prohibition against double jeopardy of art. I, sec. 9 of the state constitution. The court determined that a double jeopardy claim would attach to recidivist criminals who, having been sentenced for the crime committed, faced a sentence modification under the state's habitual criminal act. However, when sentencing of a recidivist criminal for the crime is delayed in order to accommodate the filing of the habitual criminal act indictment or information, and an extended sentence for the crime is imposed due to operation of the habitual criminal provision, the court concluded that a double jeopardy claim would not attach.

In addition, asked to consider the specific elements that were required to trigger operation of the habitual criminal statute, the court examined AS 12.55.050. Against the prosecution's claim that the sequence of criminal acts and convictions was immaterial to trigger application of the state's habitual criminal act, the court determined that the sequence of prior felonies (that is, commission of an offense; conviction; sentencing) is material to the application of a habitual criminal act, and that the statute fairly required "commission of a subsequent offense after a previous conviction, before a harsher penalty may be imposed." 560 P.2d 26, at 30.

To avoid constitutional problems and to validly apply the habitual criminal statute, the court suggested steps or procedures to be adhered to by the state as prosecutors sought to enhance a defendant's sentence through reliance on the habitual criminal statutes.

The court's Carlson decision obviously colored the legislature's revision of the Criminal Code in 1977-1978. All draft versions of the proposed code revision that I examined specifically repealed AS 12.55.040 and 12.55.050. At the same time the habitual criminal statutes were to be revoked, the authors of the code revision carried the concept of enhanced sentences for repeat offenders into the changes being considered for sentencing of convicted criminals. The drafts of the code revision first proposed to add a section entitled "Prior Convictions," which was initially designated AS 11.36.300. The rationale for the addition of this provision is set out in the draft report on this proposed new section, a copy of which is enclosed (as Enclosure "C"). The "Prior Convictions" section was ultimately enacted as AS 12.55.145. The language of the current provision, amended in 1982, is set out in Enclosure "D."

Representative Cotten
Page 3
October 6, 1987

In summary: while not denoted a "habitual criminal" statute, AS 12.55.145, when read in conjunction with the specific sentencing provisions of AS 12.55.125 cited in it, retains the notion of enhanced penalties for repeat criminal conduct. The specific limitations and requirements set out in AS 12.55.145 are responsive to the double jeopardy concern examined in the Carlson decision and to other prospective constitutional challenges, particularly a concern for due process.

Though the habitual criminal act of another state might be consulted as a model for changes to Alaska's sentencing act or for the restoration of a separate habitual criminal provision, any changes must take into account the court's decision in Carlson, as AS 12.55.145 now does.

*

When this work order request was transmitted, it asked for examples of habitual criminal statutes in other states. In light of my comments, please advise as to whether or not you would like that work done.

JC:mkr
m13/016

Enclosures

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for the nonpayment of the fine, the defendant may make applica-
tion in writing to a judge or magistrate in the district where he is
imprisoned, setting out his inability to pay the fine, and, after no-
tice to the district attorney, the judge or magistrate shall proceed
to hear and determine the matter. If on examination it appears to
him that the defendant is unable to pay the fine and that he has no
property exceeding \$50 in value, except property which is by law
exempt from being taken on execution for debt, the judge or mag-
istrate shall administer to him the following oath: "I do solemnly
swear that I do not have any property, real or personal, to the
amount of \$50, except property which is by law exempt from being
taken on civil process for debt, and that I have no property in any
way conveyed or concealed or any way disposed of for my future
use or benefit. So help me God." The judge or magistrate shall dis-
charge the defendant after he takes the oath. (§ 8.03 ch 34 SLA
1962; am § 17 ch 8 SLA 1971)

Effect of amendment. — The 1971
amendment inserted "judge or" twice
in the first sentence, once in the sec-
ond sentence, and once in the last
sentence.

Legislative committee report.—For
report on ch. 8, SLA 1971 (HB 16),
see 1971 House Journal, p. 52.

Constitutionality.—This section,
which, upon proof of indigency, limits
the sentence in lieu of payment of a
fine to 30 days, is unconstitutional.
Hood v. Smedley, Sup. Ct. Op. No.
800 (File No. 1406), 498 P.2d 120
(1972).

The injustice under this section that
is to be remedied is not the imposition
of the fine itself, but the requirement
that it be satisfied immediately or be

automatically converted into a jail
term. Hood v. Smedley, Sup. Ct. Op.
No. 800 (File No. 1406), 498 P.2d 120
(1972).

This section applies to all poor con-
victs imprisoned solely for nonpay-
ment of fines. United States v. Strom-
berger, 9 Alaska 689 (1940).

Valid methods for enforcing pay-
ment of fines.—For methods which the
State of Alaska may employ to serve
its valid interest in enforcing the pay-
ment of fines, see Hood v. Smedley,
Sup. Ct. Op. No. 800 (File No. 1406),
498 P.2d 120 (1972).

Quoted in Williams v. Illinois, 399
U.S. 235, 90 S. Ct. 2018, 26 L. Ed. 2d
586 (1970).

**Sec. 12.55.040. Increased punishment for habitual criminal after
conviction of petty larceny or misdemeanor involving fraud. A per-
son convicted of petty larceny or a misdemeanor in which fraud or
intent to defraud is an element who, subsequent to March 9, 1939,
has been three times convicted in this state or elsewhere of a crime
which would constitute burglary, larceny except changing brands,
embezzlement, or obtaining money or property by false pretenses
under Alaska law shall be adjudged an habitual criminal, and is
punishable by imprisonment for not less than one year nor more
than 10 years. (§ 8.04 ch 34 SLA 1962; am § 38 ch 43 SLA 1964)**

Effect of amendment. — The 1964
amendment substituted "less than one
year nor more than 10 years" for
"more than 10 years" at the end of
the section.

Section inapplicable to offense
committed before October 1, 1964.—
See 1964 Op. Att'y Gen., No. 8.

Sec. 12.55.050. Increased punishment for persons convicted of more than one felony. A person convicted of a felony in this state who has been previously convicted of a felony in this state or elsewhere, if the same crime elsewhere would constitute a felony under Alaska law, is punishable as follows:

(1) If the person is convicted of a felony which would be punishable by imprisonment for a term less than his natural life, and has previously been convicted of one felony, then he is punishable by imprisonment for not less than the minimum nor more than twice the longest term prescribed for the felony of which that person is convicted.

(2) If the person has previously been convicted of two felonies, then he is punishable by imprisonment for not less than the minimum nor more than twice the longest term prescribed herein for a second conviction of felony.

(3) If the person has previously been convicted of three or more felonies, then on the fourth conviction he shall be adjudged an habitual criminal, and is punishable by imprisonment for not less than 20 years nor more than the remainder of his natural life. (§ 8.05 ch 34 SLA 1962; am § 23 ch 43 SLA 1964; am § 7 ch 68 SLA 1965)

Effect of amendments.—The 1964 amendment inserted "less than the minimum nor" near the end of paragraphs (1) and (2), and added the former last sentence in paragraph (3).

The 1965 amendment deleted the former last sentence in paragraph (3), which prohibited the suspension of sentences.

Section inapplicable to offense committed before October 1, 1964.— See 1964 Op. Atty Gen., No. 8.

Section inapplicable to conviction under different counts of same indictment.— Where defendant contended that under the provisions of AS 11-40.130 a person may be found an

habitual criminal upon conviction of four or more separate counts of one indictment for contributing to the delinquency of a child, the court held that habitual offender statutes apply only to persons who have been convicted of offenses committed after previous felony convictions. *United States v. Meyers*, 16 Alaska 368, 143 F. Supp. 1 (D. Alas. 1956).

The crime of attempted robbery carries a maximum possible sentence of seven and one-half years. Because accused had previous felony convictions, he could have been sentenced to a maximum of thirty years. *Bowie v. State*, Sup. Ct. Op. No. 769 (File No. 1422), 494 P.2d 800 (1972).

Sec. 12.55.060. Procedure upon discovery of prior convictions.

(a) Before conviction or while sentence is effective, if it appears that a person convicted of a crime in this state has previously been convicted and has not been charged under §§ 40 and 50 of this chapter, the district attorney may file an information in the superior court accusing that person of the previous conviction or convictions. The court shall cause that person, whether confined in prison or otherwise, to be brought before it and shall inform him of the allegations contained in the information and of his right to be tried as to the truth of the allegations, and shall require the accused person to say whether or not he is the same

62(e)¹ in order to stay enforcement of a judgment on appeal. We answered this question affirmatively in *Alaska State Housing Authority v. Dixon*, 496 P.2d 649, 650 (Alaska 1972), where we stated:

We conclude that ASHA [Alaska State Housing Authority] is an instrumentality of the state within the Department of Commerce.²

Accordingly, the decision of the trial court is REVERSED, and this case is REMANDED with instructions to quash the writ of execution issued herein by the Clerk of the Superior Court.

BURKE, J., not participating.



STATE of Alaska, Petitioner,

v.

The Honorable Victor D. CARLSON, Judge of the Superior Court, and the Superior Court for the State of Alaska, Third Judicial District, Respondents,

Tyrone Davenport, Real Party in Interest.

Tyrone DAVENPORT, Appellant,

v.

STATE of Alaska, Appellee.

No. 2908, 2913.

Supreme Court of Alaska.

Feb. 16, 1977.

Proceeding was instituted on petition of State for writ of mandamus to compel the Superior Court, Third Judicial District, Victor D. Carlson, J., to impose a 20-year sentence on defendant under habitual criminal statute.

1. Civil Rule 62(e) provides:

When an appeal is taken or review sought by the state or an officer or agency thereof, and the operation or enforcement of the judgment, order or decision is stayed, no bond, obligation or other security shall be required

from the appellant or the petitioner, as the case may be. The Supreme Court, Connor, J., held that it is the accumulation of prior offenses, indicating that defendant has not reformed his behavior, rather than merely the gross number of offenses, which should be determinative of habitual criminal status, that each prior offense and conviction must follow in sequence to accumulate under habitual criminal statute, that once a sentence has been meaningfully imposed it may not be later increased without offending double jeopardy, and that sentencing should, therefore, be delayed until information or indictment under habitual criminal statute has been filed in order to avoid double jeopardy problems.

Petition for mandamus denied, and judgment vacated with direction to reinstate original sentence.

1. Criminal Law - 1201

Habitual criminal statute is founded on the general principle that persistent offenders should be subject to greater sanctions than those who have been convicted only once and is meant to serve as a warning to first time offenders and to provide them with an opportunity to reform. AS 12.55.050.

2. Criminal Law - 1202(1)

It is the accumulation of prior offenses, indicating that the defendant has not reformed his behavior, rather than merely the gross number of offenses, which should be determinative of habitual criminal status. AS 12.55.050.

3. Criminal Law - 1202(1)

Each prior offense and conviction must follow in sequence in order to accumulate under habitual criminal statute. AS 12.55.050.

4. Criminal Law - 1202(1)

When a convicted criminal has not taken advantage of an opportunity to reform

from the appellant or the petitioner, as the case may be.

2. See *University of Alaska v. Simpson Building Supply Company*, 530 P.2d 1317 (Alaska 1975); *University of Alaska v. National Aircraft Leasing, Ltd.*, 536 P.2d 121 (Alaska 1975).

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Court, Connor, relation of prior offenses. As not more than merely habitual, which should be a criminal status and conviction should not accumulate unless, that once a sentence is finally imposed it should not be increased without offending that sentencing until information is available in order to avoid

is denied, and action to rein-

is founded on consistent offending. Later sanctions convicted only as a warning to provide them m. AS 12.55.-

prior offenses, it has not re- can merely the high should be criminal status.

conviction must be to accumulate te. AS 12.55.-

al has not tak- nity to reform cautioner, as the

impson Building 7 (Alaska 1975); 11 Aircraft Leas- a 1975).

and subsequently commits another crime, he may be considered a worse offender than one with no previous convictions, and it is reasonable to subject him to harsher sanctions, but when two convictions occur on same day, an opportunity for reformation is afforded to defendant only once, not twice. AS 12.55.050.

5. Criminal Law ⇐ 1202(1)

An individual who commits four crimes within a short time and is given at most one opportunity to reform should not be treated the same as a defendant who has had three opportunities to reform over a substantial period of time but has persisted in his criminal conduct. AS 12.55.050.

6. Criminal Law ⇐ 189

Once a sentence has been meaningfully imposed it may not be later increased without offending double jeopardy provision of Constitution. Const. art. 1, § 9.

7. Criminal Law ⇐ 1202(6)

Trial court may impose an enhanced penalty under habitual criminal statute only where sentence for latest offense has not already been imposed. AS 12.55.050.

8. Criminal Law ⇐ 1202(6)

Imposition of an enhanced penalty under habitual criminal statute should be delayed until information or indictment under statute has been filed in order to avoid double jeopardy problems. AS 12.55.050; Const. art. 1, § 9.

1. Jurisdiction is asserted under Alaska R.App.P. 25 and AS 22.05.010(a).

2. AS 12.55.050 provides:

"Increased punishment for persons convicted of more than one felony. A person convicted of a felony in this state who has been previously convicted of a felony in this state or elsewhere, if the same crime elsewhere would constitute a felony under Alaska law, is punishable as follows:

(1) If the person is convicted of a felony which would be punishable by imprisonment for a term less than his natural life, and has previously been convicted of one felony, then he is punishable by imprisonment for not less than the minimum nor more than twice the longest term prescribed for the felony of which that person is convicted.

Glen C. Anderson, Asst. Dist. Atty., Joseph D. Balfe, Dist. Atty., Anchorage, and Avrum M. Gross, Atty. Gen., Juneau, for State of Alaska.

James L. Johnston of Opland & Johnston, Anchorage, for Davenport.

Before BOOCHEVER, C. J., and RABINOWITZ, CONNOR and ERWIN, JJ.

CONNOR, Justice.

This petition for a writ of mandamus¹ requires us to construe AS 12.55.050, Alaska's habitual criminal statute.²

On July 5, 1969, Tyrone Davenport committed burglary.³ He was convicted of this offense on December 24, 1969. On July 1, 1971, Davenport committed the offense of receiving and concealing stolen goods. On September 22, 1971 he committed an assault with a dangerous weapon. On February 15, 1972, he was convicted of both assault with a dangerous weapon⁴ and receiving and concealing stolen goods.⁵ On July 14, 1975 Davenport again committed the offense of receiving and concealing stolen goods. On February 27, 1976 he was convicted of that offense. He was sentenced to eighteen months, to be served concurrently with the sentences imposed for the 1972 convictions. Previously, in July of 1975, Davenport had been indicted as an habitual criminal under AS 12.55.050(3).

(2) If the person has previously been convicted of two felonies, then he is punishable by imprisonment for not less than the minimum nor more than twice the longest term prescribed herein for a second conviction of felony.

(3) If the person has previously been convicted of three or more felonies, then on the fourth conviction he shall be adjudged an habitual criminal, and is punishable by imprisonment for not less than 20 years nor more than the remainder of his natural life."

3. See AS 11.20.080.

4. See AS 11.15.220.

5. See AS 11.20.350.

On April 6, 1976 Davenport was sentenced as an habitual criminal by Judge Carlson who vacated the 18 month sentence previously imposed and resented Davenport to five years for receiving and concealing stolen goods.

On April 8, 1976, the state moved to correct the sentence imposed by Judge Carlson on the ground that it was illegal. The state argued that his resentencing as an habitual criminal was governed by AS 12-55.050(3), which required that a minimum sentence of twenty years be imposed.

Judge Carlson entered a written amended judgment on April 20, 1976, reflecting the five year sentence imposed on April 6, 1976. On April 22, 1976, he denied the state's motion to correct the sentence. The state seeks mandamus to compel the imposition of a 20 year sentence on Davenport.⁶

The issues presented are (1) whether Davenport was properly adjudged an habitual criminal, and if so whether a sentence of less than 20 years may be imposed⁷ and (2) whether Davenport was placed twice in jeopardy for the same offense.

I

AS 12.55.050(3) provides that if a person has been convicted of three or more felo-

6. At the sentencing proceeding Judge Carlson remarked that he found the 20 year minimum sentence to be an inappropriate punishment for Davenport. However, as we discuss in the text at page 10, a sentence once imposed may not be later augmented without offending the double jeopardy provision of the Alaska Constitution, art. I, § 9.

In its attempt to convince Judge Carlson that he had imposed an illegal sentence the state conceded that the court could have either imposed the minimum sentence and suspended a portion of that sentence under the provisions of AS 12.55.080 or, suspended the imposition of sentence under AS 12.55.083(a). See *Speas v. State*, 511 P.2d 130 (Alaska 1973). The state argued *Speas* was inapplicable because Judge Carlson did not indicate he was suspending a portion of the sentence but merely imposed a flat sentence of five years.

7. If Davenport had been properly adjudged an habitual criminal, then the imposition of a five year sentence would have been illegal. See AS 12.55.050(3).

nies, then on the fourth felony conviction he shall be adjudged an habitual criminal and sentenced to a minimum of 20 years. The state argues that this section is applicable whenever a person who has been convicted of three felonies then commits and is convicted of a fourth felony, regardless of the sequence of those prior offenses and convictions. The state asserts that the purposes of recidivist legislation, which are to protect society, deter criminal conduct and provide felons with an incentive for reformation, would best be effectuated by such an interpretation of the habitual criminal statute. We disagree.

[1] Habitual criminal statutes are founded on the general principle that persistent offenders should be subject to greater sanctions than those who have been convicted only once.⁸ These statutes serve as a warning to first time offenders and provide them with an opportunity to reform. See *Moore v. Coiner*, 303 F.Supp. 185 (N.D.W. Va.1969); *State v. Lohrbach*, 217 Kan. 588, 538 P.2d 678, 681-82 (1975). It is only upon subsequent convictions for repeated criminal conduct that increasingly stiffer sentences are imposed. The reason the sanctions become increasingly severe is "not so much that [the] defendant has sinned more than once as that he is deemed incorrigible

8. See generally *Annot.*, 24 A.L.R.2d 1247 (1952). All but two states have statutes imposing increasingly severe penalties on habitual offenders. Note, *Statutory Structures for Sentencing Felons to Prison*, 60 Colum.L.Rev. 134, 1157 (1960). In at least 21 states punishment for habitual criminality is mandatory. *Id.* at 1158. Sentences range in severity from a mandatory life term with no parole after the third conviction in Tennessee, Tenn.Code Ann. § 40-2801 et seq. (1975), to a term of not less than five years after the third conviction in Idaho. Idaho Code Ann. § 19-2514 (1975 Supp.). ABA Standards Relating to Sentencing Alternatives and Procedures § 3.3, Commentary at 166 (1968).

For a general description of habitual criminal statutes see Note, *Statutory Structures for Sentencing Felons to Prison*, 60 Colum.L.Rev. 1134, 1157-58 (1960); Model Penal Code § 7.03, Commentary at 39-40 (Tent.Draft No. 2, 1964).

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when he persists in violations of the law after conviction of previous infractions." Annot., 24 A.L.R.2d 1247, 1249 (1952).

A majority of jurisdictions, recognizing both the purposes underlying habitual criminal statutes and the severity of their penalties, require for their application that prior convictions must precede the commission of the principal offense. *Id.* and cases cited therein. As the state points out, in most of the cases construing these statutes, the sequence of prior convictions is not in issue. However, where the sequence of prior convictions is in issue, the rule followed in the majority of jurisdictions is that each successive felony must be committed after the previous felony conviction in order to count towards habitual criminal status.⁹ *E.g.*, *Johnson v. Cochran*, 139 So.2d 673 (Fla. 1962); *Gossett v. Commonwealth*, 302 S.W.2d 380 (Ky.1957); see *State v. Johnson*, 109 N.J.Super. 69, 262 A.2d 238 (1969) (second violation and indictment thereon must occur after first conviction); 4 *Wharton's Criminal Procedure* § 631 (12th ed. 1976); Annot., 24 A.L.R.2d 1247, 1249 (1952).

Accordingly, it has been held that two or more convictions on the same day on two or more indictments, or on two or more counts of the same indictment, constitute only one conviction for the purposes of the habitual offender statute. Annot., 24 A.L.R.2d 1247, 1249 (1952).

However some courts hold that the sequence of convictions is immaterial. In the case at bar, the state has relied upon the decisions in two of those jurisdictions, Oregon and New York, which have statutes

9. Some statutes specifically state what offenses count towards habitual criminal status. See Ky.Rev.Stat. § 532.080(4) (1976 Supp.) (two or more convictions of crime where uninterrupted or concurrent terms constitute only one conviction); Cal.Penal Code § 644 (West 1970) (charge must be separately brought and terms must be separately served).

10. The Oregon habitual criminal statute was modeled after § 1942 of the New York Penal Law. *Castle v. Gladden*, 201 Or. 353, 270 P.2d 675, 680 (1954). The Oregon statute then in effect read in part as follows:

similar to AS 12.55.050.¹⁰ In particular it relies on *Castle v. Gladden*, 201 Or. 353, 270 P.2d 675 (1954), and *Terwilliger v. Turk*, 156 Miss. 246, 281 N.Y.S. 527 (S.Ct.1935). *Accord*, *People ex rel. Reynolds v. Morhous*, 268 App.Div. 843, 50 N.Y.S.2d 272 (1944).

In *Castle v. Gladden*, *supra*, the Oregon court, while acknowledging that other courts require a particular sequence of offenses and convictions, concluded that the language of its habitual criminal statute should be interpreted literally. However, its conclusion was motivated at least in part by a significant change in the law. The first Oregon habitual criminal statute required that the "dates of the convictions relied upon to increase the penalty be prior to the commission of the subsequent offense." *Castle v. Gladden*, *supra* at 681, quoting from General Laws of Oregon 1921, ch. 70. However, this statute was subsequently repealed, and in its place was substituted a statute patterned after § 1942 of the New York Penal Law, which omitted any reference to a particular sequence of commission and conviction. The Oregon court chose to follow the New York rule enunciated in *Terwilliger v. Turk*, *supra* which holds that in applying the habitual offender statute the sequence of commission and conviction is immaterial.

We decline to follow the New York and Oregon approach for several reasons. First, the Alaska statute has not been rewritten as was the Oregon statute. Therefore, there is nothing which would necessarily lead us to the result reached by the Oregon court. Second, there has been no recent reaffirmation of the rule articulated in *Terwilliger*, *supra*, and followed in *Gladden*,

"§ 26-2803. A person who, after having been three times convicted within this state of felonies or attempts to commit felonies, or under the law of any other state, government or country, of crimes which, if committed within this state would be felonious, commits a felony within this state, shall be sentenced, upon conviction of such fourth, or subsequent offense, to imprisonment in a state prison for the term of his natural life." (The present Oregon statute, ORS § 161.725 (1975), is significantly different.)

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supra; in light of current changes in the theory of criminal justice, the wisdom of these precedents may be doubtful. See generally ABA Standards Relating to Sentencing Alternatives and Procedures § 3.3 (1968). In support of its position that Alaska should follow the minority view espoused in *Castle v. Gladden, supra*, the state argues that if the sequence of prior felonies were material to the determination of whether an individual should be adjudged an habitual criminal, the legislature would have written the statute accordingly.

[2] Admittedly, AS 12.55.050 does not specifically state that in order for a felony conviction to count toward habitual criminal status an offender must commit a felony, be convicted therefor, and begin to serve his sentence before the commission of a subsequent felony. However, as Davenport points out, the statute has three components, each of which requires the commission of a subsequent offense after a previous conviction, before a harsher penalty may be imposed. Thus a criminal convicted of one felony may be imprisoned for, at most, the longest term prescribed for the felony of which he was convicted. A criminal convicted of a second felony may be imprisoned for a maximum of twice the longest term prescribed for the second felony conviction. On the third conviction the possible sentence again doubles. Thus, the maximum sentence on the third conviction is four times the longest term prescribed statutorily for the felony involved in that conviction. On the conviction of the fourth felony, a defendant who has been previously convicted of three felonies must be adjudged an habitual criminal, and is to be imprisoned for not less than twenty years and not more than his natural life. Thus, a reading of the statute as a whole leads us to the conclusion that it is the accumulation of prior offenses, indicating the defendant has not reformed his behavior, rather than merely the gross number of offenses, which

should be determinative of habitual criminal status.

[3, 4] Moreover, there are sound policy reasons for requiring each prior offense and conviction to follow in sequence in order to accumulate under AS 12.55.050. Davenport points out, and the state acknowledges, that when a convicted criminal has not taken advantage of the opportunity to reform and subsequently commits another crime, he may be considered a worse offender than one with no previous convictions. It is then reasonable to subject him to harsher sanctions. However, where, as in the case of Davenport, two convictions occur on the same day, the opportunity for reformation is afforded to him only once, not twice.

[5] Thus, if the state's position were adopted, an individual who committed four crimes within a short time, and was given at most one opportunity to reform, would be treated the same as a defendant who has had three opportunities to reform over a substantial period of time, but has persisted in his criminal conduct.

We believe that such a literal reading of AS 12.55.050 would distort the underlying purpose of this statute and would be inconsistent with the principle that habitual criminal statutes are to be strictly construed in favor of the defendant. *Moore v. Coiner*, 303 F.Supp. 185, 188 (N.D.W.Va. 1969).

Thus, Davenport should have been sentenced under AS 12.55.050(2) which provides for an enhanced sentence upon the conviction of a third felony.¹¹

II

Defendant argues that he was placed twice in jeopardy for the same offense, in violation of article I, § 9 of the Alaska Constitution.

11. Davenport cannot be resentenced under AS 12.55.050(2) to more than the 18 month sentence originally imposed without placing him twice in jeopardy. *Soanier v. State*, 483 P.2d 1003 (Alaska 1971). Accord, *United States v.*

Durbin, 542 F.2d 436 (8th Cir. 1976). Cf. *North Carolina v. Pearce*, 395 U.S. 711, 89 S.Ct. 2072, 23 L.Ed.2d 636 (1969) (same result under due process).

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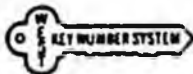
Habitual criminal statutes have been found not violative of the fifth amendment prohibition against double jeopardy, because these statutes do not create separate offenses but merely enhance the punishment for the latest offense. *Oyler v. Boles*, 368 U.S. 448, 452, 82 S.Ct. 501, 7 L.Ed.2d 446 (1962); *Graham v. West Virginia*, 224 U.S. 616, 32 S.Ct. 583, 56 L.Ed. 917 (1912); *Wilson v. Slayton*, 470 F.2d 986 (4th Cir. 1972); *Davis v. Bennett*, 400 F.2d 279, 286 (8th Cir. 1968).

[6] AS 12.55.050, however, raises double jeopardy problems under the Alaska Constitution. AS 12.55.060 provides that when the trial court sentences a defendant under AS 12.55.050, it must vacate the sentence originally imposed. This violates the rule articulated in *Sonnier v. State*, 483 P.2d 1003 (Alaska 1971), where we held that once a sentence has been meaningfully imposed it may not be later increased without offending the double jeopardy provision of the Alaska Constitution.

[7, 8] This does not mean that the trial court may never impose an enhanced penalty under AS 12.55.050, but that it may do so only where the sentence for the latest offense has not already been imposed. Therefore, sentencing should be delayed until the information or indictment under the habitual criminal statute has been filed. This avoids double jeopardy problems under *Sonnier*; *supra*.

We deny the petition for mandamus, but vacate the judgment and reinstate the original 18 month sentence.¹²

BURKE, J., not participating.



12. The State's appeal of the eighteen month and five year sentences on the ground that these are too lenient is currently pending be-

Margaret OLLESTEAD et al., Appellants,

NATIVE VILLAGE OF TYONEK, a
Federal Corporation, Appellee.

No. 2503.

Supreme Court of Alaska.

Feb. 16, 1977.

Plaintiffs sought declaratory judgment that they were entitled to rights in area encompassing native village and to shares in proceeds from certain oil and gas leases. The Superior Court, Third Judicial District, Anchorage, Edmond W. Burke, J., dismissed the action, and plaintiffs appealed. The Supreme Court, Boochever, C. J., held that lands obtained, within limits of reservation, by such native village, which was federally incorporated under certain statute, were subject to a "restriction against alienation" within statute precluding state courts from adjudicating the ownership or right to possession of property or an interest therein belonging to an Indian tribe or community which is held in trust by United States or is subject to a restriction against alienation imposed by United States; that proceeds from oil leases executed when land was in reservation status were "held in trust" and subject to a "restriction on alienation" within meaning of such statute; and that an adjudication of questions of tribal membership would encompass issues of ownership or right to possession of property "held in trust" and subject to "restrictions on alienation" within meaning of statute.

Affirmed.

I. Indians ⇐ 2

Principle that Indian tribes are sovereign, self-governing entities subject only to plenary power of Congress applies in all cases where essential tribal relations or rights of Indians are involved.

fore this court. See AS 12.55.120(b); *State v. Wortham*, 537 P.2d 1117 (Alaska 1975).

the procedures by which the panel would function.

As is provided in subsection (d), the three judge panel may sentence the defendant to any sentence applicable to the offense, regardless of whether it was a first, second or third class felony. A defendant convicted, for example, of a first, class A felony could be sentenced by the three-judge panel to a maximum sentence of less than 30 years, the maximum sentence authorized for an aggravated third or subsequent class A felony. The Subcommittee determined that this authority was in line with the extraordinary nature of the kinds of cases that would come before the panel.

VI. TD AS 11.36.300. PRIOR CONVICTIONS

This section is included in chapter 36 so that the effect of prior convictions could be properly considered by sentencing courts.

Without dissent, the Subcommittee determined, that prior convictions should not follow a person around for the remainder of a lifetime even for purposes of sentencing on a subsequent offense. Those who recidivate usually do so within a short period of time after release. Even the use of the term "recidivate" connotes a connection between the prior offense and a later. The connection lies in the presumption that both offenses arise from the same milieu of susceptibility, whether arising from surroundings, personal attitude or some life style combination of both. The Subcommittee concluded that a seven year period would be an appropriate length of time within which a conclusive presumption would be reasonable.

After seven years, the probability is that fresh

criminal misconduct does not relate to the milieu of the prior offense and that society is dealing with the individual in a different setting. That the offender has a prior conviction, under these circumstances, is as likely to be coincidental as causal. At least for purposes of determining a fair sentence, it should not automatically count against the offender. As provided in subsection (a)(1), the seven year period excludes years spent in prison, thus insuring that there is ample distance between the past offense and a present life.

In paragraphs (2)-(4) of the subsection, the Subcommittee has provided the means for determining how crimes committed in other jurisdictions, or in Alaska prior to the Revised Code, will relate to new offenses and how crimes which are committed as a result of a single substantially contemporaneous course of conduct must be considered by the sentencing court. In that regard, paragraph (3) is designed to overcome potential double jeopardy problems.

Subsection (b) is intended to provide a vehicle by which a defendant can raise objections to prior convictions which the state alleges are his. The Subcommittee was particularly concerned that defendants be provided with ample notice of the state's intention to allege prior convictions and recommends that it be done prior to trial whenever possible so that this factor can be considered by defendants and their counsel, along with others, in determining trial strategies.

On the other hand, the Subcommittee was equally aware that it is not always possible to obtain accurate criminal history information prior to the start of a trial. For that

reason, the 20 day requirement in subsection (b)(1) was approved. Since rebuttal information as to allegations of a prior history is usually immediately available to the defendant, the Subcommittee decided that five days was sufficient to reply to the allegations. On the other hand the state might require some time to answer a defendant's denial and thus the Subcommittee gave the state the 15 day period.

Since the consequences of proof of a prior conviction can be serious, the Subcommittee determined that the state should be required to prove the prior conviction "beyond a reasonable doubt" in those cases in which the defendant denied the existence of the prior conviction or alleged the existence of one of the other defects set forth in paragraph (2) of subsection (b).

As a final matter, the Subcommittee concluded that the commentary should reflect the fact that a conviction obtained in the case of an unrepresented defendant might well be unconstitutional. Determining whether or not a defendant was represented by counsel could be both time consuming and difficult, but it was assumed that if the 15 day time period was not sufficient to resolve the issue a continuance could be obtained.

imum term of imprisonment provided in (c) or (d) of this section, and the minimum sentence provided for in (c) or (d) of this section may not be otherwise reduced. (§ 12 ch 166 SLA 1978; am § 2 ch 139 SLA 1980; am § 22 ch 59 SLA 1982; am § 13 ch 61 SLA 1982; am § 31 ch 143 SLA 1982; am §§ 4, 5 ch 92 SLA 1983)

Effect of amendments. — The 1980 amendment added subsection (c).

The first 1982 amendment substituted "fourth degree" for "third degree" in the first sentence of subsection (c).

The second 1982 amendment made the same change as the first 1982 amendment.

The third 1982 amendment, in subsection (c), substituted "fourth degree" for

"third degree" and "20 days" for "10 days" in the first sentence and substituted "be imprisoned" for "by imprisoned" in the last sentence.

The 1983 amendment deleted the second and third sentences of subsection (c), concerning suspension of the execution or imposition of a sentence, and added subsections (d) and (e).

NOTES TO DECISIONS

Constitutionality of presumptive sentencing provisions. — See notes under same heading, AS 12.55.125, *Nell v. State*, Ct. App. Op. No. 77 (File No. 5665), 642 P.2d 1361 (1982).

Consecutive sentencing by district court permissible under former law. —

See *State v. Pete*, Sup. Ct. Op. No. 372 (File No. 673), 420 P.2d 338 (1966), decided under former AS 11.05.010.

Cited in *Law v. State*, Sup. Ct. Op. No. 2301 (File No. 4552), 624 P.2d 284 (1981); *Kelly v. State*, Ct. App. Op. No. 251 (File No. 6311), 663 P.2d 967 (1983).

Sec. 12.55.140. Sentences for violations. [Repealed, § 23 ch 59 SLA 1982.]

Sec. 12.55.145. Prior convictions. (a) For purposes of considering prior convictions in imposing sentence under AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), or (i)

(1) a prior conviction may not be considered if a period of 10 or more years has elapsed between the date of the defendant's unconditional discharge on the immediately preceding offense and commission of the present offense unless the prior conviction was for an unclassified or class A felony;

(2) a conviction in this or another jurisdiction of an offense having elements similar to those of a felony defined as such under Alaska law at the time the offense was committed is considered a prior felony conviction;

(3) two or more convictions arising out of a single, continuous criminal episode during which there was no substantial change in the nature of the criminal objective are considered a single conviction unless the defendant was sentenced to consecutive sentences for the crimes; offenses committed while attempting to escape or avoid detection or apprehension after the commission of another offense are not part of the same criminal episode or objective

(b) When sentence is imposed under this chapter, prior convictions not expressly admitted by the defendant must be proved by authenti-

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(c) If the defendant denies the authenticity of a prior judgment of conviction, that the defendant is the person named in the judgment, that the elements of a prior offense committed in another jurisdiction are substantially identical to those of a felony defined as such under Alaska law, or that a prior conviction occurred within the period specified in (a)(1) of this section or if the defendant alleges that two or more purportedly separate prior convictions should be considered a single conviction under (a)(3) of this section, the defendant shall file with the court and serve on the prosecuting attorney notice of denial no later than 10 days before the date set for imposition of sentence. The notice of denial shall include a concise statement of the grounds relied upon and may be supported by affidavit or other documentary evidence.

(d) Matters alleged in a notice of denial shall be heard by the court sitting without a jury. If the defendant introduces substantial evidence that the defendant is not the person named in a prior judgment of conviction, that the judgment is not authentic, that the conviction did not occur within the period specified in (a)(1) of this section, or that a conviction should not be considered a prior felony conviction under (a)(2) of this section, then the burden is on the state to prove the contrary beyond a reasonable doubt. The burden of proof that two or more convictions should be considered a single conviction under (a)(3) of this section is on the defendant by clear and convincing evidence.

(e) The authenticated judgments of courts of record of the United States, the District of Columbia, or of any state, territory, or political subdivision of the United States are prima facie evidence of conviction. (§ 12 ch 166 SLA 1978; am §§ 32-34 ch 143 SLA 1982)

Revisor's notes. — Section 35, ch. 143, SLA 1982 enacted a subsection (f) which was renumbered in 1982 as AS 12.55.147.

Cross references. — For effect of convictions prior to January 1, 1980 (effective date of ch. 166, SLA 1978), see § 23, ch. 166, SLA 1978, in the Temporary and Special Acts.

Effect of amendments. — The 1982 amendment, in subsection (a), substituted "AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), or (i)" for "this chapter" at the end of the introductory language; substituted "10 or more years" for "seven or more years" and

added "unless the prior conviction was for an unclassified or class A felony" to the end, both in paragraph (1); substituted "similar" for "substantially identical" and inserted "at the time the offense was committed" in paragraph (2); and substituted "unless the defendant was sentenced to consecutive sentences for the crimes;" for "except that" in paragraph (3). The amendment also substituted "20 days" for "10 days" in subsection (b), and substituted "10 days" for "five days" near the end of the first sentence of subsection (c).

December 8, 1987
Habitual theft offender statute

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DATE: December 8, 1987
TO: Sgt. John Grohol, Anchorage Police Department
FROM: Officer L. T. Johnson, Anchorage Police Department
SUBJECT: Request for a criminal statute establishing a class "C" felony penalty on any subsequent misdemeanor theft within five (5) years of an initial theft conviction.

AMATEUR versus PROFESSIONAL

Thieves or shoplifters can be divided into two basic groups; amateurs and professionals. This paper is specifically directed toward the professional adult thief.

The amateur thief is considered to be the rational, responsible individual who in a moment of weakness will give in to temptation. Once caught, the shame and remorse felt by the amateur thief is usually a sufficient deterrent against further similar activity. Very few, if any, can claim in total honesty that they have never taken anything that did not belong to them, but the majority can claim the common sense to have learned from our mistakes.

The professional adult thief is considered to be the rational, irresponsible individual who will continue to steal following a conviction for theft and fail to make any attempt at reformation.

It is the professional or habitual adult thief that must be considered a worse offender than the amateur with no previous theft convictions.

THE PROBLEM

Over the past year I have been specifically assigned to investigate reports of shoplifts and other misdemeanor thefts committed in the Anchorage area. During this time I have become increasingly aware of approximately 400 people that have been caught stealing subsequent to misdemeanor theft convictions.

Interviews conducted with some of these individuals provided me with insight as to their motive. The primary motive for continuing to commit thefts was to support drug habits. Several of the interviewed individuals added that, "It was an easy way to make a living".

Wallets or purses, stolen from vehicles or buildings, provide the thief with easy access to the victim's credit cards or bank account through the use of a stolen automated teller machine (ATM) card. Items such as; cartons of cigarettes, compact disks, liquor, etc., are routinely sold for approximately 50% of the initial retail price, and with cartons of cigarettes providing the adult thief with a \$5 return per carton, a case of cigarettes provides a substantial return of over \$100 for a minimal amount of effort.

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Habitual theft offender statute

APATHY BREEDS CONTEMPT

During an interview with one habitual theft offender, he readily admitted that he and his friends stole items to sell to support their cocaine habits. He also stated that he was glad that he was in jail so that he could be forced into attending drug rehabilitation because he did not possess the will power necessary to stop on his own. The charges against this individual were subsequently dropped and he is back with his friends, stealing to support their drug habits.

Petty theft, for the most part, is as common place as motorists exceeding the posted speed limits. It has no age, economic, social, racial or religious barriers. The impact of shoplifting alone is demonstrated by the annual \$2,000,000,000 loss attributed to shoplifting reported by our nation's retailers. The loss is naturally passed on to the law abiding consumer in higher product costs.

Most retail stores usually have a minimal amount of sales people on their floors and their merchandise is mass-displayed for customer ease in shopping. Given this opportunity, it is far less dangerous to; shoplift, steal a radio from a vehicle, or take a purse from an unattended desk, than to steal a car or hold up a liquor store, and the penalties are much less severe. The minimal penalties imposed on misdemeanor thefts is not a deterrent to the professional adult thief and does not encourage him or her to reform.

TYPICAL SENTENCES

Standard judicial practice on first time theft offenders is to apply a suspended imposition of sentence. This provides the first time offender an opportunity to have the guilty sentence for his theft removed from his criminal record after he or she has satisfactorily completed the judicially imposed probationary period. The standard probationary period, on suspended imposition of sentences, is six months to one year. Most defendants (amateur thieves) take full advantage of suspended imposition of sentences and are never involved in another theft. However, as previously mentioned this document is specifically directed toward the career or habitual criminal.

Members of the Judicial branch of government are not ignorant concerning the professional adult thief. With the majority of the thefts committed by these individuals being misdemeanor crimes, Judge's sentences are limited by the maximum penalty allowable for misdemeanor crimes.

December 8, 1987
Habitual theft offender statute

STATE AND LOCAL LAWS

Current state statutes provide the following maximum penalties for theft and theft related crimes.

<u>Classification</u>	<u>Fine (and/or)</u>	<u>Jail Term</u>
B Misdemeanor.....	..\$1,000.....	0-90 days
A Misdemeanor.....	..\$5,000.....	0- 1 year
C Felony.....	..\$50,000.....	0- 5 years
B Felony.....	..\$50,000.....	0-10 years
A Felony.....	..\$50,000.....	0-20 years

Briefly, a theft involving property or services under \$50 is classified as a B Misdemeanor. Between \$50 and \$499, the theft is classified as an A Misdemeanor. Between \$500 and \$24,999, the theft is classified as a C Felony. A theft involving \$25,000 or more is considered a B Felony. Robbery, a violent theft, appropriately carries the classification of a class A Felony.

Theft ordinances for the Municipality of Anchorage impose a maximum penalty of no more than six months imprisonment and/or a fine of not more than \$1,000.

Painfully evident is the fact that there is no serious potential deterrent against the professional adult thief if he limits his thefts to items under \$500. The habitual adult thief usually concentrates on stealing items that he can quickly sell for between \$5 and \$100 so that he can use the money to support his personal habit which can cost approximately \$150 per day to support. With most people not having immediate access to amounts over \$500, the thief usually takes items that he knows that he can sell for approximately 50% of the retail price. Because of this, the professional thief generally steals items costing under \$500, thereby avoiding the penalties imposed by the felony statutes.

APPREHENSION TO CONVICTION

The cost in apprehending and prosecuting a thief is not a factor in determining the classification of the criminal charge, but is naturally passed on to the consumer/taxpayer in higher costs.

How much does it cost? Anchorage Municipal Prosecutor Jim Wolf estimates that the total cost is approximately \$2,500 per defendant. Why does it cost so much money to prosecute a single person for a "minor" misdemeanor theft? Let me explain.

From the moment of initial observation of a thief, a clock begins ticking. This clock represents the hourly wage paid to all of the people who become involved in the disposition of the thief.

A typical apprehension takes the following form and involves the following people.

December 8, 1987
Habitual theft offender statute

TYPICAL THEFT SCENARIO

A store security officer initiates his observations of a suspected thief. The clock begins ticking. He establishes sufficient probable cause that a theft has been committed and arrests the suspect. Following the arrest, he conducts his interview with the suspect to complete his required documentation of the incident. He then phones a police dispatcher who radios a police officer to respond to the store.

The police officer drives to the store and contacts the store security officer who relates the circumstances of the arrest. That officer then interviews the suspect and witnesses so that he can document the incident in his report to the prosecutor's office.

The police officer leaves the store with the arrested suspect and any evidence, driving the suspect to the Magistrate's office for a bail hearing. The Magistrate establishes the Defendant's bail and the officer drives the Defendant to the jail for booking.

At the jail the Defendant is turned over to a Corrections officer who completes the required documentation concerning the detention.

The police officer returns to the Police Department and completes his report. He then gives his report to a records clerk who distributes the copies of the report for filing and forwards a copy to the Prosecutor's office. Any evidence seized by the officer is given to the Property and Evidence personnel for safeguarding.

At arraignment, the Defendant pleads not guilty before a Judge or Magistrate. A public defender is provided by the Municipality and a trial date is established.

A Municipal Prosecutor reviews the case and determines who will be required to testify in court. Subpoenas are completed and given to an officer to serve on the Complainant and witnesses.

The trial begins and lasts for approximately two days during which the following people are present; the Judge, court recorder, Municipal Prosecutor, Public Defender, six jury members, the reporting police officer, the Complainant and any witnesses.

Completion of the trial essentially stops the clock representing the wages paid to the people involved in the incident.

The estimated \$2,500 cost in processing an apprehended thief is readily apparent and may in fact be higher, given the time and number of people involved to bring an adult thief to justice.

How prevalent is the crime of petty theft? The following statistical data clearly demonstrates the impact of this crime, but keep in mind that the statistics do not reflect the hidden costs of theft offenders.

December 8, 1987
 Habitual theft offender statute

NATIONAL THEFT STATISTICS

The following information was obtained from the U.S. Department of Commerce, Bureau of the Census and represents the most current reported 1985 national statistical information available.

Type of Theft (*)	NUMBER OF OFFENSES IN 1985	PERCENTAGE OF TOTAL	AVERAGE DOLLAR LOSS PER INCIDENT
Total			
Larceny/theft.....	6,453,000.....	100%.....	\$393.00
Pocket picking.....	73,000.....	1.1%.....	\$257.00
Purse snatching.....	78,000.....	1.2%.....	\$206.00
Shoplifting.....	901,000.....	14.0%.....	\$ 85.00
From vehicles.....	1,275,000.....	19.8%.....	\$428.00
Vehicle accessories...	1,079,000.....	16.7%.....	\$283.00
Bicycles.....	528,000.....	8.2%.....	\$159.00
From buildings.....	1,005,000.....	15.6%.....	\$615.00
From coin machines.....	55,000.....	.9%.....	\$130.00
All other.....	1,459,000.....	22.6%.....	\$ unkn

(*)Does not include statistical data for robbery or burglary

MUNICIPALITY OF ANCHORAGE STATISTICS

The following statistical information was compiled from the records of the Anchorage Police Department and represents the reported thefts from January 1986, through August 1987.

Type of Theft (*)	NUMBER OF OFFENSES Jan '86-Aug '87	PERCENTAGE OF TOTAL	AVERAGE DOLLAR LOSS PER INCIDENT
Total			
Larceny/theft.....	17,752.....	100.0%.....	\$346.00
Pocket picking.....	66.....	0.4%.....	\$577.00
Purse snatching.....	54.....	0.3%.....	\$122.00
Shoplifting.....	5,488.....	30.9%.....	\$ 54.00
From vehicles.....	3,011.....	16.9%.....	\$441.00
Vehicle Accessories...	1,701.....	9.6%.....	\$381.00
Bicycles.....	1,418.....	8.0%.....	\$222.00
From buildings.....	1,667.....	9.4%.....	\$343.00
From coin machines.....	126.....	0.7%.....	\$ 32.00
All other.....	4,251.....	23.9%.....	\$690.00

(*)Does not include statistical data for robbery or burglary

In Anchorage the total reported dollar loss attributed to thefts other than robbery or burglary, between January 1986 and August 1987, was \$6,139,425.

December 8, 1987
Habitual theft offender statute

EXAMPLES OF CRIMINAL ACTIVITY AND RELATED SENTENCING

Attached to this document are copies of computer printouts pertaining to several professional thieves. For reasons of privacy their names and AKA's (also known as) have been obliterated. Data from states in the lower 48 is not included.

SUBJECT #1:

<u>Arrest date</u>	<u>Crime</u>	<u>Sentencing Date</u>	<u>Jail Term</u>
8-09-84	Shoplifting	12-11-85	3 days
8-27-84	Fail to Appear	12-11-85	3 days
9-03-85	Shoplifting	12-11-85	5 days
6-11-86	Shoplifting	10-08-86	2 days
8-30-86	Trespass	08-31-86	2 days
8-30-86	Resisting	08-31-86	2 days
9-18-86	Larceny	10-08-86	5 days
12-10-86	DWI	01-08-87	3 days
1-07-87	Driving w/lic Susp.	01-08-87	10 days
1-08-87	Shoplifting	05-06-87	10 days
1-25-87	Larceny	05-06-87	30 days
2-11-87	Obstruct Police	05-06-87	10 days
4-02-87	Shoplifting	05-06-87	40 days
4-20-87	Larceny	05-01-87	15 days
8-20-87	Robbery	(awaiting sentencing)	
8-20-87	Driving w/lic Susp.	(awaiting sentencing)	
8-20-87	Larceny	(awaiting sentencing)	
8-20-87	Obstruct Police	(awaiting sentencing)	

Subject #1 is well documented within the Anchorage Police Department as a person who participates in thefts by distracting store clerks in conversation about products or employment, while his accomplice removes cases of cigarettes or liquor.

With most small convenience stores manned by a single employee, it is a simple matter to escape detection and more often than not, the employee is not aware of the theft until Subject #1 has driven away along with his accomplice.

On 8-20-87, Subject #1 was arrested for robbery in which he drove a reported stolen vehicle while his associate, another repetitive theft offender, utilized a gun to take money from someone who had stopped to help them with their disabled vehicle.

During an interview with Subject #1, he laughed about his cocaine addiction causing him to continually steal and showed no intention to reform. He also bragged about how easy it was to sell what he had stolen to other businesses and "after-hours" houses.

December 8, 1987
Habitual theft offender statute

SUBJECT #2:

<u>Arrest date</u>	<u>Crime</u>	<u>Sentencing Date</u>	<u>Jail Term</u>
5-20-81	Shoplifting	06-02-81	1 day
11-05-82	Cocaine Possession	04-07-83	(no jail term)
2-07-83	Shoplifting	03-22-83	15 days
10-07-83	Conceal Merchandise	08-03-84	30 days
6-18-84	Conceal Merchandise	09-20-84	30 days
8-03-84	Probation Violation	08-03-84	(Prob. extended)
7-14-84	Shoplifting	08-03-84	30 days
12-26-84	Shoplifting	04-04-85	90 days
6-05-86	Drive w/o License	11-08-86	(no jail term)
7-07-86	Fail to Appear	11-08-86	5 days
7-12-86	Conceal Merchandise	11-08-86	12 days
9-08-86	Shoplifting	11-08-86	25 days
11-07-86	Shoplifting	03-04-87	60 days
1-26-87	Larceny	03-25-87	60 days
6-23-87	Reckless Driving	08-31-87	10 days
6-23-87	Drive w/o License	08-31-87	5 days
7-01-87	Conceal Merchandise	08-31-87	70 days
7-10-87	Shoplifting	08-31-87	110 days
7-13-87	Shoplifting	08-31-87	90 days

Subject #2 is well documented within the Anchorage Police Department as a person who has entered stores with plastic bags and boldly proceeded to fill the bag with items such as; lamps, \$150 jogging suits, and other articles of clothing.

Subject #2 has also been known to participate in thefts as a driver while his associates steal; liquor, cigarettes, or clothing. The vehicles driven by Subject #2 are routinely shared by other repetitive theft offenders and quite often the license plates are from other vehicles which inhibits attempts at suspect identification.

My attempts to interview Subject #2 and determine the reason behind his continued thefts have met with negative results with his refusal to talk with me.

Based upon his past cocaine conviction and his known association with persons addicted to cocaine, it is assumed that he is still addicted. Because of this assumption, I believe that his need to support his habit causes him to continually steal.

December 8, 1987
Habitual theft offender statute

SUBJECT #3:

<u>Arrest date</u>	<u>Crime</u>	<u>Sentencing Date</u>	<u>Jail Term</u>
8-04-62	Drunk in Public	08-04-62	(no jail term)
8-10-62	Disorderly Conduct	08-10-62	120 days
4-04-64	Disorderly Conduct	04-04-64	90 days
9-03-74	Disorderly Conduct	09-03-74	(no jail term)
9-03-74	Drinking in Public	09-03-74	(no jail term)
9-17-75	Larceny	09-22-75	5 days
7-16-76	Larceny	07-17-76	15 days
11-13-76	Disorderly Conduct	11-14-76	1 day
5-08-79	Open Container	05-09-79	(no jail term)
8-26-79	Disorderly Conduct	08-29-79	(no jail term)
9-27-81	Larceny	09-28-81	2 days
12-23-82	Shoplifting	02-07-83	5 days
3-17-84	Conceal Merchandise	03-18-84	5 days
4-23-84	Shoplifting	04-24-84	2 days
4-23-84	Probation Violation	04-09-85	8 days
2-03-85	Shoplifting	04-15-85	5 days
2-22-85	Disorderly Conduct	02-23-85	2 days
9-21-86	Trespass	09-22-86	5 days
9-21-86	Shoplifting	09-22-86	10 days
1-25-87	Disorderly Conduct	01-25-87	2 days
5-07-87	Shoplifting	05-08-87	5 days
5-07-87	Trespass	05-07-87	5 days
7-07-87	Shoplifting	08-26-87	15 days
7-07-87	Trespass	08-26-87	15 days

Subject #3 is documented within the Anchorage Police Department as an indigent or "Street Person" who has his food and shelter provided by the Municipality of Anchorage and other welfare agencies.

Apparently not satisfied with the free welfare provided to him, he is known to steal clothing, food, cigarettes, and liquor for his personal consumption.

His method of operation has been well established for over ten years and shows no attempt at reformation.

ADDITIONAL EXAMPLES

In addition to the previously mentioned subjects, I have personal knowledge of the following examples of known repetitive theft offenders.

One suspect repeatedly stole unattended purses from desks in office buildings for the money that they contained. This suspect was very careful to not be seen taking the purses and he was not charged with numerous thefts because there was insufficient evidence. On the first three convictions for theft, the judge ordered that he make restitution to the victims. Within days, following the judicial order, he was luckily caught stealing another purse for money to pay the court ordered restitution.

Another suspect is known to me to have posed as a hospital employee in order to gain access to offices in the hospital so that she can steal from the unattended purses of the hospital staff and patients. She is extremely competent in her craft and rarely gets caught.

December 8, 1987
Habitual theft offender statute

FORGOTTEN THEFTS

Not reflected in the above criminal histories are the theft charges subsequently dropped by the Prosecutor's or DA's office. Often a charge of theft will be dismissed because the Complainant cannot be located to serve with a subpoena to provide testimony against the Defendant.

Another discouraging aspect is the number of cases that I have investigated in which the Complainant has requested to have the matter dropped. All too frequently, I have heard the statement from Complainant's, "It's only a misdemeanor and they (the Judges) won't do anything with them anyway". From personal experience, I know of numerous cases, against habitual adult offenders, that were never presented to the Prosecutor's office because of the preceding statement made by Complainants.

It is obvious that something must be done to overcome the apathy surrounding misdemeanor thefts committed by the professional adult thief. A glimmer of hope must be given to the citizens of Alaska that corrective action will be taken against repetitive theft offenders that will encourage them to reform.

UNDETECTED THEFTS

As previously mentioned there was a reported loss of \$6,139,425 between January 1986 and August 1987, attributed to petty thefts within the Municipality of Anchorage. But, what about the thefts that go undetected? None of us can be naive enough to believe that a thief would be so gullible as to wear a sign saying, "Watch me, I'm going to steal from you".

The professional adult thief is clever and careful while performing his or her's self appointed employment. From interviews with professional thieves, I have been told on several occasions that, "It is an easy way to make a living". Most often these same thieves laugh at the consequences of a misdemeanor conviction.

Proof that a large number of thefts go undetected is obtained from the boasting statements of apprehended professional thieves and supported by inventory accounting conducted by retailers. Stores know how much they spend on their merchandise and following an inventory, the retailer can account for his merchandise on hand or sold. The unaccountable loss (shrinkage) of merchandise is attributed in large part to undetected thefts.

December 8, 1987
Habitual theft offender statute

A PLEA FOR HELP

Attached to this report are letters from the Loss Prevention Managers of; Sears, Pay'n Save, Lamonts, and Carrs. Each letter documents their suspected loss to undetected thefts. All of the letters document concern about the professional adult thief.

Fred Becker Sr., Loss Prevention Manager for Sears in Anchorage, documents that in 1986, Sears lost approximately \$104,040 to undetected thefts (based upon the suspicion that five thefts are committed for every thief apprehended). He also documents the following statements that he has heard thieves make; "What do I have to lose, nothing happens anyway?", "The case will be dismissed.", "I have to play the odds, how often do you think I get away for each time I get caught?", "The money is good." (some talk of \$50,000 to \$100,000 per year).

Betty Wills, Director of Loss Prevention for Lamonts, documents that 50% of their shrinkage is due to undetected thefts (based upon the opinion of Loss Prevention experts). Utilizing the preceding percentage, Fred Becker Jr., Loss Prevention Manager for Lamonts in Anchorage, documents that Lamonts lost \$912,000 to undetected thieves in 1986.

Bill Hughes, Loss Prevention Manager for Pay'n Save, documented that he suspects that the Pay'n Save stores in Alaska lose \$200,000 annually to undetected thieves.

Peter Johnson, Director of Loss Prevention for Carrs, documented that the Carrs stores attribute an annual loss of \$1,000,000 per year from thefts.

PRIOR HABITUAL CRIMINAL STATUTES

Habitual criminal statutes are not new to Alaska. Prior to the 1980 revision of our State's criminal code, two statutes were in existence. One of the statutes, AS12.55.040, titled; "Increased punishment for habitual criminal after conviction of petty larceny or misdemeanor involving fraud", mandated a punishment of imprisonment for not less than one year nor more than ten years which would be considered a felony by the State's current criminal code. A copy of that code is attached to this report.

Following the 1980 revision, the criminal code adopted presumptive sentencing for repetitive felony offenders. No where was there mentioned action against the habitual adult theft offender of misdemeanor level thefts.

December 8, 1987
Habitual theft offender statute

CONCLUSION

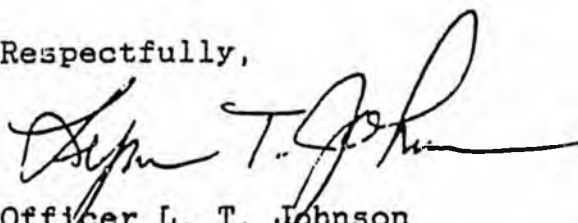
Currently under the criminal code, a person who "borrows" another persons car without permission is sentenced at a misdemeanor level on the first conviction. If that same person is foolish enough to commit the same act after the first conviction, the penalty for the second offense increases to the level of a C felony.

Why then can't the same reasoning behind repetitive vehicle theft be applied to the habitual adult theft offender? I believe that it can and must.

The problem of the professional adult thief is well documented and the conclusion must necessarily address the question, "What can be done?". I am of the opinion that a statute must be enacted that would specifically address harsher action against the habitual adult theft offender.

Without inhibiting the District Attorney's office from exercising established case review procedures, I suggest that following a conviction for theft of any degree, any adult committing a second theft offense (defined by current Title 11 code) within five years of the first conviction should be subject to the penalties of a class C felony.

Respectfully,



Officer L. T. Johnson
Misdemeanor Crimes Investigation Unit
Anchorage Police Department

Attachments

- #1. Copy of prior habitual petty theft statute
- #2. Copies of letters from Loss Prevention Managers
- #3. Copies of criminal histories

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for the nonpayment of the fine, the defendant may make applica- tion in writing to a judge or magistrate in the district where he is imprisoned, setting out his inability to pay the fine, and, after no- tice to the district attorney, the judge or magistrate shall proceed to hear and determine the matter. If on examination it appears to him that the defendant is unable to pay the fine and that he has no property exceeding \$50 in value, except property which is by law exempt from being taken on execution for debt, the judge or mag- istrate shall administer to him the following oath: "I do solemnly swear that I do not have any property, real or personal, to the amount of \$50, except property which is by law exempt from being taken on civil process for debt, and that I have no property in any way conveyed or concealed or any way disposed of for my future use or benefit. So help me God." The judge or magistrate shall dis- charge the defendant after he takes the oath. (§ 8.03 ch 34 SLA 1962; am § 17 ch 8 SLA 1971)

Effect of amendment. — The 1971 amendment inserted "judge or" twice in the first sentence, once in the sec- ond sentence, and once in the last sentence.

Legislative committee report.—For report on ch. 8, SLA 1971 (HB 15), see 1971 House Journal, p. 52.

Constitutionality.—This section, which, upon proof of indigency, limits the sentence in lieu of payment of a fine to 30 days, is unconstitutional. Hood v. Smedley, Sup. Ct. Op. No. 800 (File No. 1406), 498 P.2d 120 (1972).

The injustice under this section that is to be remedied is not the imposition of the fine itself, but the requirement that it be satisfied immediately or be

automatically converted into a jail term. Hood v. Smedley, Sup. Ct. Op. No. 800 (File No. 1406), 498 P.2d 120 (1972).

This section applies to all poor convicts imprisoned solely for nonpay- ment of fines. United States v. Strom- berger, 9 Alaska 689 (1940).

Valid methods for enforcing pay- ment of fines.—For methods which the State of Alaska may employ to serve its valid interest in enforcing the pay- ment of fines, see Hood v. Smedley, Sup. Ct. Op. No. 800 (File No. 1406), 498 P.2d 120 (1972).

Quoted in Williams v. Illinois, 399 U.S. 235, 90 S. Ct. 2018, 26 L. Ed. 2d 586 (1970).

Sec. 12.55.040. Increased punishment for habitual criminal after conviction of petty larceny or misdemeanor involving fraud. A per- son convicted of petty larceny or a misdemeanor in which fraud or intent to defraud is an element who, subsequent to March 9, 1939, has been three times convicted in this state or elsewhere of a crime which would constitute burglary, larceny except changing brands, embezzlement, or obtaining money or property by false pretenses under Alaska law shall be adjudged an habitual criminal, and is punishable by imprisonment for not less than one year nor more than 10 years. (§ 8.04 ch 34 SLA 1962; am § 38 ch 43 SLA 1964)

Effect of amendment. — The 1984 amendment substituted "less than one year nor more than 10 years" for "more than 10 years" at the end of the section.

Section inapplicable to offense committed before October 1, 1964.— See 1964 Op. Att'y Gen., No. 8.

SEARS

October 17, 1987

Officer L.T. Johnson
Anchorage Police Department
4501 South Bragaw
Anchorage, AK 99507

Dear L.T.:

While we both realize that losses suffered by retail merchants can be very hard to evaluate, there are a number of accepted formulas that can be utilized to reach a reasonable conclusion.

Statistics tell us that security departments apprehend anywhere from 1 in 30 to 1 in 10 thieves. I feel that my department ranks a little better and estimate that we may even be as good as 1 in 5. My chart will compare those three figures against my actual apprehensions and dollar recovery for 1985, 1986, and 1987 through August.

	<u>1985</u>	<u>1986</u>	<u>1987</u>
Shoplift Apprehensions	491	609	259
Escaped Detection 1 in 5	1,964	2,436	1,036
Escaped Detection 1 in 10	4,419	5,481	2,331
Escaped Detection 1 in 30	14,239	17,661	7,511
Dollar Recovery	\$29,154	\$26,010	\$23,595
Dollars Lost to Shoplifters 1 in 5	\$116,616	\$104,040	\$94,380
Dollars Lost to Shoplifters 1 in 10	\$262,386	\$234,090	\$212,355
Dollars Lost to Shoplifters 1 in 30	\$845,466	\$754,290	\$684,255

As you can see, the losses that I suffer from shoplifters are considerable. My company has spent well over \$100,000.00 in the same years in shoplifting deterrents. That figure does not include the security department's payroll.

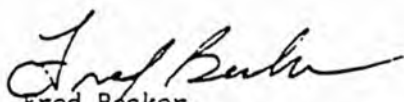
A problem that I consider significant is the "professional" shoplifter or "refund artist". I have personally been involved in, or arrested a number of repeat offenders, some as many as five times; yet each APD officer issues a citation and the suspect is released. The suspects have been quite talkative at times and have said:

- a. "What do I have to loose, nothing happens anyway."
- b. "The case will be dismissed."
- c. " I have to play the odds - how often do you think I get away for each time I get caught."
- d. "The money is good." (Some talk of \$50,000. to \$100,000. a year.)

Officer L.T. Johnson
Page 2
October 17, 1987

I feel that when a person is arrested the third time for shoplifting he should be charged with a Class C Felony. Certainly this will have a significant effect on the professional thieves. Perhaps if they see jail time in front of them, shoplifting will lose some of its' allure. Maybe Alaska will become less comfortable as well, and they will leave the state.

Sincerely,


Fred Becker
Loss Prevention Manager

ml

Lamonts

THE FAMILY CLOTHING STORE

350 Richards Rd. Bellevue, WA 98005
(206) 644-5700

November 4, 1987

To Whom It May Concern:

Our overall shrinkage company-wide was .3 lower than our Alaskan stores.

In the opinion of Loss Prevention experts, 50% of store shrinkage can be attributed to external theft. The further breakdown being 25% paper error and 25% due to employee theft.

We find we have several repeat offenders in the Anchorage area. Sometimes the same individuals are arrested at all three stores.

Any legislation to help combat repeat offenders would be of benefit to the entire community.

Sincerely,



Betty Wills
Director of Loss Prevention
Lamonts Apparel

BW:sk

Lamonts

THE FAMILY CLOTHING STORE

OFFICER L. T. JOHNSON
ANCHORAGE POLICE DEPT.
4501 SOUTH BRAGAW
ANCH. AK. 99507

SIR:

LAMONTS AS A CORPORATION HAS SUSTAINED SUCH GREAT LOSSES TO EXTERNAL THEFT THAT ONLY THIS YEAR HAVE WE HAD TO GO FROM A CUSTOMER ORIENTED DETECT SYSTEM (TAGGED CLOTHING) TO A IN HOUSE LOSS PREVENTION DEPARTMENT. AS NOTED IN THE LETTER FROM THE DIRECTOR OF LOSS PREVENTION FOR LAMONTS LAST YEAR LAMONTS ATTRIBUTED 50% OF ALL SHRINDAGE TO EXTERNAL THEFT, SHOPLIFTERS. FOR THE ANCHORAGE AREA ONLYSHRINKAGE FIGURES ARE AS SHOWN:

1986 ALONE

UNIVERSITY CENTER	SHRINKAGE LOSSES AMOUNTED TO	\$ 583,952
NORTHWAY MALL	SHRINKAGE LOSSES AMOUNTED TO	\$ 697,204
DIAMOND MALL	SHRINKAGE LOSSES AMOUNTED TO	\$ 542, 930
	ANCHORAGE BOWL LOSSES TOTALED	\$ 1,924,086

TO ATTRIBUTE ONLY 50% OF THOSE LOSSES TO EXTERNAL LOSS WOULD GIVE YOU A FIGURE OF OVER \$912,000 LAMONTS LOSS TO SHOPLIFTERS IN 1986 ALONE, IN THE ANCHORAGE BOWL AREA.

AS LOSS PREVENTION MANAGER FOR THE UNIVERSITY CENTERFOR THE LAST NINE MONTHS AND HAVING WORKED LOCALLY FOR THE PAST FOUR YEARS, I DO NOT SEE THE PROBLEM STEMMING FROM THE FIRST TIME OFFENDERS, OR THE ONES WHO JUST MADE A BAD JUDGEMENT DECISION, THE LOSSES FROM WHAT I HAVE SEEN AND FROM THOSE I HAVE ARRESTED ARE TAKING PLACE BY THE REPEAT OFFENDERS. THOSE ARE THE ONES WHO HAVE BEEN PLAYING THE ODDS OR HAVE BEEN THROUGH THE SYSTEM AND SEEN THAT THEY CAN HAVE THE SYSTEM WORK IN THIER FAVOR. SO OFTEN I HAVE HEARD SOMEONE I HAVE ARRESTED STATE "THIS WILL JUST GET DISSESSED, JUST LIKE LAST TIME" OR "I AM JUST DOING IT FOR THE MONEY, BECAUSE IT IS SO GOOD." I FEEL THAT ACTION NEEDS TO BE DIRECTED TO THESE REPEAT OFFENDERS, I ALSO BELIEVE THAT BY MAKING THE THIRD TIME OFFENSE A CLASS C FELONY THIS WOULD AFFECT AND IN FACT DETTER THIER ACTIVITY. SOMEONE WHO IS ARRESTED FOR THIER THIRD OFFENSE WOULD BE IN FACT CN THIER SIXTYITH SHOPLIFT ATTEMPT (FIGURES

Lamonts

THE FAMILY CLOTHING STORE

SHOW THAT YOU WILL ARREST SOMEONE ONLY ONE IN TWENTY SHOPLIFT ATTEMPTS). THAT I THINK WOULD CONSTITUTE A PROBLEM SHOPLIFTER, AND MAYBE BY SEEING SOME TYPE OF REAL DETERMENT IN FRONT OF THEM SUCH AS YOUR INTENT ON MAKING THE THIRD TIME OFFENSE A CLASS C FELONY, WE AS MERCHANTS MIGHT SEE OUR SHRINKAGE FIGURES SHRINK.

SINCERELY

A handwritten signature in cursive script that reads "Frederick C. Becker". The signature is written in dark ink and is positioned above the typed name.

FREDERICK C. BECKER V
LOSS PREVENTION MANAGER
LAMONTS CLOTHING APPAREL



PAY 'n SAVE STORES INC.

A Subsidiary of PAY 'n SAVE INC.

Alaska Regional Offices: Woodland Business Park

3710 Woodland Drive • Suite 2100

ANCHORAGE, ALASKA 99517-2564

Phone (907) 243-4498

October 23, 1987

Anchorage Police Department
Officer LT. Johnson
4501 S. Bragaw
Anchorage, Alaska 99507

Dear Officer Johnson,

Pay'n Save Stores Incorporated, like any other retailer has felt the adverse impact on profitability that shoplifting has. By nature of our volume and numerous locations throughout the state, we probably have felt it worse than most.

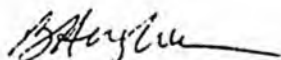
Especially damaging are those adults who are repeat shoplifters. The adult men and women who have been repeatedly caught are the same adults who are repeatedly successful at causing losses. Although the actual percentage of adult repeat offenders is low, this single group is, in my opinion, the most damaging. This group does not seem to be attracted toward small dollar items, rather these folks seem to be attracted toward TV's, VCR's and shopping bags full of compact disc recordings. Additionally, there appears to be a tendency for repeat offenders to be more violent. Although I can not site an exact figure which Pay'n Save loses due to undetected shoplifters, however, based upon my experiences I would estimate a figure in excess of \$200,000.00 annually.

Pay'n Save gives full support to your effects to amend the criminal code to make it a felony offence for shoplifting based upon repeat convictions.

Should you need additional information, have questions or require additional support, please feel free to contact me.

Best wishes for your success.

Sincerely,


Bill Hughes
Loss Prevention Manager
Pay'n Save/Alaska

CARRS

QUALITY CENTERS

1341 Fairbanks Street

Anchorage, Alaska 99501

(907) 277-6639

November 25, 1987

Officer L. T. Johnson
Misdemeanor Follow-Up
Anchorage Police Department
4501 South Bragaw
Anchorage, Alaska 99507


Dear Sir:

It is my understanding that a proposal has been made to draft legislation making third-time shoplift offenses a felony. We at Carrs wholeheartedly support such a proposal.

We have arrested over 1,000 shoplifters so far this year. Literally dozens of these people are repeat offenders back on the street after receiving relatively minor sentences. It is our belief that third time and greater offenders should receive stiffer sentences.

Our estimated shoplifting losses are in the neighborhood of a million dollars a year. Repeat offenders comprise a disproportionate share of that dollar loss. Consumers should not be made to bear the burden. Let's send the message that shoplifting is a serious property crime offense and repeaters will face serious sanctions.

Sincerely,



M. Peter Johnson, Jr.
Director of Loss Prevention

MPJ/tb

RETRACOR TERMID: YAV3

CRIMINAL HISTORY

12/03/87 17:31

PERSON NAME: [REDACTED]

AST NUMBER: 122290

ID/LIC NUMBER: 6263474

FBI NUMBER: 191436H

ARRESTING AGENCY: DCCA DATE: 08/20/1987 CHARGE: 4899 OBSTRUCT POLICE

CONVICTING COURT: DATE: CHARGE:

COURT DOCKET: POS ID: Y DISPOSITION:

CONDITION:

SENTENCE	YEARS	DAYS	AMOUNT	DATE TO COMPLETE
* CONTACT R&I. SOME CRIMINAL RECORDS DO NOT MEET OCH CRITERIA *				

FFS CONVICTIONS

* AT END *

CRIMINAL HISTORY OF SUBJECT #2

PST0300P TERMID: YAV3 BASIC PERSON RECORD 12/03/87 12:41:0

PERSON NAME: ██████████
 AKA: ██████████
 DOB: 11/18/1954 SSN: 401-65-0264 * SEX: M
 HEIGHT: 6 01 WEIGHT: 175 HAIR: BLK EYE COLOR: BR
 BIRTH PLACE CITY: COLUMBUS STATE: GA COUNTRY: ST LAST CHG
 MAILING ADDR: 1200 COLUMBINE -D-17 CITY/COUNTRY ANCHORAGE AK 11/02/19
 RES ADDR: 1200 COLUMBINE -D-17 ANCHORAGE AK 08/24/19
 ID/LIC NUM: 1001613 STATUS: SUSPEND/BR/TEST

CLASS EXPIRES CLASS EXPIRES

RESTRICTIONS:

PF2 MULT PER PF7 DRIV HST PF8 CRIM HST PF9 CITN UPD PF10 NCIC W/W PF12 DIS W/W

PST0200P TERMID: YAV3 WANT/WARRANT INFORMATION 12/03/87 12:41:11

PERSON NAME: ██████████
 (MORE) AKA: ██████████
 DOB: 11/18/1954 SSN: 401-65-0264 * SEX: M
 WEIGHT: 175 HEIGHT: 6 01 HAIR: BLK
 EYE COLOR: BRO RACE: B SKIN: MED
 ID/LIC NUM: 1001613 MARKS:
 FBI NO: 313167NE AST NO: 99912 TEMPERAMENT:
 DR LIC NO: STATE: COUNTRY:

* * * * * WANTS/WARRANTS * * * * *

C.O. NUM./	WARRANT SUB TYPE/	OFFENSE DESCRIPTION
C.O. DATE	BAIL AMT AGENCY ID	OPTIONAL COMMENTS
3AN87-727	LOCATE	LOC-NOTIFY AGENCY
03/25/87	ANCH CORR 411 W 4TH SUITE 1 D	
	ON DEP OF CORR SUPERVISION UNTIL 032489	
	PLS NOTIFY LA20 OF CONTACT RESULTS ASAP	

PF2 MULT PERSON PF10 NCIC INQUIRY PF12 DISPLAY ALIAS MORE.

SPD000P TERMID: YAV3 WANT/WARRANT INFORMATION 12/03/87 12:41:23.

PERSON NAME: [REDACTED]
(MDSE) AKA: [REDACTED]
DOB: 11/12/1954 SSN: 401-65-0264 * SEX: M
***** WANTS/WARRANTS *****
C.O. NUM./ WARRANT SUB TYPE/ OFFENSE DESCRIPTION
C.O. DATE BAIL AMT AGENCY ID (& OPTIONAL COMMENTS)
INFO LOCATE ONLY - NO CONTACT MISSING PERSON-ADULT
08/26/87 ANCH POLICE DEPT
AKA CLAUDE CLAYTON SSN 600 65 0264 ID 1001613 HAS FELONY
WARRANT AND 2 MIED WARRANTS

PF2 MULT PERSON PF10 NCIC INQUIRY PF12 DISPLAY ALIAS * AT END *

SPD000P TERMID: YAV3 PERSON ALIAS NAMES 12/03/87 12:41:47.

PERSON NAME: [REDACTED]
DOB: 11/12/1954
SSN: 401-65-0264
AKA: 1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. [REDACTED]
8. [REDACTED]

PF2 MULT PERSON * AT END *