

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8590 HOUSE • JUDICIARY •

NOTES TO DECISIONS

The safe and proper rule of construction of mechanic's lien statutes is that, while the remedial portions of the statutes should be liberally construed, with a view to avoid defeating the purpose of the statute, yet these parts upon which the right to the existence of a lien depends, being in derogation of the common law, should be strictly construed. *Sullens & Hoss, Inc. v. Farvour*, 14 Alaska 492, 117 F. Supp. 535 (D. Alaska 1954).

Applied in *Fjeidahl v. Homer Co-Op. Ass'n*, 11 Alaska 112 (1946); *Stephenson v. Ketchikan Spruce Mills, Inc.*, 412 P.2d 496 (Alaska 1966).

Quoted in *Mitchell v. Beaver Dredging Co.*, 8 Alaska 566 (1935); *Gleason v. Diamond*, 9 Alaska 621 (1939); *Clay v. Sandal*, 369 P.2d 890 (Alaska 1962); *Moores v. Alaska Metal Bldgs., Inc.*, 448 P.2d 581 (Alaska 1968).

Chapter 40. Fraudulent Transfers, Revocations, and Trusts.

Section

- 10. Invalidity generally
- 20. Invalidity as against purchasers
- 30. Purchasers with notice
- 40. Invalidating effect for revocation, determination or alteration
- 50. Conveyance in exercise of power to revoke and reconvey
- 60. Conveyance before accrual of right to execute power of revocation
- 70. Requirement of writing for grant or assignment of trust

Section

- 80. Invalidity against heirs, successors, representatives, or assigns
- 90. Fraudulent intent question of fact
- 100. When title of purchaser for value not affected
- 110. Invalidity of transfers of personal property in trust
- 120. "Land" and "estate and interest in land" defined
- 130. "Conveyance" defined

Sec. 34.40.010. Invalidity generally. A conveyance or assignment, in writing or otherwise, of an estate or interest in land, or in goods, or things in action, or of rents or profits issuing from them or a charge upon land, goods, or things in action, or upon the rents or profits from them, made with the intent to hinder, delay, or defraud creditors or other persons of their lawful suits, damages, forfeitures, debts, or demands, or a bond or other evidence of debt given, action commenced, decree or judgment suffered, with the like intent, as against the persons so hindered, delayed, or defrauded is void. (§ 22-4-1 ACLA 1949)

NOTES TO DECISIONS

Common law. — Under the common law, a transfer by an insolvent debtor to pay or to secure an antecedent debt has never been treated as a transfer to hinder, delay, or defraud creditors, although it is self-evident that other creditors are necessarily hindered and delayed by such a transfer. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

At common law it was not illegal for a debtor to pay one of his creditors in full,

even though he did not have enough left to pay his other creditors in full or even in part. Such a payment was not, and is not now, a fraudulent conveyance. The payment is merely the performance of an existing legal duty. Nor is it illegal for the debtor to transfer property as security for an existing debt; the value of the property in excess of the debt remains available to other creditors. The conveyance of property to a creditor in satisfaction of an ex-

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iating debt is a fraudulent conveyance only in case its value is in excess of the debt and the purpose of the debtor is to keep that excess out of the hands of his other creditors. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

This section provides Alaska's basic prohibition against transactions in fraud of creditors. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

And AS 34.40.090 complements this basic prohibition by providing that the existence of fraudulent intent is a question of fact. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

The court never presumes fraud. *Matheson v. Patenaude*, 8 Alaska 238 (1930).

Under normal circumstances, fraud will not be presumed. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

And the burden of proof under this section is on the plaintiff. *Matheson v. Patenaude*, 8 Alaska 238 (1930).

Fraud is established by preponderance of evidence; clear and convincing proof is not required. *Gabaig v. Gabaig*, 717 P.2d 836 (Alaska 1986).

AS 09.25.060 qualifies the provisions of this section and AS 34.40.090 by erecting a prima facie presumption of fraud in cases where a sale of personal property is not "accompanied by the immediate delivery and the actual and continued possession" by the vendee. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

Where the creditor offered a satisfactory explanation for his failure to take more overt steps in attempting to reestablish possession of a vessel, and where he further showed that the quitclaim deed delivered by the debtor was issued in exchange for valuable consideration, the trial court was unjustified in relying on the statutory presumption to invalidate as fraudulent the conveyance in question. Under these circumstances, the trial court should have considered the validity of the transaction as a question of fact pursuant to this section and AS 34.40.090. Accordingly, the court should have ruled on the issue whether, in the conveyance of the vessel to the creditor, there was an actual, as opposed to a presumed intent to hinder, delay, or defraud other creditors. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

The badges of fraud here are as clearly apparent as they are multitudinous. The compelling ones in terms of long-recognized indicia of fraud are: (1) The consideration is inadequate. (2) The transfer of the property was in anticipation of a pending suit. (3) The transferor debtor was insolvent. (4) There was a failure to record the instrument within a reasonable length of time. (5) The conveyance was a transfer of all or substantially all the debtor's property. (6) The retention of possession of the premises by the grantor from the date of the execution of the deed stands unexplained. (7) The transfer so completely depleted the assets of the debtor that his creditor, the plaintiff, has thereby been hindered and delayed in recovering any part of his judgment. (8) The relationship of the parties becomes an additional badge of fraud when there also appear other circumstances which of themselves incite distrust and suspicion. *First Nat'l Bank v. Enzler*, 537 P.2d 517 (Alaska 1975).

When a conveyance is alleged to have been made fraudulently, the court may consider whether the disparity between the true value and the price paid is so great as to shock the conscience and strike the understanding at once with the conviction that such transfer never could have been made in good faith. *Gransbury v. United Bldg. Supply, Inc.*, 531 P.2d 1247 (Alaska 1975).

Badges of fraud at most are only evidentiary facts tending to prove the ultimate fact, which is that fraud was intended. *Matheson v. Patenaude*, 8 Alaska 238 (1930); *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

Badges of fraud must be viewed within the context of each particular case, and, where their presence is satisfactorily accounted for, or where their existence is not inconsistent with a construction of the transaction as a valid one, they deserve to be accorded little weight. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971); *First Nat'l Bank v. Enzler*, 537 P.2d 517 (Alaska 1975).

Where the totality of the circumstances surrounding a transaction has failed to indicate fraud, or where a strong showing of good faith in a transaction has been made, courts have frequently discounted the significance of badges of fraud as indicia of the character of the transaction. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

Evidence of post-transfer events is

clearly admissible to show intent at an earlier point in time, although the probative value of the evidence decreases as the elapsed time increases. *Gabaig v. Gabaig*, 717 P.2d 835 (Alaska 1986).

Hasty and unexplained departure of seller after sale of lots as evidence that conveyance was fraudulent. — See *Gransbury v. United Bldg. Supply, Inc.*, 531 P.2d 1247 (Alaska 1975).

Decree only avoids conveyance as to creditor who is party. — When fraud has been established as to one creditor, it has not the effect to vitiate the conveyance as to all other creditors. The decree in such a suit merely avoids the conveyance as to the plaintiff therein, and as to all the other creditors it remains as though no proceedings had been taken. *Ellis v. Reed*, 238 F. 341 (9th Cir. 1917).

Debtor-creditor relationship necessary. — The acts condemned by this section are, by the terms of the statute, dependent upon the existence of debtor-creditor relationship. *First Nat'l Bank v. Enzler*, 537 P.2d 517 (Alaska 1975).

A contingent debt may be the basis of a debtor-creditor relationship under this section. *First Nat'l Bank v. Enzler*, 537 P.2d 517 (Alaska 1975).

Although the liability for a debt in the interim period before the collateral is sold at an execution sale is contingent in that it will only arise should the collateral sell for less than the amount owing, this fact does not preclude the present existence of a debt owed by the contingently liable party to the secured creditor. *First Nat'l Bank v. Enzler*, 537 P.2d 517 (Alaska 1975).

Distinction between transfer by contingent debtor and transfer by debtor anticipating suit. — In the context of proving an intent to defraud creditors, there must be a distinction made between the transfer of property by a contingent debtor who, while aware of the possibility of owing a debt at some future time, reasonably concludes that that possibility will not arise, and the debtor who believes a suit is in the offing and who, in anticipation thereof, conveys property. The bona fide nature of the transfer in the former case is significantly less subject to suspicion than in the latter. *First Nat'l Bank v. Enzler*, 537 P.2d 517 (Alaska 1975).

A preferential transfer does not constitute a fraudulent conveyance. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

A preferential payment to one of several

creditors by an insolvent debtor is not in itself an unlawful or fraudulent act. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

In the absence of bankruptcy laws or express statutory prohibition, an insolvent debtor may convey property to one creditor even if it means that the debtor's assets will thereby be depleted, and the claims of other creditors will be defeated. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

Barring the applicability of bankruptcy laws or similar statutory provisions insuring equal distribution of an insolvent debtor's assets among all general creditors, there is nothing improper or unlawful about a preference being given to one creditor, even if it means that other creditors will be precluded from recovery. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

A bona fide preference of one creditor over others will be upheld even where the debtor is or will be rendered insolvent, or where other creditors are threatening suit, or where the preferred creditor is aware of the debtor's insolvency. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

For a list of cases upholding the right of a debtor to prefer one among his creditors, see *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

The rule against fraudulent conveyances may be availed of by a single creditor. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

Effect of permitting single creditor to set aside preferential transfer. — To allow a single creditor, acting in his own interest alone, to set aside a preferential transfer as one in fraud of creditors would amount to substituting that creditor as the person preferred in place of the creditor chosen by the debtor. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

Conveyance of marital property in anticipation of divorce. — Husband's secret conveyance of his interest in a bar to his brother three days after receiving service of divorce papers was intended to defraud the wife of her fair share of a primary marital asset. *Pattee v. Pattee*, 744 P.2d 658 (Alaska 1987). See also *Gabaig v. Gabaig*, 717 P.2d 835 (Alaska 1986).

Transfer by husband of all assets to wife held not void under this section. — See *First Nat'l Bank v. Enzler*, 537 P.2d 517 (Alaska 1975).

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Applied in Rollins v. Leibold, 512 P 2d 937 (Alaska 1973).

Quoted in Dean v. Firor, 681 P 2d 321 (Alaska 1984).

Collateral references. — 37 Am. Jur. 2d, Fraudulent Conveyances, § 1 et seq. 37 C.J.S., Fraudulent Conveyances, § 1 et seq.

Right to relief as affected by fact that parties are not in pari delicto. 7 ALR 150.
Estoppel to claim invalidity. 9 ALR 358.
Fraudulent conveyance as cloud on title. 78 ALR 250.

Liability of one who assists or encourages in making fraudulent reasonable to a third person. 112 ALR 1250.

Purpose to defraud as defense to suit to recover property. 117 ALR 1464.

Right as between creditors of grantor or transferor and those of grantee or transferee. 148 ALR 520.

Right of creditor to set aside transfer of property as fraudulent as affected by the fact that his claim is barred by statute of limitations. 14 ALR2d 598.

Sec. 34.40.020. Invalidity as against purchasers. A conveyance of an interest in land, or the rents or profits of it, or a charge upon land or upon the rents and profits thereof, that is made or created with the intent to defraud prior or subsequent purchasers for a valuable consideration of the land, rents, or profits, as against these purchasers, is void. (§ 22-4-2 ACLA 1949)

NOTES TO DECISIONS

Applied in Crossly v. Champion Min. Co., 1 Alaska 391 (1901).

Sec. 34.40.030. Purchasers with notice. A conveyance or charge is not considered fraudulent in favor of a subsequent purchaser who has actual or legal notice of it at the time of the purchase, unless it appears that the grantee in the conveyance, or person to be benefited by the charge, was privy to the fraud intended. (§ 22-4-3 ACLA 1949)

NOTES TO DECISIONS

Applied in Crossly v. Champion Min. Co., 1 Alaska 391 (1901).

Cited in Walker v. Fairbanks Inv. Co., 268 F.2d 48 (9th Cir. 1959).

Collateral references. — 37 Am. Jur. 2d, Fraudulent Conveyances, §§ 152-154.

Sec. 34.40.040. Invalidating effect of provision for revocation, determination, or alteration. A conveyance or charge of or upon an estate or interest in land containing a provision for the revocation, determination, or alteration of the estate or interest, or a part of it, at the will of the grantor, is void as against subsequent purchasers from the grantor for a valuable consideration of an estate or interest liable to be revoked or determined, although the estate or interest is not expressly revoked, determined, or altered by the grantor by virtue of

the power reserved or expressed in a prior conveyance or charge. (§ 22-4-4 ACLA 1949)

Sec. 34.40.050. Conveyance in exercise of power to revoke and reconvey. Where a power to revoke a conveyance of land, or the rents and profits from it, and to reconvey the land or the rents and profits is given to a person other than the grantor in the conveyance, and the person subsequently conveys the land, rents, or profits to a purchaser for a valuable consideration, the subsequent conveyance is valid in the same manner and to the same extent as if the power of revocation were recited in it and the intent to revoke the former conveyance expressly declared. (§ 22-4-5 ACLA 1949)

Sec. 34.40.060. Conveyance before accrual of right to execute power of revocation. If a conveyance to a purchaser under either AS 34.40.040 or 34.40.050 is made before the person making the conveyance is entitled to execute the power of revocation, it nevertheless is valid from the time the power of revocation actually vests in the person, in the same manner and to the same extent as if then made. (§ 22-4-6 ACLA 1949)

Sec. 34.40.070. Requirement of writing for grant or assignment of trust. A grant or assignment of an existing trust in land, goods, or things in action, unless the grant or assignment is in writing, subscribed by the person making it, or a lawfully authorized agent of the person, is void. (§ 22-4-7 ACLA 1949)

Sec. 34.40.080. Invalidity against heirs, successors, representatives, or assigns. A conveyance, charge, instrument, or proceeding declared by law to be void as against the creditors, purchasers, or mortgagees is equally void as against the heirs, successors, personal representatives, or assigns of the creditors, purchasers, or mortgagees. (§ 22-4-8 ACLA 1949)

Sec. 34.40.090. Fraudulent intent question of fact. The question of fraudulent intent in a case arising under the provisions of this chapter is a question of fact, and not of law. (§ 22-4-9 ACLA 1949)

NOTES TO DECISIONS

AS 34.40.010 provides Alaska's basic prohibition against transactions in fraud of creditors. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

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tion of fact. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

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Fraud is not presumed. — Fraud, not shown by the evidence to have existed, will not be presumed. *Courtney v. Brenneman*, 6 Alaska 233 (1920).

Under normal circumstances, fraud will not be presumed. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

The intent to defraud will not be presumed. Rather, it is a question of fact usually to be proved by circumstantial evidence. *First Nat'l Bank v. Enzler*, 537 P.2d 517 (Alaska 1975).

General allegations of fraud must be supported by specific allegations. — The general words of fraud and conspiracy can have no more force and effect towards rendering a mortgage void than the truth as disclosed by the specific allegations will warrant. *Schwabacher Bros. Co. v. Palmer*, 4 Alaska 75 (1910).

Applied in *Matheson v. Patenaude*, 8 Alaska 238 (1930).

Sec. 34.40.100. When title of purchaser for value not affected. The provisions of AS 34.40.010 and 34.40.070 — 34.40.130 may not be construed in any manner to affect or impair the title of a purchaser for a valuable consideration unless it appears that the purchaser had previous notice of the fraudulent intent of the purchaser's immediate grantor, or of the fraud rendering void the title of the grantor. (§ 22-4-10 ACLA 1949; am § 52 ch 21 SLA 1985)

Cross references. — For provisions relating to purchasers from distributees of an estate, see AS 13.16.680.

Collateral references. — 37 Am. Jur. 2d, *Fraudulent Conveyances*, § 152 et seq.

Sec. 34.40.110. Invalidity of transfers of personal property in trust. A deed of gift, a conveyance, or a transfer or assignment, oral or written, of goods and chattels or things in action made in trust for the person making the deed, conveyance, transfer, or assignment is void as against the creditors, existing or subsequent, of the person. (§ 22-4-13 ACLA 1949)

NOTES TO DECISIONS

Chattel mortgage allowing mortgagor to treat property as own is void. — If a chattel mortgage is coupled with a condition or agreement that the mortgagor may treat the goods as if he were the owner of them, that is, may sell them at his option and receive the proceeds to his own use, such condition or agreement

avoids the mortgage. In legal effect it is a sham, a nullity, a mere shadow of a mortgage, only calculated to ward off other creditors, and is a conveyance in trust for the benefit of the person making it, and therefore void as against creditors. In re *Minkovc*, 6 Alaska 68 (1918).

Sec. 34.40.120. "Land" and "estate and interest in land" defined. The term "land" as used in AS 34.40.010 and 34.40.070 — 34.40.130, shall be construed as coextensive in meaning with "lands, tenements, and hereditaments," and the term "estate and interest in land" shall be construed to embrace every interest, freehold, and chattel, legal and equitable, present and future, vested and contingent in land as defined in this section. (§ 22-4-11 ACLA 1949)

Collateral references. — 28 Am. Jur. 2d, Estates, §§ 1, 2.

Sec. 34.40.130. "Conveyance" defined. The term "conveyance," as used in AS 34.40.010 and 34.40.070 — 34.40.130, shall be construed to embrace every instrument in writing except a last will and testament, of whatever form and by whatever name it may be known in law, by which an estate or interest in lands is created, aliened, assigned, or surrendered. (§ 22-4-12 ACLA 1949)

Chapter 45. Unclaimed Property.

Article

1. Consignees and Bailees (§§ 34.45.010 — 34.45.080)
2. Personal Property Presumed Abandoned; General Rules (§§ 34.45.110 — 34.45.120)
3. Conditions Leading to Presumption of Abandonment of Particular Types of Personal Property (§§ 34.45.140 — 34.45.260)
4. Reporting and Disposition of Personal Property (§§ 34.45.280 — 34.45.340)
5. Administration of Abandoned Property (§§ 34.45.360 — 34.45.430)
6. Enforcement and Penalties (§§ 34.45.450 — 34.45.470)
7. General Provisions (§§ 34.45.700 — 34.45.780)

Article 1. Consignees and Bailees.

Section

- 10. Record of consignee or bailee
- 20. Consignee's or bailee's notice to owner
- 30. Sale
- 40. Presale inventory and notice

Section

- 50. Order of sale
- 60. Sale at public auction
- 70. Proceeds of sale
- 80. Sale of perishable property

Revisor's notes. — Pursuant to § 3, ch. 24, SLA 1968, in AS 34.45.010 — 34.45.090 "district magistrate" was changed to "district judge" and "deputy magistrate" was changed to "magistrate".

Sec. 34.45.010. Record of consignee or bailee. When personal property is consigned to or deposited with a forwarding merchant, wharf, warehouse, or tavern keeper, or the keeper of a depot for the reception and storage of trunks, baggage, merchandise, or other personal property, the consignee or bailee shall immediately record a

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January 31, 1995

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Hon. Pete Kott, Chair
House Labor & Commerce Committee
Alaska State Legislature
Room 432, State Capitol
Juneau, Alaska 99801-1182

HAND-DELIVERED

Re: HB 72 (Uniform Fraudulent Transfer Act)

Dear Representative Kott:

I understand that HB 72, proposing the Uniform Fraudulent Transfer Act, is scheduled for a hearing in your committee tomorrow, and I wanted to express my strong support for this bill. I urge your committee's favorable action on it.

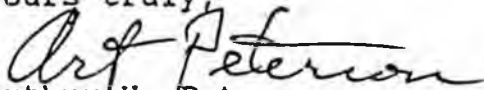
HB 72 updates Alaska law that was borrowed from Oregon for Alaska back in the 1800's. We did not even enact the 1918 predecessor to this Uniform Act (the Uniform Fraudulent Conveyance Act).

By enacting HB 72, Alaska will finally update its law, making significant improvements in the process, and will join at least 33 other states in enacting this modern version. The bill's handling of fraudulent transfers will help assure the smooth flow of business transactions in the state and between this state and other states.

If you have any question about it, please let me know. I should mention that, among Alaska's uniform law commissioners, Jerry Kurtz (276-6100) is the most knowledgeable about HB 72.

Thank you.

Yours truly,


Arthur H. Peterson
Uniform Law Commissioner
for Alaska

cc: Hon. Brian Porter, Chair
House Judiciary Committee

Rest of Alaska's ULC Delegation

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

January 23, 1995

Hon. Brian Porter, Chair
House Judiciary Committee
State Capitol, Room 118
Juneau, Alaska 99801-1182

Re: Material on Uniform Fraudulent
Transfer Bill (HB 72)

Dear Representative Porter:

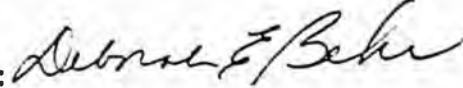
Per your staff's request, enclosed are informational materials on HB 72 concerning the Uniform Fraudulent Transfer Act. The bill is modeled after the uniform law adopted by the National Conference of Commissioners on Uniform State Laws.

As you know, this bill would bring Alaska's law into conformity with 33 other states that have enacted these provisions of the uniform Act. Also, since Alaska law has not been updated for many years, this bill would update our state law to handle significant problems with our existing statutes concerning the sale or exchange of personal property done fraudulently to avoid payment to creditors.

If you need additional information, please let me know.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
Deborah E. Behr
Assistant Attorney General

RECEIVED

JAN 23 1994

Rep. Brian Porter

DEB:cl

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FAX (907) 465-6735

MEMORANDUM.

RECEIVED

AUG 30 1993

State of Alaska

Department of Law

TO Deborah Behr
Assistant Attorney General
Legislation/Regulation Section

BURR, PEASE & KURTZ
DATE

August 24, 1993

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SUBJECT

UFTA

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Department of Law

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FROM

Mary Ellen Beardsley *MEB*
Assistant Attorney General
Commercial Section-Anchorage

You have asked me to comment on the Uniform Fraudulent Transfer Act ("UFTA"), and whether it might be beneficial for Alaska to adopt the UFTA. After reviewing the material you provided as well as AS 34.40.010 - .130, Alaska's fraudulent conveyances statute, and the headnotes of cases dealing with fraudulent conveyances in Alaska, I conclude that the UFTA would be an improvement over Alaska's existing law.

As noted in Summers v. Hagen, ___ P.2d ___, No. 3961, May 28, 1993, at fn. 5 pg. 8, Alaska has not adopted the predecessor to the UFTA, the Uniform Fraudulent Conveyance Act ("UFCA"). Alaska's law was adopted in 1949, and has seen very little change since its adoption. However, since 1949, many changes in both state and federal law have occurred, particularly in the area of bankruptcy, and relationships between creditors and debtors have become more complex. Debtors, in particular, have found new and more imaginative ways of hiding assets from their creditors.

The Alaska law provides in general that a conveyance, whether in writing or otherwise, of real or personal property will be void if it was made "with the intent to hinder, delay or defraud creditors." (Emphasis added) AS 34.40.010. The cases cited under this statute (as well as AS 34.40.090) indicate that the existence of this fraudulent intent is a question of fact, that the court will never presume fraud and that the burden of proof is upon the plaintiff. This burden of proof can be extremely hard to prove. The only exception to this is found in AS 09.25.060 which creates a prima facie presumption of fraud when personal property is sold and the vendee does not take immediate delivery and does not have continued possession.

The UFTA, on the other hand, not only considers a transfer fraudulent if the debtor made the transfer with the intent to hinder, delay, or defraud any creditor (whether present or future), but, in certain cases, it mandates that the intent exists if the facts are as stated in the UFTA. The UFTA also sets out numerous non-exclusive factors to be considered by the court when

LSK DEPARTMENT OF LAW

RECEIVED

OFFICE OF THE ATTORNEY GENERAL

AUG 30 1993

BURR, PEASE & KURTZ

August 26, 1993

REPLY TO:

1031 W 4TH AVENUE SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550
FAX: (907) 276-3697

KEY BANK BUILDING
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1568
FAX: (907) 456-1317

^{1103CO} PO BOX 2 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 485-3600
FAX: (907) ~~485-5206~~
485-6735

Lloyd S. Kurtz, Jr., Esq.
Burr, Pease & Kurtz
810 N Street
Anchorage, Alaska 99501

NO DOCKET DATE af
DOCKETED

Dear Jerry:

At my request, Assistant Attorney General Mary Ellen Beardsley reviewed the Uniform Fraudulent Transfer Act (UFTA). Ms. Beardsley has a background in tax and bankruptcy law. She concludes that UFTA would be an improvement over existing Alaska law.

I thought that all of the Alaska Uniform Law Commissioners might want to review her memorandum in advance of our September teleconference.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By: Deborah E. Behr
Deborah E. Behr
Assistant Attorney General

DEB:cl

BURR, PEASE & KURTZ

A PROFESSIONAL CORPORATION

DONALD A. BURR
L. S. KURTZ, JR.
OF COUNSEL

THEODORE M. PEASE, JR.
CHARLES M. FLYNN
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RALPH E. QUERRE
ANN C. LIBURD
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THOMAS P. OWENS III
JOYCE WEAVER JOHNSON
NORA D. BARLOW

810 N STREET
ANCHORAGE, ALASKA 99501-3293
TELEPHONE: (907) 278-6100
FACSIMILE III: (907) 258-2930

*ALIC NO. 92-0037388

September 17, 1993

Representative Brian Porter
716 West Fourth Avenue, #640
Anchorage, AK 99501

HAND DELIVERED

Re: Uniform Fraudulent Transfer Act

Dear Representative Porter:

As promised in our telephone conversation today, I am forwarding two copies of the 1984 Uniform Fraudulent Transfer Act (UFTA) drafted by the National Conference of Commissioners on Uniform State Laws, two copies of Alaska's present law concerning fraudulent transfers, and a copy of a Department of Law Memorandum concerning the UFTA. Also enclosed are copies of a map and a chart from the Uniform Law Commission showing the 30 states which already have adopted the UFTA.

The heart of the UFTA is in section 4, which covers and augments the ground covered by existing Alaska Statutes 34.40.010. Section 4(a)(2) of the UFTA would eliminate the present Alaskan necessity of finding actual intent by a property transferor to hinder, delay or defraud a creditor in many situations where the transferor is obviously transferring assets solely to keep them out of the reach of the transferor's creditors.

Several Uniform Law Commissioners from Alaska agree with me that you are an ideal person to sponsor enactment of the UFTA in Alaska because of your related law enforcement and business background and because the legislation is desirable from the standpoint of legitimate business people and will cost the State of Alaska nothing. In fact, it is certain to help the State of Alaska loan programs in dealing with unscrupulous borrowers. When you return to Anchorage, I would appreciate having the opportunity to review the UFTA further with you.

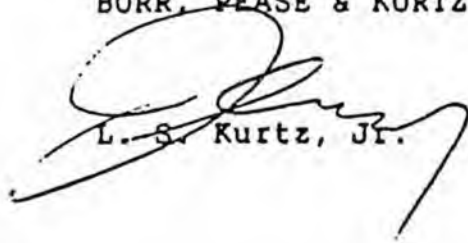
Representative Brian Porter
September 17, 1993
Page 2

In closing, the only parties I am representing in connection with this matter are the commissioners appointed by the State of Alaska to the Uniform Law Commission and myself. I have represented numerous parties (both debtors and creditors) in situations involving fraudulent or allegedly fraudulent transfers, and I am convinced the UFTA should be enacted in Alaska. Our present law technically was adopted in 1949 as noted in the Department of Law Memorandum, but the substance of it goes back to May 17, 1884, when the civil laws of Oregon were put in place in the State of Alaska. Looking back at Alaska Compiled Laws of 1949, 1933, and 1913, and Carter's Annotated Alaska Codes of 1900, I find no substantive changes in this area of law since the Oregon laws were installed here.

Please call me when you have had a chance to review these materials. Thank you for your time on the telephone today.

Sincerely,

BURR, PEASE & KURTZ



L. S. Kurtz, Jr.

dms
Enclosures as noted.

National Conference of Commissioners on **U** Uniform State Laws

676 North St. Clair Street, Suite 1700
Chicago, IL 60611
(312) 915-0195 FAX (312) 915-0187

L
C

BIOGRAPHY

Debra Rand Perelman is Legislative Counsel for the National Conference of Commissioners on Uniform State Laws, a position she has held since December, 1990. Prior to joining the Conference, she served as Assistant Counsel for the National Association of Independent Insurers, in Des Plaines, Illinois and most recently was a practicing attorney with the firm of Leahy, Eisenberg and Fraenkel, in Chicago, Illinois. She has a law degree from the University of North Carolina, Chapel Hill, and has an undergraduate degree in Political Science from the Ohio State University. Along with other responsibilities, Ms. Perelman works with state legislatures and interest groups to attain state adoption of uniform acts approved by the Conference.

HB

74

1995 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Public Safety
 Title: "An Act relating to the assault Alaska State Troopers
of children by adults." Component: Detachments
 Sponsor: Representative Bunde
 Requestor: (H) State Affairs COMPONENT SERIAL NO. 0799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES () Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 95) impact: \$ -0-

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

No significant impact on the Alaska State Troopers is anticipated

Prepared By: Francis C. Allan Phone: 269-5691
 Division: Alaska State Troopers Date: 01/26/95
 Approved by Commissioner: *Ronald L. Otte* Date: 1/30/95
 Agency: Ronald L. Otte, Dept. of Public Safety

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For further distribution information call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 74

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act relating to the assault of children by BRU: Prosecution
adults." Component: All
 Sponsor: Representative Bunde
 Requester: Representative Bunde COMPONENT SERIAL NO. 0085-0090

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 11.41.220(a) to provide that a person commits the crime of assault in the third degree if the person, while being 18 years of age or older, causes physical injury to a child under 16 years of age but at least 10 years of age and the injury reasonably requires medical treatment. Assault in the third degree is a class C felony. It would be an affirmative defense that, at the time of the alleged offense, the defendant reasonably believed the victim to be 16 years of age or older, unless the victim was under 13 years of age at the time of the alleged offense. Currently, such behavior would be chargeable as assault in the fourth degree, a class A misdemeanor. Although there will be some impact, it should not be significant because prosecutors would use their discretion sparingly by bringing felony charges in those egregious cases that warrant tougher punishment.

Prepared by: Richard I. Peques, Director Phone: 465-3672
 Division: Administrative Services Division Date: 1/23/95
 Approved by Commissioner: Bruce M. Botelho Attorney General Date: 1/23/95
 Agency: Department of Law

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 74

Revision Date: _____ Dept. Affected: Corrections
 Title: An Act relating to the assault of children by adults BRU: all
 Component: all
 Sponsor: Rep. Bunde
 Requester: Rep. Bunde COMPONENT SERIAL NO. _____

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ _____

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 11.41.220 (a) by extending it's application to the assult of someone 10 through 15 years old by another, 18 years of age or older. { sub section (3) added} It further provides for an affirmative defense in AS 11.41.220 (d)

The number of individuals sentenced to prison under the changes that would result from this bill is expected to extremely small.

Prepared by: Jerry Shriner
 Division: Comm. Office
 Approved by Commissioner: Margaret M. Pugh
 Agency: Department fo Corrections

Phone: 465-5582
 Date: 1/20/95
 Date: 1-21-95

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Rick Mystrom,
Mayor

ANCHORAGE POLICE DEPARTMENT

4501 South Bragaw Street • Anchorage, Alaska 99507-1599

Telephone (907) 786-8500



Service since 1921

January 24, 1995

Representative Con Bunde
Alaska State Legislature
Juneau, Alaska 99801-1182

Dear Representative Bunde:

The Anchorage Police Department strongly supports House Bill 74, which relates to the assault of children by adults. This law, if passed, will provide penalties more appropriate to the crime when adults, who must be completely responsible for their acts, injure children who cannot, in most cases, defend themselves.

Sincerely,

Kevin M. O'Leary
Chief of Police

**Testimony for State Affairs Committee
by Julie Jensen Zarr**

My name is Julie Jensen Zarr and I am here today to ask for your support in passing House Bill 74. The current assault law needs to be updated.

On November 11, 1994 at 5:30 am while delivering the Anchorage Daily News my 14 year old nephew, Shaun Jensen was viciously assaulted by 3 adult men in South Anchorage. Shaun lost 2 permanent teeth, suffered neck trauma and was run over by his own snow machine. The law as it reads now only made misdemeanor charges against these men possible, not a message we want to send to thugs that prey on our young.

In 1971 my family moved to Alaska and settled in South Anchorage, it was a great place to grow up. We felt safe and secure out walking or horseback riding anywhere. My parents raised three children in Alaska we are now running our businesses and raising our children here. The Anchorage of the 50's, 60's, 70's and 80's did not have drive by shootings, assaults or random senseless acts of violence, the law at that point in time fit, but in 1995 it does not. AS crimes change so must the laws change must fit the crimes of 1995 and beyond.

This event brought to light for me the need to make a difference and try to turn a negative into a positive, teaching my nephew and 2 children empowerment instead of victimization. A change in this law will show that through hard work and believing in an idea one person can make positive impact on society. The outpouring of support from the people of Anchorage has also had a healing effect on Shaun.

Again, I ask for your support in passing House Bill 74. I want to thank the committee for their attention and support. This bill must be passed as soon as possible, before another young man or woman is victimized as Shaun was in November. Thank you for taking the time to listen to me today.

Municipality
of
Anchorage



ANCHORAGE, ALASKA
Anchorage, Alaska 99519-6650
Telephone: (907) 343-4433

Rick Mystrom, Mayor

OFFICE OF THE MUNICIPAL MANAGER

January 20, 1995

Representative Con Bunde
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Bunde:

There has been an outpouring of indignation over the fact that the three adults who viciously beat up a young paperboy leaving him with permanent physical damage can only be charged with misdemeanor assault.

Correction of this inequity is one of the top priorities in the Mayor's 1995 legislative program. House Bill 74 represents an important step toward making similar crimes subject to felony prosecution. We support your efforts in this area and may offer comments and suggestions as the bill moves through the various committees.

Thank you for taking the initiative on this issue of utmost importance to the citizens of Anchorage.

Sincerely,


Larry D. Crawford
Municipal Manager

METRO

THURSDAY, December 15, 1994

ANCHORAGE DAILY NEWS

SECTION C

No felony charges in carrier assault

By S.J. KOMAROVITZKY
Daily News reporter

Three men accused of beating up a 16-year-old newspaper delivery boy in November have been charged with criminal mischief and fourth-degree assault — both misdemeanors.

Jason Harding, 20, Matthew Rios, 21, and Billy Mazoch Jr., 20, are accused of running over Shaun Jensen with a snowmachine and punching him twice in the face before chasing him away from Har-

ding's South Anchorage home.

Harding and Mazoch also were charged with underage drinking.

Jensen, an eighth-grader at Polar Alternative School, suffered a bruised neck and lost his two front teeth in the attack.

According to court documents, the three men had been drinking and playing pool at Mazoch's house the morning of the attack.

About 8:30 a.m., they decided to drive to a cabin in Hope owned by Rios' father.

They split up and planned to regroup at Harding's house on Norak Place just off Huffman Road.

Jensen delivers papers in the area on his snowmachine, and when he saw a car pull up to Harding's house he figured he would give the person his paper.

Instead, Harding accused Jensen of driving his snowmachine in the yard and then jumped on the boy, knocking him to the ground, according to court documents. Mazoch and Harding then held Jensen

down while Rios ran over his leg and foot with the snowmachine.

Jensen said in an interview after the attack that he could smell alcohol on their breath as they jerked his head back and forth trying to rip off his helmet.

One of them finally undid the helmet and Harding punched the boy twice in the face, knocking one tooth out completely.

Please see Page C-2, ATTACK

ATTACK: Men face charges in assault on carrier

Continued from Page C-1

and leaving the other dangling by a thread, according to court documents.

Assistant District Attorney Kevin Fitzgerald said Wednesday that he wanted to charge the men with a more serious crime of felony assault.

Criminal mischief and fourth degree-assault are both misdemeanors, punishable by up to a year in jail and a \$5,000 fine.

Charging the three men with a felony would have required that a deadly weapon be involved or that Jensen be hurt more seri-

"If he'd had his two front teeth knocked out with a bat, then we could have done it," Fitzgerald said.

As it was, the two teeth aren't on the same scale as a police officer being slashed in the cheek with a knife — another recent case where the person was charged with second-degree assault, he said.

He added that while the snowmachine could be considered a deadly weapon, Jensen wasn't hurt when they ran him over with it.

"This was a cowardly act: Three men ganging up on a young boy to beat him

the level of a felony," he said.

Jeff Jensen, Shaun's father, said he's angry the men won't face more serious charges and wants the law changed so those who attack juveniles are automatically charged with a felony.

"I'm absolutely upset," he said. "I don't feel the punishment or the charge

fits the crime at all."

Jensen said his son has suffered psychological damage from the attack and will need surgery to replace the two front teeth he lost.

"I think these guys are going to get off with a hand slap, and if these kids are allowed to get off easily, it will happen again," he said.

Police question 3 men in attack on paperboy

By S.J. KOMARNITSKY
Daily News reporter

A 14-year-old boy delivering newspapers in a South Anchorage neighborhood was attacked Friday by three men who pushed him to the ground, ran over him with a snowmachine and punched out his two front teeth before fleeing the area.

Shaun Jensen, an eighth-grader at Polar Alternative School, suffered a bruised neck and permanently lost two teeth. The attackers were identified as Jason I. Harding, 20; Billy Mazoch Jr., 21; and Matthew R. Rios, 21.

State troopers said Harding apparently was the one who punched Jensen. All three were being questioned late Friday and could face assault charges, Sgt. Greg Tanner said. The three live near one another with their parents, and Harding lives at the home where the attack occurred.

Resting at his home Friday afternoon, Jensen said he was driving his snowmachine down Norak Place just off Huffman Road when he saw a car pull up to a home he delivers to and a man get out. "I

Please see Back Page, **TEETH**

TEETH: Paperboy loses pair in early morning attack

Continued from Page A-1

ght, 'Oh, maybe some-
home, I'll give them
paper.'"

stead as he strode up
e man, he was attack-

ensen said the man
e him down and
e screaming at him
e driving through the
— something he said
dn't do. The man then
over him with the
achine, he said.

o other men then
ged from the car and
d trying to pull his
t off, he said. The
a : said he could
lcohol on their
as they jerked his
back and forth trying
move the helmet.

tally, one of them un-
e strap, and another
punched him twice,
ging one of his front
and leaving another
ng by a thread.

Jensen said he took off
running with one of his
teeth in his hand.

Shaun's dad, Jeff Jen-
sen, said that when his son
showed up at the door,
screaming and missing two
teeth, he was so enraged he
picked up his gun and
drove over to the Har-
dings' house.

He said he parked in
front of the driveway,
blocking the two vehicles
in it. While he was there, a
woman he identified as
Harding's mother walked
out with one of her sons.

He said he tried to talk
to the woman, but she
started yelling at him that
she was going to be late for
work, and that he would
have to pay her salary if
she was. The two got in
separate cars and drove
through snowbanks around
his truck, Jensen said.

"It happened right in
her driveway," he said.
"But it seemed more im-

portant to her to get to
work than see if someone
needed help."

He said he later spoke
with Harding's dad, who
seemed more concerned
about the attack. And he
also spoke briefly with Ri-
os' mother, who seemed
shocked her son could be
involved.

Neither man's parents
would talk to a reporter
Friday.

But Billy Mazoch's fa-
ther, also named Billy,
said he had been told his
son was involved.

"At this point, all I
know is Mr. Harding and a
trooper came over and
woke me up this morning,"
he said. "Supposedly there
was a fight and a boy got
his teeth knocked out. I
was also told my son didn't
do the knocking out, and
all three pushed a little
bit."

He said he hadn't been
able to talk to his son, and

wasn't sure if what was
said was true.

Jeff Jensen said he
hoped the men would be
brought to justice. As he
spoke, a constant stream of
relatives, including grand-
parents and younger cous-
ins, filtered into the home
to visit Shaun, who was
sitting on a couch.

Many hugged him, while
others ventured to a near-
by table to look at a plastic
bag containing his missing
teeth. Doctors told the
boy's parents the teeth
were broken at the bone
and can't be reattached.
His father joked about him
not losing the teeth to
hockey, his favorite sport.

"If it was a puck, we
could understand that," his
father said. "But this."

Shaun said he hoped his
attackers would have to
spend a long time in jail.
But first, he said: "I'd like
to ask them why they did
it."

Carrier assault

The search for justice continues

The paperboy lost his two front teeth and took a bruising in the November early-morning encounter. While 14-year-old Shaun Jensen's alleged assailants were rapidly apprehended, justice in the case remains elusive.

The three young men arrested and accused of pounding Shaun and running over him with a snowmachine face only misdemeanors. Prosecutors say that if the perpetrators had used a deadly weapon or the boy had been hurt more seriously, a tougher charge would have followed.

"This was a cowardly act: Three men ganging up on a boy to beat him up," said Assistant District Attorney Kevin Fitzgerald, "But it doesn't rise to the level of a felony."

Public outrage has not subsided since the prosecutors' decision. Alaskans rightly feel that men who make unprovoked war on a boy — and leave the boy facing reconstructive dental work during his teen-age years — deserve the lash of the law.

What can prosecutors do if they're unable to bring felony charges? They can vigorously argue their case and ask for the maximum misdemeanor sentence if the defendants are convicted. That's a year in jail and a \$5,000 fine for each of the two Class A misdemeanors two of the defendants face, a penalty sure to jerk them to attention.

What can Alaskans do? Those familiar with the defendants can appear at sentencing to tell the judge what they know about the men. If the men have endangered others before, the judge should know about it. He's empowered to take such testimony into consideration while weighing sentencing possibilities.

Meanwhile, the Alaska Legislature should take a look at this case and related cases in which it seems impossible to impose felony charges on those who have committed brutal acts.

Perhaps lawmakers will find a new way to address some but not all of the cases that fall through the cracks. Perhaps lawmakers will find they cannot tailor the law to fit every outrageous case. But in the process of exploration, these lawmakers definitely will experience firsthand the pain the justice system delivers to victims when it can't deliver justice to criminals.

Friday Dec 23, 1994 ADN

11-30-94

To Whom it May Concern,

On November 11, 1994 at 5:45 a.m. Shauri Jensen a 14-yr. old paperboy was assaulted in South Anchorage by three men, have any arrests been made, or follow up done to assure us that these men have been punished?!!!! NO. and we are outraged!!! The undersigned want to express their unhappiness, outrage and confusion over the inaction concerning this assault !!! How dare the authorities ignore this case and let these men roam free after committing this brutal attack !! What will it take the loss of a li fe?

Let's change the way we handle and procecute the crimes against our children!!!

Virgil Jensen
12301 Tracy Rd.

ANCHORAGE, AK 99518

BRENDAN C. MCKEE
737 W. 22ND AVE.
ANCHORAGE, AK 99503

Bill Cohen
6423 Lone Tree Circle
Anchorage, Ak 99516

NICK CLINE
24145 Park Dr
SIUGIAK AK 99567

PAUL J. PRICE
2733 W. 66TH
ANCHA, AK, 99502

SHAWN P. SNISARENKO
6 24 CUTTY SARK ST.
ANCHORAGE, AK 99502

ROBERT HANN
1327 W 27TH #217
ANCHORAGE AK 99503

DAVID COOUDGE
P.O. BOX 101035
ANCHORAGE, AK 99510

VIRGIL L. MCCRAW
3306 E. 19TH CT.
ANCHORAGE, AK 99508

Jim Driffel
628 Aniak Rd #2
Anch. AK 99508

JOAN CHOPMAN
PO BOX 165
EABLE RIVER AK
99577

11-30-94

To Whom it May Concern,

On November 11, 1994 at 5:45 a.m. Shaun Jensen a 14-yr. old paperboy was assaulted in South Anchorage by three men, have any arrests been made, or follow up done to assure us that these men have been punished?!!!! NO, and we are outraged!!! The undersigned want to express their unhappiness, outrage and confusion over the inaction concerning this assault !!! How dare the authorities ignore this case and let these men roam free after committing this brutal attack !! What will it take the lose of a li fe?

Let's change the way we handle and procecute the crimes against our children!!!

Beere Airway Employees

Diane Sunderson
 America Huff
 Tom Veyre Sr
 Patricia [unclear]
 [unclear]
 Richard [unclear]
 Bob [unclear]
 Mike Zarr
 Stephen A Kovatt
 [unclear]
 Dwight Johnson
 Sue [unclear]
 Don [unclear]
 Mark Phamson
 Wolfgang Stenham
 David B. Cat

Craig Wilber
 Paul [unclear]
 Sub [unclear]
 Mac [unclear]
 Bill [unclear]
 Allen [unclear]
 [unclear]
 Douglas [unclear]

11-30-94

To Whom it May Concern,

On November 11, 1994 at 5:45 a.m. Shaun Jensen a 14-yr. old paperboy was assaulted in South Anchorage by three men, have any arrests been made, or follow up done to assure us that these men have been punished?!!!! NO, and we are outraged!!! The undersigned want to express their unhappiness, outrage and confusion over the inaction concerning this assault !!! How dare the authorities ignore this case and let these men roam free after committing this brutal attack !! What will it take the lose of a li fe?

Let's change the way we handle and procecute the crimes against our children!!!

Kristen T. Thomson
Dici Sabrowski
The Jensen Family
Michael J. Tuttle

Della J. Burns
~~Ilse Jensen~~
Cresca J. Jensen
Jenny Lapinski
Elizabeth Smith
Mary E. Murphy
Ann Jensen
Barbara Prody
Michael J. Hill
Sally Weller
Bonnie Fanner
Tori A. Jensen
Cary Stewart Kaskowitz
Josh Warner

TO WHOM IT DOES CONCERN

The undersigned want to express to you their unhappiness, outrage and confusion over the recent brutal attack and inaction concerning an assault on a paper boy in south Anchorage on November 9, 1994 at 5:45am.

We are concerned that there is a lack of action in this matter and can not understand how these three men are allowed to roam free after committing this obvious crime.

How dare the authorities ignore this matter! What will it take? A lost life?

What has happened to justice for all?

James Connor
Karen Stary
Michael Fay
Janette Hall
Gaelyn Berry
Michelle W. Shinsung
B. Leigh Beckman

Keith W. ...
Janet Vaughn
Eddie Vaughn
J. Samuelson
Charles Lever
P. H.

November 18, 1994

11-30-94

To Whom it May Concern,

On November 11, 1994 at 5:45 a.m. Shaun Jensen a 14-yr. old paperboy was assaulted in South Anchorage by three men, have any arrests been made, or follow up done to assure us that these men have been punished?!!!! NO, and we are outraged!!! The undersigned want to express their unhappiness, outrage and confusion over the inaction concerning this assault !!! How dare the authorities ignore this case and let these men roam free after committing this brutal attack !! What will it take the lose of a li fe?

Let's change the way we handle and procecute the crimes against our children!!!

Bonnie J. Hamblin	4019 Brentwood Cir.	Anch. Ak
Tom Hamblin	4019 BRENTWOOD CIR	99502
Nora J. Sims	10520 Spruells Dr	99515
Jewell K. Hansen	1013 Potlatch Cir	99513
Jackie Spence	1105 Potlatch Cir	99513
Beverly A. Burtce	7001 Elm Ave Anch	99504
Paula J. Munkoh	1849 Bellevue Cr. Anch. AK.	99515
Wanda Beltz	2109 Cornell Ct	99508
Robert L. Kutz	3005 CARROLL Ln ANCH AK.	99517
Julie Leis	550 S. W. St Anch	99504
Rosemary Elledge	3905 Hampton Dr	99504
Brothy Daverny	2414 Larkina Dr.	99517
J. Ann Jensen	12301 Stacy Rd.	99517

Put end to abuse, violence

This is the first time I have ever sent you an opinion.

I have just read the article that appeared on the front page of the Metro section entitled "No felony charges in carrier assault." The incident described in this article angers me very much.

I found the article interesting because of the age of the criminals. I am a

22-year-old male and a member of their generation. I did not attend college. I am a musician and play in several local bands. I also vote, pay taxes, and hold a full-time job (which I have had for four consecutive years). Maybe I'm an exception; my generation has been stereotyped as slacker, lazy, and "grunge." Well, I want that stereotype to change.

These males are a disgrace and have

shamed my generation. (I refrain from using the word men, because men do not gang up three-to-one on 14-year-old boys.) I hope their actions are not ignored, condoned, or coddled. For those who have the authority and the obligation to do so, it is time to establish a moral boundary and say, "This is not acceptable; you are not allowed to behave this way; this kind of behavior will not be tolerated."

Attack on carrier shameful

I was disturbed after I read the Daily News' article "Police question 3 men in attack on paperboy (Nov. 12)." I was a papergirl for four years when I was young and learned valuable lessons, including money management, responsibility (and self-discipline (getting out of bed in the mornings). My earnings financed the boarding of my horse and I always had my own spending money.

I can't even imagine the effect it would have had on me to be physically beat up while out on my route. My heart goes out to Shaun Jensen. How many kids will now miss out on the benefits of having a paper route because of parents afraid for their safety (and rightly so). Look at our society. Who is gaining and who is losing here? Who in the end will be punished more? Shaun Jensen or his attackers? I believe the three attackers should be punished severely! Their parents also should be punished. What shame that should feel for raising children that have like this! They have failed their most important task in life.

— Catherine Blaine
Homer

What if these bullies do not receive the justice due them? It will send a negative message to the innocent victim, as well as to his family, friends, classmates, and the sane of our generation. It will prove that safety, justice, and freedom no longer exist in America.

These males were also charged with underage drinking. The article says their intention was to travel to Hope. Who knows what disaster or death awaited them on the Seward Highway? I am disgusted, saddened, and tired of seeing friends and peers crushed by alcohol abuse and violence, whether by death, injury, or trashed lives. My plea to those in authority is this: Please do all that is in your power to put an end to this senselessness.

I believe that Jason Harding, Billy Mazoch Jr., and Matthew Rios deserve the maximum allowable sentence. I am overly willing to do anything I can to help change the way people look at my generation and its future.

— Kristian Rosentrater

Why does it take numbers to assault a defenseless person? In regard to the three-man attack on young Shaun Jensen, anymore, one can look upon society as anarchistic. There are gangs which besiege one person, while there is the gun-toter who shoots an individual who has no weapon. Or there's the knife-wielder who stabs an innocent victim.

Savage is what the natives called the murderous foreigners. As history was written, it erred when it said the wild Indians were called savages. The descendants of the true savages have decided to prove history was recorded in error. Those descendants of foreign lands are jumping out of vehicles to attack the loner, the homeless drunk, the elderly poor on the streets, and the innocent pedestrian. The helpless are beaten up, shot at, robbed and sometimes murdered by several hands.

In villages and on other Native American homelands, the headlines cry the same violations: assault, murder, rape, robbery, bootlegging, and overwhelming chemical addictions.

My husband and I reared our children, the sons as men; the girls as ladies, their ages range from 37 to 21 years old. We will take the credit for the good they do and we will take the blame for their failures. A nation is only as strong as its families, and as it was quoted, "As the twig is bent, so shall the tree grow." All children have leaders, they are called parents or guardians. We agree with those who say parents are to blame when children become criminals.

Shaun Jensen, you are a far better man than the three savages. May you walk without fear, and walk always in peace.

— Elizabeth A. Wells, director
Oree Drumrite Walking Heritage

Carrier attack an outrage

11/17/94

Talk about overgrown bullies that are more than 20 years old and still don't know the proper way to settle problems. The 14-year-old is just that: 14 years old! Only now he has no teeth and has been beaten up. The assailants should do jail time. A parent of one assailant claims, "Supposedly there was a fight. . . ." Three adults against a 14-year-old kid. Wrong! These grown-ups viciously attacked a youngster. It is an outrage! These kind of creeps need to be taken off the streets for the safety of our children.

— Teresa Werner
Kenai

Punish assault of paperboy

The three punks that attacked Shaun Jensen, the 14-year-old paperboy, must be held accountable for their actions. They must be punished. They should be made an example of. They should be required to work his paper route for one year in addition to paying all his medical bills and something for his pain and suffering. I hope young Jensen gets a good attorney.

This violent, unmitigated behavior must not and will not be tolerated in our community. We must stop this kind of action now before it gets totally out of hand.

Please do your part in the media and follow up on this. Pay more attention to the things going on here in Alaska. I find it hard to believe there have been but a few letters published in regard to this assault.

— Robert Bowling

Attackers deserve worse

I'm confused and outraged about our criminal justice system and how unjust it truly is. I'm referring to the 14-year-old Shaun Jensen case. The quote in the paper states that it wasn't a felony because a deadly weapon wasn't used.

Shaun's neck was badly bruised by one

of these animals tearing at his head while another man held him so yet another man could run over his legs with a snowmachine. Let me ask you Mr. District Attorney, if this isn't assault with deadly force, what the hell is?

These adult men could have broken his neck or severed his spine. If that would have happened, would we be adding a charge about equal to, let's say, jaywalking, to the list of ruthless crimes these felons committed and maybe add another day of community service to what these guys will probably get?

By knocking out his teeth, it's evident they meant business. By tearing at his head, it's evident these men need a hell of a lot more than they will get with these petty charges. What's the deal here?

Is it that the criminal lawyers are tougher and better and you're afraid to charge these guys with a crime with some teeth in it? I'd say no guts . . . no glory. Take a chance on shoving the rights of the innocent down their throats. If we don't start punishing our society's criminals like they punished Shaun, the day will come when we fear going to our newspaper box.

— Tim Stuart

QUOTABLE

"There are bullets raining all over D.C."

— White House spokesman Carl Meyer, saying that shots fired at the White House may have been "just a stray couple of rounds."

"We are living at a time when these incidents of violence take place not just in cities and communities around this country, they take place here in Washington in front of the White House."

— Leon Panetta, White House chief of staff.

"I think these guys are going to get off with a hand slap, and if these kids are allowed to get off easily, it will happen again."

— Jeff Jensen, father of 14-year-old Shaun, who was assaulted by three men in their 20s who have been charged with misdemeanors in the attack.

fraud charges against a president of a bank and three women in the Valley — arrests made and suspects in custody. An Anchorage Daily News carrier was beaten by three men who have been identified, yet are they in custody?

The scales of justice need work.

Are people that run that money scam more of a danger to society than cowards that prey on children? The adults who participated in the pyramid did so of their own volition, forgetting the golden rule, nothing in life is free.

Their egos are hurting and their wallets are a bit lighter, but they have lost nothing that cannot be replaced. The paperboy and his family have lost far greater things: His teeth and their sense of safety in the neighborhood.

The laws say to defraud people of money is a felony. The same legal system says physical assault on a child by three adult men is a misdemeanor. Where is the justice in our legal system for our children?

— Mike Zarr

■ MORE LETTERS: Readers write, B-8

11-30-94

To Editor-Daily News,

SHAME ON THE ANCHORAGE DAILY NEWS! The lack of coverage by your paper on the story of the assault on your own carrier and the inaction on the authorities to arrest or even charge these men is outrageous!!

How dare they not take this case seriously and you not keeping the story active until action is taken is an insult to this young boy. This 14 yr. old is walking around without front teeth, a lack of trust in the people sworn to protect him and the knowlage that these men are running free.

In the original story on November 12 it stated these 3 men "could" face assault charges!! We must question why after 3 weeks there are no arrests. These men have been identified yet they are free, does this sound right to you? What is this inaction saying to our young people, where is the justice for Shaun.

The story also quoted Mr Mazock as saying that his son Billy did not Knock the boy's teeth out but " that all 3 had pushed the boy around"! Get real Mr. Mazoch **ASSAULT** is **ASSAULT!!** Would he be so quick to think that the case had it been his child, I think not. As a parent he should be outraged that his child could commit this act instead of looking for a justification. **SHAME ON YOU SIR!**

As citizens of Anchorage lets make our outrage known.

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 1, 1995

FURTHER REFERRALS:

Finance

Date of Committee Action: 2-8-95

The JUDICIARY Committee considered:

HB 74

HOUSE BILL NO. 74

ASSAULT BY ADULTS ON CHILDREN

"An Act relating to the assault of children by adults."

recommends it be replaced with the following committee substitute _____ the same title a new title

additional referral to _____ Committee

attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal note(s) _____ fiscal note(s) _____

zero fiscal note(s) Pub-Saf. Law, Corrections zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i>				X
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>				
<i>[Signature]</i>				X
<i>[Signature]</i>	X			
<i>[Signature]</i>	✓			

12-1-95

**Testimony for State Affairs Committee
by Julie Jensen Zarr**

My name is Julie Jensen Zarr and I am here today to ask for your support in passing House Bill 74. The current assault law needs to be updated.

On November 11, 1994 at 5:30 am while delivering the Anchorage Daily News my 14 year old nephew, Shaun Jensen was viciously assaulted by 3 adult men in South Anchorage. Shaun lost 2 permanent teeth, suffered neck trauma and was run over by his own snow machine. The law as it reads now only made misdemeanor charges against these men possible, not a message we want to send to thugs that prey on our young.

In 1971 my family moved to Alaska and settled in South Anchorage, it was a great place to grow up. We felt safe and secure out walking or horseback riding anywhere. My parents raised three children in Alaska we are now running our businesses and raising our children here. The Anchorage of the 50's, 60's, 70's and 80's did not have drive by shootings, assaults or random senseless acts of violence, the law at that point in time fit, but in 1995 it does not. AS crimes change so must the laws change must fit the crimes of 1995 and beyond.

This event brought to light for me the need to make a difference and try to turn a negative into a positive, teaching my nephew and 2 children empowerment instead of victimization. A change in this law will show that through hard work and believing in an idea one person can make positive impact on society. The outpouring of support from the people of Anchorage has also had a healing effect on Shaun.

Again, I ask for your support in passing House Bill 74. I want to thank the committee for their attention and support. This bill must be passed as soon as possible, before another young man or woman is victimized as Shaun was in November. Thank you for taking the time to listen to me today.

HOUSE BILL NO. 74

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE BUNDE

Introduced: 1/16/95

Referred: State Affairs, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the assault of children by adults."

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

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

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

5 (1) recklessly

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

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

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

11 (i) causes physical injury to a child under 10 years of age
12 and the injury reasonably requires medical treatment;

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

15 (2) with intent to place another person in fear of death or serious

1 physical injury to the person or the person's family member makes repeated threats to
2 cause death or serious physical injury to another person; ^{intentionally} or

3 (3) while being 18 years of age or older, causes physical injury to
4 a child under 16 years of age but at least 10 years of age and the injury
5 reasonably requires medical treatment.

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

7 (d) In a prosecution under (a)(3) of this section, it is an affirmative defense
8 that, at the time of the alleged offense, the defendant reasonably believed the victim
9 to be 16 years of age or older, unless the victim was under 13 years of age at the time
10 of the alleged offense.



House of Representatives

**SPONSOR STATEMENT
HB 74**

November of 1994 was a turning point for one 14 year old Anchorage boy. While delivering newspapers, via his snow machine, early one morning Sean Jensen was viciously attacked by 3 adults over the age of twenty. These "adults" held Sean while they punched out his two front teeth and ran over him with his own snow machine before they chased him home.

Sean's three attackers are charged with a misdemeanor. The public is outraged. If Sean was 10 years old or less his attackers would be charged with a felony for this vicious attack.

HB 74 will give prosecutors the ability to charge people over the age of 18 with a felony if they cause a physical injury that reasonably requires medical treatment to a child between the ages of 10 and 16.

In order to avoid unnecessary felony charges, HB 74 provides the prosecutor with the flexibility to charge a defendant with a misdemeanor (as they are charged under current statute) if the defendant reasonably believes the victim was 16 years of age or older. This provision protects those who should not have a felony charge as well as, minimizing the fiscal impact to the state.

Thank you for your positive consideration of HB 74.

DIVISION OF LEGAL SERVICE
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

January 20, 1995

SUBJECT: Sectional Summary of HB 74. (Work Order No. 9-LS0368\A)

TO: Representative Con Bunde
Attn: Pattie Swenson

FROM: Gerald P. Luckhaupt *GPL*
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill amends AS 11.41.220(a) by providing that a person commits assault in the third degree¹ if the person is 18 years of age or older and causes physical injury that reasonably requires medical treatment to a child between the ages of 10 and 16.²

Section 1 of the bill amends AS 11.41.220 by providing a new subsection that provides an affirmative defense³ to a prosecution under section 1 of the bill to a defendant that reasonably believes the victim was 16 years of age or older unless the victim was under 13 years of age at the time of the offense.

GPL:glc
95-077.glc

¹ Assault in the third degree is a class "C" felony punishable as provided in AS 12.55.125.

² Recklessly causing physical injury reasonably requiring medical treatment to a child under 10 years of age is punishable as assault in the third degree under AS 11.41.220(a)(1)(C)(i).

³ AS 11.81.900(b)(1) provides "affirmative defense" means that
(A) some evidence must be admitted which places in issue the defense, and
(B) the defendant has the burden of establishing the defense by a preponderance of the evidence".

SECTIONAL SUMMARY

HB

75

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 75(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES SANDERS, Finkelstein, Kott

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to vehicle theft and the consequences of vehicle theft, including
2 revocation of a driver's license, privilege to drive, or privilege to obtain a license;
3 amending Rule 32.1, Alaska Rules of Criminal Procedure; and providing for an
4 effective date."

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

6 * Section 1. AS 11.46 is amended by adding new sections to read:

7 ARTICLE 2A. VEHICLE THEFT.

8 Sec. 11.46.360. VEHICLE THEFT IN THE FIRST DEGREE. (a) A person
9 commits the crime of vehicle theft in the first degree if, having no right to do so or
10 any reasonable ground to believe the person has such a right, the person drives, tows
11 away, or takes

12 (1) the propelled vehicle of another, other than a snow machine or all-
13 terrain vehicle;

14 (2) the snow machine or all-terrain vehicle of another and the machine

1 or vehicle or any other property of another is damaged, or the owner incurs reasonable
2 expenses as a result of the loss of use of the vehicle, in a total amount of \$500 or
3 more;

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

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

8 (A) this section or AS 11.46.365;

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

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

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

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

16 (b) A person,

17 (1) 18 years of age or older at the time of the offense who is convicted
18 of vehicle theft in the first degree is guilty of a class C felony;

19 (2) less than 18 years of age at the time of the offense who is convicted
20 of vehicle theft in the first degree is guilty of a class A misdemeanor.

21 (c) In this section, "all-terrain vehicle" means a three, four, or six wheeled
22 propelled vehicle less than 75 inches in width and having a dry weight of 800 pounds
23 or less, equipped with low pressure tires, and designed primarily for travel over
24 unimproved terrain.

25 Sec. 11.46.365. VEHICLE THEFT IN THE SECOND DEGREE. (a) A
26 person commits the crime of vehicle theft in the second degree if, having no right to
27 do so or a reasonable ground to believe the person has such a right,

28 (1) the person drives, tows away, or takes the snow machine or all-
29 terrain vehicle of another; or

30 (2) having custody of a propelled vehicle under a written agreement
31 with the owner of the vehicle that includes an agreement to return the vehicle to the

1 owner at a specified time, the person knowingly retains or withholds possession of the
2 vehicle without the consent of the owner for so long a period beyond the time
3 specified as to render the retention or possession of the vehicle an unreasonable
4 deviation from the agreement.

5 (b) Vehicle theft in the second degree is a class A misdemeanor.

6 (c) In this section, "all-terrain vehicle" has the meaning given in AS 11.46.360.

7 * Sec. 2. AS 11.46.484(b) is amended to read:

8 (b) Criminal [EXCEPT AS PROVIDED IN (c) OF THIS SECTION,
9 CRIMINAL] mischief in the third degree is a class A misdemeanor.

10 * Sec. 3. AS 11.46.486(a) is amended to read:

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

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

17 (2) with intent to damage property of another, the person damages
18 property of another in an amount less than \$50; or

19 (3) the person rides in a propelled vehicle knowing it has been stolen
20 or that it is being used in violation of AS 11.46.360 or 11.46.365(a)(1)
21 [AS 11.46.482(a)(4) or 11.46.484(a)(2)].

22 * Sec. 4. AS 12.55.045(e) is amended to read:

23 (e) If a defendant is convicted of vehicle theft in the first degree in violation
24 of AS 11.46.360 or vehicle theft in the second [CRIMINAL MISCHIEF IN THE
25 THIRD] degree in violation of AS 11.46.365(a)(1) [AS 11.46.484(a)(2)], and the
26 victim of the offense incurs damage or loss as a result of the offense, the court shall
27 order the defendant to pay restitution.

28 * Sec. 5. AS 12.55.135(e) is amended to read:

29 (e) If [EXCEPT AS PROVIDED IN AS 12.55.055(f), If] a defendant is
30 sentenced under (c) or [,] (d) [, OR (f)] of this section,

31 (1) execution of sentence may not be suspended and probation or parole

1 may not be granted until the minimum term of imprisonment has been served;

2 (2) imposition of a sentence may not be suspended except upon
3 condition that the defendant be imprisoned for no less than the minimum term of
4 imprisonment provided in the section; and

5 (3) the minimum term of imprisonment may not otherwise be reduced.

6 * Sec. 6. AS 12.55.135(f) is amended to read:

7 (f) A defendant convicted of vehicle theft in the second degree in violation
8 of AS 11.46.365(a)(1) [CRIMINAL MISCHIEF IN THE THIRD DEGREE IN
9 VIOLATION OF AS 11.46.484(a)(2), WHOSE CONVICTION IS NOT A FELONY
10 UNDER AS 11.46.484(c),] shall be sentenced to a definite term of imprisonment of
11 at least 72 hours but not more than one year.

12 * Sec. 7. AS 28.15.181(a) is amended to read:

13 (a) Conviction of any of the following offenses is grounds for the immediate
14 revocation of a driver's license, privilege to drive, or privilege to obtain a license:

15 (1) manslaughter or negligent homicide resulting from driving a motor
16 vehicle;

17 (2) a felony in the commission of which a motor vehicle is used;

18 (3) failure to stop and give aid as required by law when a motor
19 vehicle accident results in the death or personal injury of another;

20 (4) perjury or making a false affidavit or statement under oath to the
21 department under a law relating to motor vehicles;

22 (5) operating a motor vehicle or aircraft while intoxicated;

23 (6) reckless driving;

24 (7) using a motor vehicle in unlawful flight to avoid arrest by a peace
25 officer;

26 (8) refusal to submit to a chemical test authorized under
27 AS 28.33.031(a) or AS 28.35.031(a) while under arrest for operating a motor vehicle,
28 commercial motor vehicle, or aircraft while intoxicated, or authorized under
29 AS 28.35.031(g);

30 (9) driving while license, privilege to drive, or privilege to obtain a
31 license, canceled, suspended, or revoked, or in violation of a limitation;

1 AS 41.21; and

2 (5) AS 04.16.050, relating to possession or consumption.

3 * Sec. 10. Rule 32.1(a), Alaska Rules of Criminal Procedure, is amended to read:

4 (a) Scheduling. At the time guilt in a felony case is established by verdict or
5 plea, the judge shall establish the date for a sentencing hearing and a presentencing
6 hearing, if appropriate, and except as provided in paragraph (f) of this rule shall
7 order a presentence investigation by the Department of Corrections. If the judge elects
8 to schedule a single hearing, all of the procedures for the presentencing and sentencing
9 hearings shall be applicable at the single hearing.

10 * Sec. 11. Rule 32.1, Alaska Rules of Criminal Procedure, is amended by adding a new
11 subsection to read:

12 (f) When Presentence Investigation Not Required. Unless a person may be
13 sentenced to a presumptive term of imprisonment under AS 12.55.125(e)(1) or (2), a
14 presentence investigation by the Department of Corrections is not required for a
15 defendant convicted of vehicle theft in the first degree in violation of AS 11.46.360.

16 * Sec. 12. AS 11.46.482(a)(4), 11.46.482(a)(5), 11.46.484(a)(2), 11.46.484(a)(3),
17 11.46.484(c); and AS 12.55.055(f) are repealed.

18 * Sec. 13. This Act applies to offenses committed on or after the effective date of this Act.

19 * Sec. 14. This Act takes effect immediately under AS 01.10.070(c).

HOUSE COMMITTEE REPORT

Date Referred to Committee: January 30, 1996

FURTHER REFERRALS:

2/7/96
Finance

Date of Committee Action: 2/5/96

The JUDICIARY Committee considered:

SSHB 75

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 75

INCREASED PENALTIES FOR JOYRIDING

"An Act relating to vehicle theft and the consequences of vehicle theft, including revocation of a driver's license, privilege to drive, or privilege to obtain a license; amending Rule 32.1, Alaska Rules of Criminal Procedure; and providing for an effective date."

recommends it be replaced with the following committee substitute _____ [] the same title [] a new title

[] additional referral to _____ Committee [] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

[X] fiscal note(s) Courts

[X] fiscal note(s) P.S. (a), Admin, Doc (a)

H&SS(3), Law, 1/30/96

[] zero fiscal note(s)

[X] zero fiscal note(s) Law

P.S. 1/30/96

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>[Signature]</i>	Verzey	✓			
<i>[Signature]</i>	Finkelstein	X			
<i>[Signature]</i>	B. Davis	X			
<i>[Signature]</i>	Green	✓			
<i>[Signature]</i>	Bundo	✓			
<i>[Signature]</i>	Toohy	✓			
<i>[Signature]</i>	Porter	✓			
		(7)			

CHAIR'S SIGNATURE Brian Porter
Porter

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SSHB 75

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: Vehicle Theft BRU: Trial Courts
 Component: _____
 Sponsor: Rep. Sanders
 Requestor: House Judiciary COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	35.4	35.4	35.4	35.4	35.4	35.4
TRAVEL						
CONTRACTUAL	49.8	49.8	49.8	49.8	49.8	49.8
SUPPLIES	1.5	1.5	1.5	1.5	1.5	1.5
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	86.7	86.7	86.7	86.7	86.7	86.7

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	86.7	86.7	86.7	86.7	86.7	86.7
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	86.7	86.7	86.7	86.7	86.7	86.7

Estimate of any current year (FY 96) cost: None

Positions

Full-Time						
Part-Time	3.0	3.0	3.0	3.0	3.0	3.0
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel *CC*
 Agency: Alaska Court System
 Approved by: Arthur H. Snowden, II, Administrative Director *AS*
 Agency: Alaska Court System

Phone: 284-8228
 Date: 02/05/96
 Date: 02/05/96

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

Alaska Court System
Fiscal Analysis
SSHB 75

SSHB 75 removes vehicle theft and joyriding from the criminal mischief statutes, and establishes the crime of vehicle theft in the first degree, a class C felony, and vehicle theft in the second degree, a class A misdemeanor. Most of the conduct which the current law classifies as misdemeanor joyriding is reclassified by SSHB 75 as felony theft.

According to the Department of Law, existing vehicle thefts committed by adults and treated as felonies will increase from 100 to 363, or an increase of 263 felonies statewide (these numbers are based upon actual arrests in FY 95). Handling these as felony cases rather than misdemeanor cases will substantially increase the court costs associated with the offense. A misdemeanor joyriding trial can be expected to last one day and is tried before a six member jury. A felony joyriding trial can be expected to average three days in length and will be tried before a 12 member jury. The extra trial time results from the more serious consequences of a felony conviction; attorneys for both sides spend more time on matters such as jury selection, examination of witnesses, and motion practice. In addition, approximately 30 of these cases can be expected to involve defendants subject to presumptive sentencing because of prior convictions, thus bringing up the average trial time and rate. Unlike most misdemeanor joyriding cases, sentence will not be imposed at the time the guilty plea is entered or the verdict is returned; instead, there will be a separate sentencing hearing. This is less efficient and requires additional court time.

Because of the more serious consequences of a felony conviction, the trial rates can be expected to increase substantially. This note assumes that the trial rate will increase from five percent to ten percent (note that the trial rate for misdemeanor joyriding is generally higher than the trial rate for other class A misdemeanors because of the 72 hour minimum sentence and loss of drivers license associated with the offense).

Unlike misdemeanor cases, felony cases require presentment to a grand jury. SSHB 75 will increase the number of cases presented to grand juries each year by approximately 10 percent. There are also grand jury transcript preparation costs associated with indictments.

Alaska Court System
Fiscal Analysis
SSHB 75

Personal Services

<u>Position</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Pro Tem Superior court Judge, 50% vested, Anchorage, PPT, 3 months	\$12,075	\$6,169	\$18,244
In-Court Clerk, range 12A, Anchorage, PPT, 3 months (petit jury trials)	6,777	1,799	8,576
In-Court Clerk, range 12A, Anchorage, PPT, 3 months (grand juries)	6,777	1,799	8,576
			35,395
Increase in Personal Services Costs (net of existing costs)			35,395

Contractual

Increase in petit jury costs:

Estimated number of trials for the crime as a felony:

<i>Estimated number of cases to be filed as a felony</i>	263
<i>Estimated trial rate for crime as a felony</i>	10%
<i>Estimated number of felony trials</i>	26

Estimated jury costs for 26 felony trials using 13 jurors for three days with a jury fee of \$25 a day per juror 25,350

Less estimated number of trials for the crime as a misdemeanor:

<i>Cases filed as a misdemeanor 1995</i>	263
<i>Estimated trial rate for crime as a misdemeanor</i>	5%
<i>Estimated number of misdemeanor trials</i>	13

Estimated jury costs for 13 misdemeanor trials using 6 jurors for one day with a jury fee of \$25 a day per juror 1,950 23,400

Increase in grand jury costs:

Estimated 10% increase in grand jury costs - fees and expenses 21,400

Estimated increase in transcription costs 5,000

Total Increase in Contractual Costs 49,800

Supplies

Cassette tapes, trial forms, juror forms and in-court supplies 1,500

Total Estimated Costs \$86,695

Date of Committee Action: _____

The JUDICIARY Committee considered:

SSHB 75

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 75

INCREASED PENALTIES FOR JOYRIDING

"An Act relating to vehicle theft and the consequences of vehicle theft, including revocation of a driver's license, privilege to drive, or privilege to obtain a license; amending Rule 32.1, Alaska Rules of Criminal Procedure; and providing for an effective date."

recommends it be replaced with the following committee substitute _____ the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
 fiscal note(s) _____ fiscal note(s) _____

zero fiscal note(s) _____ zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>Betty [Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			

CHAIR'S SIGNATURE Brian Porter



*Rick Mystrom,
Mayor*

ANCHORAGE POLICE DEPARTMENT

4501 South Bragaw Street • Anchorage, Alaska 99507-1599

Telephone (907) 786-8500



Service since 1921

FEB 5 1996

January 31, 1996

Representative Brian Porter
Alaska State Legislature
State Capitol (MS 3000)
Juneau, Alaska 99801-1182

Dear Representative Porter,

I appreciate your interests in raising the penalty for the unlawful taking of a motor vehicle. We think taking someone's car without permission is felony behavior and should be charged as such.

Undoubtedly in your deliberations, there will be discussions about how to handle juveniles. Should they be waived into Adult Court, or should they remain under the jurisdiction of the Juvenile Justice system. I would like to offer some opinion that I hope will help in your decisions.

I was in whole hearted support of the sweeping Juvenile Waiver Bill that passed the legislature two years ago. Juvenile Waiver for the most violent of crimes was supported by myself and others, in part, because of our belief that the Juvenile Justice System is not designed to deal with certain violent offenders. We believe that the needs of society are best served by using the Adult System when extreme violence is used. Juvenile Waiver was an idea whose time had come, and I think history will prove that the Legislature made a wise decision.

This does not mean the entire Juvenile Justice System is a failure, nor does it mean that the Adult System is better at treating juveniles in all cases. Certainly, most violent offenders belong in the Adult System. However, we should be cautious in assuming that the Adult System is the appropriate place for all young people to be dealt with. The Juvenile system has more tools available to it for treating youthful, non-violent offenders than the Adult System, provided that it is afforded the appropriate budgetary levels.

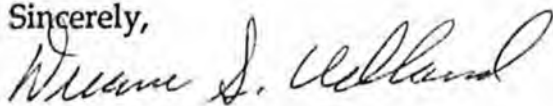
There is no evidence I am aware of to suggest that the Adult Court System is better at treating juveniles than the Juvenile System is. I have seen statistics that indicate

that the Juvenile System has a very low recidivism rate for non-violent offenders. They must be doing something right. The heart of the problem is that stealing a car is only a misdemeanor and both the Adult and Juvenile Justice Systems treat it as a low priority.

I ask that you keep the bill simple. Let's raise the penalty to a felony to help ensure that both systems of justice treat vehicle theft as a serious crime. Let's also eliminate the term "joy riding" from our vocabulary and call it what it is. It is stealing, it is dangerous behavior, and it should be treated more severely than we have in the past.

If I can offer anything else, or if you have any questions, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Duane S. Udland".

Duane S. Udland
Deputy Chief of Police

cc; Senator Loren Leman

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

P.O. BOX 111200
JUNEAU, ALASKA 99811-1200
PHONE: (907) 465-4322
FAX: (907) 465-4362

February 5, 1996

The Honorable Brian Porter, Chairman
House Judiciary Committee
Capitol Building, #118
Juneau, Alaska 99801

Dear Mr. Chairman:

This is to reiterate our position concerning Committee Substitute for House Bill 419 (State Affairs) "Disposal of Firearms" which was brought forth in the House State Affairs Committee meeting on Thursday, January 25, by my Special Assistant, Ms. Gretchen Pence.

It is the Administration's position that this legislation is unnecessary. The disposal of handguns is addressed in policy as follows:

1. Weapons which, according to state law, are deemed unsafe, unlawful, or potentially harmful to the public will be destroyed.
2. Every effort will be made to return stolen or unclaimed firearms to their rightful owners.
3. Long-barreled rifles and shotguns will be sold to licensed firearms dealers for sale to the public. Such guns have always been made available to the public.
4. Antiques, curios, and collectibles, as defined by federal firearms regulations, will be held for display purposes.
5. The Department of Public Safety and local law enforcement agencies in Alaska will be allowed to obtain any needed weapons.
6. Other state agencies, like the Departments of Fish and Game, Natural Resources and Corrections will be allowed to obtain any needed weapons.


The Honorable Brian Porter, Chairman
February 5, 1996
Page 2

7. Certified gun safety programs will be allowed to obtain firearms useful for their purposes.
8. All remaining firearms will be offered by bid to licensed firearms dealers, provided they are sold only to certified law enforcement officers or law enforcement organizations.

It is our belief that the above policy is a good one, and is one that works to ensure the streets of Alaska are safer for all residents.

Thank you for affording me the opportunity to address this legislation.

Sincerely,


for Ronald L. Otte
Commissioner

cc: Mark Boyer, Commissioner, DOA
House Judiciary Committee Members
Sandy Perry-Provost, Special Assistant, DPS

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SSHB 75

Revision Date: _____
Title: Vehicle Theft
Sponsor: Rep. Sanders
Requestor: House Judiciary

Dept. Affected: Alaska Court System
BRU: Trial Courts
Component: _____
COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	35.4	35.4	35.4	35.4	35.4	35.4
TRAVEL						
CONTRACTUAL	49.8	49.8	49.8	49.8	49.8	49.8
SUPPLIES	1.5	1.5	1.5	1.5	1.5	1.5
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	86.7	86.7	86.7	86.7	86.7	86.7

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (
----------------------	--	--	--	--	--	--

Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	86.7	86.7	86.7	86.7	86.7	86.7
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	86.7	86.7	86.7	86.7	86.7	86.7

Estimate of any current year (FY 98) cost: None

Positions

Full-Time						
Part-Time	3.0	3.0	3.0	3.0	3.0	3.0
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel *CC*
Agency: Alaska Court System

Approved by: Arthur H. Snowden, II, Administrative Director *AS*
Agency: Alaska Court System

Phone: 264-8228
Date: 02/05/96
Date: 02/05/96

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

Alaska Court System
Fiscal Analysis
SSHB 75

SSHB 75 removes vehicle theft and joyriding from the criminal mischief statutes, and establishes the crime of vehicle theft in the first degree, a class C felony, and vehicle theft in the second degree, a class A misdemeanor. Most of the conduct which the current law classifies as misdemeanor joyriding is reclassified by SSHB 75 as felony theft.

According to the Department of Law, existing vehicle thefts committed by adults and treated as felonies will increase from 100 to 363, or an increase of 263 felonies statewide (these numbers are based upon actual arrests in FY 95). Handling these as felony cases rather than misdemeanor cases will substantially increase the court costs associated with the offense. A misdemeanor joyriding trial can be expected to last one day and is tried before a six member jury. A felony joyriding trial can be expected to average three days in length and will be tried before a 12 member jury. The extra trial time results from the more serious consequences of a felony conviction; attorneys for both sides spend more time on matters such as jury selection, examination of witnesses, and motion practice. In addition, approximately 30 of these cases can be expected to involve defendants subject to presumptive sentencing because of prior convictions, thus bringing up the average trial time and rate. Unlike most misdemeanor joyriding cases, sentence will not be imposed at the time the guilty plea is entered or the verdict is returned; instead, there will be a separate sentencing hearing. This is less efficient and requires additional court time.

Because of the more serious consequences of a felony conviction, the trial rates can be expected to increase substantially. This note assumes that the trial rate will increase from five percent to ten percent (note that the trial rate for misdemeanor joyriding is generally higher than the trial rate for other class A misdemeanors because of the 72 hour minimum sentence and loss of drivers license associated with the offense).

Unlike misdemeanor cases, felony cases require presentment to a grand jury. SSHB 75 will increase the number of cases presented to grand juries each year by approximately 10 percent. There are also grand jury transcript preparation costs associated with indictments.

Alaska Court System
Fiscal Analysis
SSHB 75

Personal Services

<u>Position</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Pro Tem Superior court Judge, 50% vested, Anchorage, PPT, 3 months	\$12,075	\$6,169	\$18,244
In-Court Clerk, range 12A, Anchorage, PPT, 3 months (petit jury trials)	6,777	1,799	8,576
In-Court Clerk, range 12A, Anchorage, PPT, 3 months (grand juries)	6,777	1,799	8,576
			<hr/>
Increase in Personal Services Costs (net of existing costs)			<u>35,395</u>

Contractual

Increase in petit jury costs:

Estimated number of trials for the crime as a felony:

<i>Estimated number of cases to be filed as a felony</i>	263
<i>Estimated trial rate for crime as a felony</i>	10%
<i>Estimated number of felony trials</i>	26

Estimated jury costs for 26 felony trials using 13 jurors for three days with a jury fee of \$25 a day per juror	25,350
--	--------

Less estimated number of trials for the crime as a misdemeanor:

<i>Cases filed as a misdemeanor 1995</i>	263
<i>Estimated trial rate for crime as a misdemeanor</i>	5%
<i>Estimated number of misdemeanor trials</i>	13

Estimated jury costs for 13 misdemeanor trials using 6 jurors for one day with a jury fee of \$25 a day per juror	<u>1,950</u>	23,400
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Increase in grand jury costs:

Estimated 10% increase in grand jury costs – fees and expenses	21,400
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Estimated increase in transcription costs	<u>5,000</u>
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Total Increase in Contractual Costs	<u>49,800</u>
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Supplies

Cassette tapes, trial forms, juror forms and in-court supplies	<u>1,500</u>
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Total Estimated Costs	<u><u>\$86,695</u></u>
-----------------------	------------------------



Official Business

Alaska State Legislature

Chairman - Economic Development Committee

REPRESENTATIVE
JERRY SANDERS
District 19

Anchorage
716 W 4th Ave
Anchorage -- 99501
(907) 258-3199

State Capitol
Juneau, AK 99801-1182
(907) 485-4945

COMMITTEES
Labor and Commerce
Transportation

SPONSOR STATEMENT

SPONSOR SUBSTITUTE FOR HOUSE BILL 75

VEHICLE THEFT

Sponsor Substitute for House Bill 75 labels those who take cars belonging to others as what they are -- thieves -- not joy riders or pranksters. It increases the penalty for the crime of vehicle theft to a C Felony with one minor exception (first offense snow machines).

This bill provides a strong deterrent for those who might otherwise commit vehicle theft. Generally, under current law, those caught "joy riding" can only be convicted of a Class A Misdemeanor. The current law ties the hands of police and provides no deterrent for the car thief unless they cause \$500 damage or it is their second offense.

By increasing the crime of "joy riding" to a felony, SSHB 75 provides a strong deterrent necessary to prevent Alaska's youth from participating in vehicle theft and it gives the justice system the tools with which to make car thieves responsible for their actions.

There are other bills currently under consideration regarding vehicle theft issues. However, I feel that SSHB 75 best serves the public interest because it is a compromise bill that stands the best chance of addressing the concerns of both the legislature and the administration.

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 75
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES SANDERS, Finkelstein, Kott

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to vehicle theft and the consequences of vehicle theft, including
2 revocation of a driver's license, privilege to drive, or privilege to obtain a license;
3 amending Rule 32.1, Alaska Rules of Criminal Procedure; and providing for an
4 effective date."

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

6 * Section 1. AS 11.46 is amended by adding new sections to read:

7 ARTICLE 2A. VEHICLE THEFT.

8 Sec. 11.46.360. VEHICLE THEFT IN THE FIRST DEGREE. (a) A person
9 commits the crime of vehicle theft in the first degree if, having no right to do so or
10 any reasonable ground to believe the person has such a right, the person drives, tows
11 away, or takes

12 (1) the motor vehicle of another;

13 (2) the propelled vehicle of another and the vehicle or any other
14 property of another is damaged, or the owner incurs reasonable expenses as a result

1 of the loss of use of the vehicle, in a total amount of \$500 or more;

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

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

6 (A) this section or AS 11.46.365;

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

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

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

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

14 (b) Vehicle theft in the first degree is a class C felony.

15 Sec. 11.46.365. VEHICLE THEFT IN THE SECOND DEGREE. (a) A
16 person commits the crime of vehicle theft in the second degree if, having no right to
17 do so or a reasonable ground to believe the person has such a right,

18 (1) the person drives, tows away, or takes the propelled vehicle of
19 another that is not a motor vehicle; or

20 (2) having custody of a propelled vehicle under a written agreement
21 with the owner of the vehicle that includes an agreement to return the vehicle to the
22 owner at a specified time, the person knowingly retains or withholds possession of the
23 vehicle without the consent of the owner for so long a period beyond the time
24 specified as to render the retention or possession of the vehicle an unreasonable
25 deviation from the agreement.

26 (b) Vehicle theft in the second degree is a class A misdemeanor.

27 Sec. 11.46.370. DEFINITIONS. In AS 11.46.360 - 11.46.370,

28 (1) "aircraft" has the meaning given in AS 02.15.260;

29 (2) "commercial motor vehicle" has the meaning given in
30 AS 28.40.100;

31 (3) "motorcycle" has the meaning given in AS 28.40.100;

1 (4) "motor vehicle" means a propelled vehicle that is a passenger car,
2 truck, motorcycle, watercraft, aircraft, or commercial motor vehicle;

3 (5) "passenger car" means a vehicle designed or used primarily for the
4 transportation of persons;

5 (6) "truck" means a vehicle designed, used, or maintained primarily for
6 the transportation of property;

7 (7) "watercraft" means a vessel used or capable of being used as a
8 means of transportation, for recreational or commercial purposes, on water.

9 * Sec. 2. AS 11.46.484(b) is amended to read:

10 (b) Criminal [EXCEPT AS PROVIDED IN (c) OF THIS SECTION,
11 CRIMINAL] mischief in the third degree is a class A misdemeanor.

* Sec. 3. AS 11.46.486(a) is amended to read:

12 (a) A person commits the crime of criminal mischief in the fourth degree if,
13 having no right to do so or any reasonable ground to believe the person has such a
14 right,
15

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

19 (2) with intent to damage property of another, the person damages
20 property of another in an amount less than \$50; or

21 (3) the person rides in a propelled vehicle knowing it has been stolen
22 or that it is being used in violation of AS 11.46.360 or 11.46.365(a)(1)
23 [AS 11.46.482(a)(4) or 11.46.484(a)(2)].

24 * Sec. 4. AS 12.55.045(e) is amended to read:

25 (e) If a defendant is convicted of vehicle theft in the first degree in violation
26 of AS 11.46.360 or vehicle theft in the second [CRIMINAL MISCHIEF IN THE
27 THIRD] degree in violation of AS 11.46.365(a)(1) [AS 11.46.484(a)(2)], and the
28 victim of the offense incurs damage or loss as a result of the offense, the court shall
29 order the defendant to pay restitution.

30 * Sec. 5. AS 12.55.135(e) is amended to read:

1 (e) If [EXCEPT AS PROVIDED IN AS 12.55.055(f), IF] a defendant is
2 sentenced under (c) or [,] (d) [, OR (f)] of this section,

3 (1) execution of sentence may not be suspended and probation or parole
4 may not be granted until the minimum term of imprisonment has been served;

5 (2) imposition of a sentence may not be suspended except upon
6 condition that the defendant be imprisoned for no less than the minimum term of
7 imprisonment provided in the section; and

8 (3) the minimum term of imprisonment may not otherwise be reduced.

9 * Sec. 6. AS 12.55.135(f) is amended to read:

10 (f) A defendant convicted of vehicle theft in the second degree in violation
11 of AS 11.46.365(a)(1) [CRIMINAL MISCHIEF IN THE THIRD DEGREE IN
12 VIOLATION OF AS 11.46.484(a)(2), WHOSE CONVICTION IS NOT A FELONY
13 UNDER AS 11.46.484(c),] shall be sentenced to a definite term of imprisonment of
14 at least 72 hours but not more than one year.

15 * Sec. 7. AS 28.15.181(a) is amended to read:

16 (a) Conviction of any of the following offenses is grounds for the immediate
17 revocation of a driver's license, privilege to drive, or privilege to obtain a license:

18 (1) manslaughter or negligent homicide resulting from driving a motor
19 vehicle;

20 (2) a felony in the commission of which a motor vehicle is used;

21 (3) failure to stop and give aid as required by law when a motor
22 vehicle accident results in the death or personal injury of another;

23 (4) perjury or making a false affidavit or statement under oath to the
24 department under a law relating to motor vehicles;

25 (5) operating a motor vehicle or aircraft while intoxicated;

26 (6) reckless driving;

27 (7) using a motor vehicle in unlawful flight to avoid arrest by a peace
28 officer;

29 (8) refusal to submit to a chemical test authorized under
30 AS 28.33.031(a) or AS 28.35.031(a) while under arrest for operating a motor vehicle,
31 commercial motor vehicle, or aircraft while intoxicated, or authorized under

1 AS 28.35.031(g);

2 (9) driving while license, privilege to drive, or privilege to obtain a
3 license, canceled, suspended, or revoked, or in violation of a limitation;

4 (10) vehicle theft in the first degree in violation of AS 11.46.360 or
5 vehicle theft in the second degree in violation of AS 11.46.365.

6 * Sec. 8. AS 28.15.181(b) is amended to read:

7 (b) A court convicting a person of an offense described in (a)(1) - (4), (6),
8 [OR] (7), or (10) of this section shall revoke that person's driver's license, privilege
9 to drive, or privilege to obtain a license for not less than 30 days for the first
10 conviction, unless the court determines that the person's ability to earn a livelihood
11 would be severely impaired and a limitation under AS 28.15.201 can be placed on the
12 license that will enable the person to earn a livelihood without excessive danger to the
13 public. If a court limits a person's license under this subsection, it shall do so for not
14 less than 60 days. Upon a subsequent conviction of a person for any offense described
15 in (a)(1) - (4), (6), [OR] (7), or (10) of this section occurring within 10 years after a
16 prior conviction, the court shall revoke the person's license, privilege to drive, or
17 privilege to obtain a license and may not grant the person limited license privileges for
18 the following periods:

19 (1) not less than one year for the second conviction; and

20 (2) not less than three years for a third or subsequent conviction.

21 * Sec. 9. Rule 32.1(a), Alaska Rules of Criminal Procedure, is amended to read:

22 (a) Scheduling. At the time guilt in a felony case is established by verdict or
23 plea, the judge shall establish the date for a sentencing hearing and a presentencing
24 hearing, if appropriate, and, except as provided in paragraph (f) of this rule, shall
25 order a presentence investigation by the Department of Corrections. If the judge elects
26 to schedule a single hearing, all of the procedures for the presentencing and sentencing
27 hearings shall be applicable at the single hearing.

28 * Sec. 10. Rule 32.1, Alaska Rules of Criminal Procedure, is amended by adding a new
29 subsection to read:

30 (f) When Presentence Investigation Not Required. Unless a person may be
31 sentenced to a presumptive term of imprisonment under AS 12.55.125(e)(1) or (2), a

1 presentence investigation by the Department of Corrections is not required for a
2 defendant convicted of vehicle theft in the first degree in violation of AS 11.46.360.

3 * Sec. 11. AS 11.46.482(a)(4), 11.46.482(a)(5), 11.46.484(a)(2), 11.46.484(a)(3),
4 11.46.484(c); and AS 12.55.055(f) are repealed.

5 * Sec. 12. AS 11.46.360(a)(1), enacted by sec. 1 of this Act, applies to an act committed
6 on or after the effective date of this Act.

7 * Sec. 13. This Act takes effect immediately under AS 01.10.070(c).

Alaska Association Chiefs of Police



February 2, 1996

**Representative Sanders
House of Representatives
State Capital, Juneau AK 99801-1182**

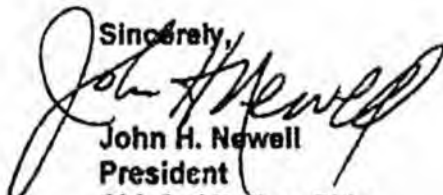
Honorable Representative Sanders,

I am writing on behalf of Alaska law enforcement in support of HB 75. We believe making vehicle theft in Alaska a class C felony is long overdue.

We have heard of some discussion about an automatic waiver of juveniles into adult court for felony vehicle theft. While law enforcement would agree there are times when that would be appropriate, we ask that you not make it automatic by legislation.

The current system will allow us to move those specific cases into adult court when it is appropriate. In a majority of instances, it will still be appropriate to deal with juvenile offenders within the juvenile system.

Thank you for being concerned and providing the laws necessary to deal with those who choose to violate the rights and property of another.

Sincerely,

**John H. Newell
President
Chief of Police, Sitka**

Victims for Justice

619 East Fifth Avenue, Anchorage, AK 99501
 Phone: (907)278-0977 FAX: (907)258-0740

February 2, 1996

Representative Jerry Saunders
 State Capitol
 Juneau, Alaska 99801-1182

Re: HB 75

Dear Representative Saunders,

Victims for Justice is writing a letter of support to HB 75. It is a sad note that our society has evolved to such a state that youthful offenders steal cars at the rate that they do. It is also a sad note that our laws do not provide a consequence to these youthful offenders who choose to steal cars. Of course the persons who always lose are the victims of the theft. They are the ones who must absorb the financial loss which often puts them into a major financial crisis. Such a law will provide a consequence which I am sure will be a deterrent for other youthful offenders which will prevent future victims. I encourage the legislators to please support such a bill.

Sincerely, ,

Janice Lienhart

Janice Lienhart
 Executive Director

Crisis Intervention
 Short and Long Term
 Emotional Support
 Grief Education
 Victim Advocacy
 Assault Support
 Group
 Homicide Survivors
 Support Group
 Court Accompaniment
 CourtWatch Program
 Annual Victims Rights
 Week Observance
 Member - National
 Association of Victim
 Advocacy
 Member - National
 Organization Victim
 Assistance

Serving victims of violent crimes and the families and friends of murder victims.

SECTION 7 adds vehicle theft to those offenses which may be grounds for immediate driver's license revocation by the court.

SECTION 8 provides for mandatory driver's license revocation by the court for conviction of vehicle theft. For a first offense, the revocation must be 30 days; for a second conviction, at least one year; and for a third conviction, at least three years.

SECTION 9 and 10 amend Rule 32.1, Alaska Rules of Criminal Procedure by excepting vehicle theft from cases where a presentence report by the Department of Corrections is required. If a defendant is subject to presumptive sentencing for the offense, a presentence report is still required.

SECTION 11 repeals the existing statute allowing substitution of community service for jail time, and other provisions replaced by the new statutes.

SECTION 12 and 13 provide the effective date for the bill.

Fiscal Note
"An Act relating to Vehicle Theft"
Page 2 of 2

(Continued from page 1 of 2)

assumed they will average 3 months in prison and 12 months in a CRC.

32 Offenders X 90 days X \$107 per day	= \$ 308,160
32 Offenders X 365 days X \$57 per day	= \$ 665,760
32 Offenders X 240 days X \$4.25 per day	= \$ <u>32,940</u>
TOTAL NEW	= \$1,006,560

Forty-three (43) new "C" Felons will be convicted and sentenced to an average of 30 days in CRC's and 6 months probation. These first time offenders would have been serving an average of 5 days which would have been served in a CRC under the old statute. An average net of 25 additional days will be served per offender and the sentence will be served in a CRC at an average cost of \$ 57.00 per day.

New (43 Offenders X 180 Days X \$ 4.25 per day)	=	\$ 32,895
New (43 Offenders X 25 Days X \$ 57.00 per day)	=	\$ <u>61,275</u>
TOTAL NEW	=	\$ 94,170

Eighty-five (85) additional "C" felons will be convicted and receive a suspended imposition of sentence for one year. Their conviction will be set aside if these offenders successfully complete their year's probation. The Department assumes that these will be the least serious first time offenders, to be managed at a lower level of probation supervision, and the cost per case will be about ½ the average cost of other probationers in this group of offenders.

New (85 Offenders X 365 days X \$ 4.25 per day) = \$ 131,856 [Probation]

Each felony conviction will require a pre-sentence investigation. While the cases would be spread across the state, the incremental equivalent is 1.4 probation officer positions.

A total of four (4) probation officers and an Administrative Clerk will be required.

P.O. II (w/benefits) \$ 52,900 X 1.4 = \$ 74,060 for presentence investigations.

TOTAL NEW COSTS

\$ 1,306,646

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB75(STA)

Revision Date: _____
Title: Vehicle Theft

Dept. Affected: Health and Social Services

BRU: Family and Youth Services

Component: Southcentral Region

Sponsor: Representative Sanders

COMPONENT SERIAL NO. 254

Requestor: House (STA)

See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY97	FY98	FY99	FY00	FY01	FY02
PERSONAL SERVICES	182.0	184.4	188.9	189.4	172.0	174.8
TRAVEL						
CONTRACTUAL						
SUPPLIES	3.0	3.0	3.0	3.0	3.0	3.0
EQUIPMENT	18.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	183.0	167.4	169.9	172.4	175.0	177.8

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGES IN REVENUES ()						
-------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	183.0	187.4	189.9	172.4	175.0	177.8
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other (please specify)						
TOTAL	183.0	167.4	169.9	172.4	175.0	177.6

POSITIONS:

FULL-TIME	3	3	3	3	3	3
PART-TIME						
TEMPORARY						

Estimate of any current year (FY96) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

The Division looks forward to an increased ability to deal with juveniles who steal cars when these offenses are elevated to felony status. However, increasing the seriousness of the offense does not, in itself, mean that juveniles will actually experience stiffer penalties unless the division has adequate resources to devote to the issue.

According to the Dept. of Public Safety's 1994 UCR, 205 juveniles were arrested for vehicle theft, and 184 of those arrests were for auto theft. There is a strong perception that auto thefts, particularly by juveniles, have increased since then. If DFYS is to take more serious action on these offenses, the division must have additional staff to supervise the penalties. We anticipate a need for two additional Juvenile Probation Officer II's in Anchorage and one in Palmer. These are the two communities with rampant increase in these juvenile offenses. The cost of these 3 positions is \$182.0. The estimated equipment cost for a new position for a desk, chair, computer and software is \$6.0 per position. The estimated annual cost of supplies per position is \$1.0.

Prepared by: L. Diane Worley, Director
Division: Family & Youth Services

Phone: 465-3702
Date: 01/26/96

Approved by Commissioner: Karen Hardue, Commissioner
Agency: Department of Health & Social Services

Date: 1/26/96

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB75(STA)

Revision Date: _____
Title: Vehicle Theft

Dept. Affected: Health and Social Services
BRU: Family and Youth Services

Sponsor: Representative Sanders
Requestor: House (STA)

Component: Southeastern Region
COMPONENT SERIAL NO. 258
See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY97	FY98	FY99	FY00	FY01	FY02
PERSONAL SERVICES	54.0	54.8	55.8	58.4	57.3	58.2
TRAVEL						
CONTRACTUAL						
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	6.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	61.0	55.8	56.6	57.4	58.3	59.2

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGES IN REVENUES ()						
-------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	61.0	55.8	56.6	57.4	58.3	59.2
1005 GF/Program Receipts						
1008 GF/MHTIA						
Other (please specify)						
TOTAL	61.0	55.8	56.6	57.4	58.3	59.2

POSITIONS:

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

Estimate of any current year (FY96) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

The Division looks forward to an increased ability to deal with juveniles who steal cars when these offenses are elevated to felony status. However, increasing the seriousness of the offense does not, in itself, mean that juveniles will actually experience stiffer penalties unless the division has adequate resources to devote to the issue.

According to the Dept. of Public Safety's 1994 UCR, 205 juveniles were arrested for vehicle theft, and 184 of those arrests were for auto theft. There is a strong perception that auto thefts, particularly by juveniles, have increased since then. If DFYS is to take more serious action on these offenses, the division must have additional staff to supervise the penalties. We anticipate a need for an additional Juvenile Probation Officer II in Juneau. The cost of this Juvenile Probation Officer II position is \$54.0 with an estimated 1.5% COLA for each year thereafter. The estimated cost for a new position for a desk, chair, computer and software is \$0.0. Estimated annual supply cost is \$1.0.

Prepared by: *[Signature]*
C. Diane Worley, Director
Division: Family & Youth Services

Approved by Commissioner: *[Signature]*
Karen Perdue, Commissioner
Agency: Department of Health & Social Services

Phone: 465-3702
Date: 01/26/96

Date: 1/21/96

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB75(STA)

Revision Date: _____
 Title: Vehicle Theft
 Sponsor: Representative Sanders
 Requestor: House (STA)

Dept. Affected: Health and Social Services
 BRU: Family and Youth Services
 Component: Northern Region
 COMPONENT SERIAL NO. 255
 See also (SN#): _____

Expenditures/Rvenues:

(Thousands of Dollars)

OPERATING	FY97	FY98	FY99	FY00	FY01	FY02
PERSONAL SERVICES	54.0	54.8	55.6	56.4	57.3	58.2
TRAVEL						
CONTRACTUAL						
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	6.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	61.0	55.8	56.6	57.4	58.3	59.2

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGES IN REVENUES ()						
-------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	61.0	55.8	56.6	57.4	58.3	59.2
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other (please specify)						
TOTAL	61.0	55.8	56.6	57.4	58.3	59.2

POSITIONS:

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

Estimate of any current year (FY96) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

The Division looks forward to an increased ability to deal with juveniles who steal cars when these offenses are elevated to felony status. However, increasing the seriousness of the offense does not, in itself, mean that juveniles will actually experience stiffer penalties unless the division has adequate resources to devote to the issue.

According to the Dept. of Public Safety's 1994 UCR, 205 juveniles were arrested for vehicle theft, and 184 of those arrests were for auto theft. There is a strong perception that auto thefts, particularly by juveniles, have increased since then. If DFYS is to take more serious action on these offenses, the division must have additional staff to supervise the penalties. We anticipate a need for an additional probation officer in Fairbanks. The cost of this Juvenile Probation Officer II position is \$54.0 with an estimated 1.5% COLA for each year thereafter. The estimated equipment cost for a new position for a desk, chair, computer and software is \$6.0. Estimated annual supply cost is \$1.0.

Signature
5/26/96

Prepared by: *E. Diane Worley*
 Division: Family & Youth Services

Phone: 465-3702
 Date: 01/26/96

Approved by Commissioner: *Karen Perdue*
 Agency: Department of Health & Social Services

Date: 1/26/96

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 75

Revision Date: _____ Dept. Affected: Corrections
 Title: An act related to vehicle theft... BRU: All
 Component: _____
 Sponsor: Rep. Sanders
 Requester: House State Affairs COMPONENT SERIAL NO. # 0694

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	271.5	275.6	279.7	283.9	288.2	292.5
TRAVEL						
CONTRACTUAL	727.0	727.0	727.0	727.0	727.0	727.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	308.2	308.2	308.2	308.2	308.2	308.2
TOTAL OPERATING	1,306.7	1,310.8	1,314.9	1,319.1	1,323.4	1,327.7

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	1,306.7	1,310.8	1,314.9	1,319.1	1,323.4	1,327.7
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	1,306.7	1,310.8	1,314.9	1,319.1	1,323.4	1,327.7

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME	5					
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Based on data supplied by DPS and DOL, the Department of Corrections projects the following fiscal impact :

Thirty-two (32) offenders with a prior felony conviction will be convicted of vehicle theft in the first degree. They will be subject to a presumptive sentence of two years in prison. They will serve 16 months allowing for good time reduction. These people are currently serving an average of 30 days. Thus, they will serve an additional 15 months in prison and 8 months on mandatory parole. Of the additional prison time, it is

CONTINUED ON PAGE 2

Prepared by: Jerry Shriner
 Division: Office of the Commissioner
 Approved by Commissioner: Margaret Pugh Margaret Pugh
 Agency: Department of Corrections

Phone: 465-4652
 Date: 1/27/96
 Date: 1/29/96

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FISCAL NOTE

Work Draft

1/24/96

**STATE OF ALASKA
1996 LEGISLATIVE SESSION**

BILL NO. CSHB 75 ()

Revision Date: <u>1/26/96</u>	Dept. Affected: <u>Department of Law</u>
Title: <u>"An Act relating to vehicle theft and the consequences of vehicle theft..."</u>	BRU: <u>Criminal Division</u>
Sponsor: <u>Representative Sanders</u>	Component: <u>Criminal Division</u>
Requester: <u>Representative Sanders</u>	COMPONENT SERIAL NO. <u>2085</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	108.5	108.5	108.5	108.5	108.0	108.5
TRAVEL	3.0	3.0	3.0	3.0	3.0	3.0
CONTRACTUAL	14.6	14.6	14.6	14.6	14.6	14.6
SUPPLIES	5.7	3.6	3.6	3.6	3.6	23.6
EQUIPMENT	15.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	146.8	129.7	129.7	129.7	129.7	129.7

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	146.8	129.7	129.7	129.7	129.7	129.7
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	146.8	129.7	129.7	129.7	129.7	129.7

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME	2.0	2.0	2.0	2.0	2.0	2.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The work draft committee substitute for HB 75 amends various criminal laws to establish the crime of vehicle theft in the first degree, a class C felony, and vehicle theft in the second degree, a class A misdemeanor. These changes have the effect of removing vehicle theft and joyriding from the criminal mischief statutes, and reclassifying this conduct as separate crimes. Moreover, the bill does this in a way that increases the penalty when a person drives, tows away or takes the motor vehicle of another from a class A misdemeanor to a class C felony. Under existing law, this conduct is punishable as a class C felony when the owner of the vehicle incurs reasonable expenses as a result of damages or the loss of use of the vehicle in a total amount of \$500 or more, it is a second offense, or the vehicle is a police or emergency vehicle.

Based upon actual arrests that occurred in the past year, existing vehicle thefts committed by adults and treated as felonies will increase from 100 to 363, or an increase of 263 new felonies statewide, that will be referred to the Department of Law for prosecution. About one-half of these felony referrals (130) will occur

Prepared by: Richard I. Pegues, Director
 Division: Administrative Services Division
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Phone: 465-3672
 Date: 1/26/96
 Date: 1/26/96

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FISCAL NOTE

Work Draft

1/24/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 75 ()

ANALYSIS CONTINUATION:

in the Anchorage area. This will result in an increase of seven or eight percent in the existing Anchorage felony caseload. As compared to misdemeanor prosecutions, felony prosecutions are far more intensive, requiring grand jury proceedings and extensive pretrial motion practice. This will particularly be the case in 30 or more new prosecutions involving presumptive (enhanced) sentencing because of prior felony convictions. The Department of Law is therefore requesting the addition of one Attorney II and one Legal Secretary I to handle the additional felony caseload that will occur in the Anchorage area if this bill is enacted. Normally, a part-time secretary would be adequate; however, in this case a large number of convictions (40 to 50) may result in a suspended imposition of sentence. When that happens the prosecution is required to prepare a lengthy written sentencing agreement. This additional work, taken together with the scheduling and normal documentation needed for this large a number of felonies, will require the services of a full-time legal secretary.

	<u>Attorney III</u>	<u>Legal Secretary I</u>	<u>Total</u>
Personal Services	71.5	37.0	108.5
Travel	3.0	0.0	3.0
Contractual	8.6	6.0	14.6
Supplies	3.3	2.4	5.7
Equipment	<u>6.5</u>	<u>8.5</u>	<u>15.0</u>
TOTAL	92.9	53.9	146.8

10/13/95

11:08:22.0

PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

PAGE: 1

DEPARTMENT OF LAW
COMPONENT #: 6501020300 NAME: THIRD JUDICIAL DISTRICTSCENARIO: 1
BRU NAME: PROSECUTION

PCN	UNAUTH PCN	JOB CLASS TITLE	T S	LOCATION NAME	R C	B U	S	R&S	MOS BUDG	SALARY	PREM PAY	BENES	PER.SERV. COSTS	G. F. AMOUNT
03//001		ATTORNEY III		F ANCHORAGE	A	XE	AA	22A	12	53304	0	18156	71460.78	
**** JUSTIFICATION:														
This Attorney III position is required to handle the 130 or more new felony prosecutions that will occur in the Anchorage area when the penalty for vehicle theft (currently classified as criminal mischief) is raised from a class A misdemeanor to a class C felony, as a result of the passage of this bill. Felony prosecutions require substantially increased processing, including grand jury proceedings and trial motion practice, compared to misdemeanor prosecutions. This additional work represents about a seven percent increase in the Anchorage felony caseload.														
TRAVEL COSTS 3000.00														
CONTRACTUAL COSTS 8600.00														
SUPPLIES COSTS 3300.00														
EQUIPMENT COSTS 6500.00														
OTHER COSTS 0.00														
=====														
TOTAL COSTS 92860.78 71460.70														
**** FUNDING DETAIL:														
1004 GENERAL FUND RECEIPTS 71460.78														
=====														
TOTAL FUNDING 71460.78														
03//002		LEGAL SECRETARY I		F ANCHORAGE	A	CG	2A	10A	13	25517	0	11447	36964.86	
**** JUSTIFICATION:														
This Legal Secretary I will be needed to provide clerical support to the new attorney handling felony prosecutions, as a result of raising the penalty for vehicle theft from a class A misdemeanor to a class C felony. Of particular note will be a large number of convictions resulting in a suspended imposition of sentence. These will all require lengthy sentencing agreements and a considerable amount of secretarial time. Taken together with the normal scheduling and documentation required by the overall felony caseload increase, full-time secretarial services are needed														
TRAVEL COSTS 0.00														
CONTRACTUAL COSTS 6000.00														
SUPPLIES COSTS 2400.00														
EQUIPMENT COSTS 8500.00														
OTHER COSTS 0.00														
=====														
TOTAL COSTS 53864.86 36964.86														
**** FUNDING DETAIL:														
1004 GENERAL FUND RECEIPTS 36964.86														
=====														
TOTAL FUNDING 36964.86														
**** COMPONENT TOTALS:														
FULL TIME NEW POSITIONS 2 TOTAL PERSONAL SERVICES 108425.64														
PART TIME/SEASONAL NEW POSITIONS 0														
NON PERMANENT NEW POSITIONS 0 TOTAL COSTS INC. ASSOC COSTS 146725.64														
OTHER..... 0														
=====														
NUMBER OF NEW POSITIONS IN COMPONENT: 2														
FUNDING DATA: G.F. & G.F. MATCH: 108425.64														
OTHER FUNDS: 0.00														
=====														
TOTAL FUNDING: 108425.64														

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO: SSHB 75

Revision Date: January 29, 1996
Title: Felony Vehicle Theft
Sponsor: Representative Sanders
Requestor: H.State Affairs

Dept. Affected: Public Safety
BRU: Alaska State Troopers
Component: Detachments
COMPONENT SERIAL NO. 0799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	8.8	8.8	8.8	8.8	8.8	8.8
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	8.8	8.8	8.8	8.8	8.8	8.8
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES () Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 95) impact: \$ _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

See Attached.

Prepared By: Lt. Dan Lowden
Division: Alaska State Troopers

Phone: 465-5505
Date: January 29, 1996

Approved by Commissioner: *Ronald L. Otte*
Agency: Ronald L. Otte, Department of Public Safety

Date: 1/29/96

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO: Draft CSHB 75

Revision Date: _____ Dept. Affected: Public Safety

ANALYSIS CONTINUED:

This legislation will amend current state law so that all occurrences of taking a motor vehicle would be a felony. Under existing law the taking of a motor vehicle is only a felony if the vehicle is an emergency vehicle or \$500.00 or more in damage is done to the vehicle or other property.

This bill will have fiscal impact on the Department. Felony cases require more effort from the Department than do misdemeanor cases. That increased effort includes the court time involved by the Troopers worked on the case, increased evidence collection and processing, and increased report documentation with short time limits for report completion. It is difficult to place a precise dollar figure on this type of fiscal impact because of the many variables involved. At the very least, the passage of this bill will require the investigating trooper to attend a grand jury session.

In 1995 the Troopers arrested 89 persons for "joyriding." One third of those cases were removed assuming that the case was investigated by a trooper assigned to day shift and no additional costs would be incurred for that trooper to testify before the grand jury. This leaves about 60 cases worked by swing and graveyard shift troopers who would have to attend the grand jury on overtime with a minimum of three hours pay by contract. This adds up to \$8,820 in overtime costs, using an average figure of \$49 per hour. Note: the average cost of \$49 per hour is just that an average cost. More senior troopers being paid at a higher step, geographic differential, and travel cost for troopers to fly to court from outlying areas would all have an effect on the figures.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO: SSB 75

Revision Date: January 29, 1996 Dept. Affected: Public Safety
 Title: An Act relating to criminal mischief BRU: Motor Vehicles
 Component: Driver Services
 Sponsor: Representative Sanders
 Requestor: H. State Affairs COMPONENT SERIAL NO. 0500

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	36.1	36.1	36.1	36.1	36.1	36.1
TRAVEL						
CONTRACTUAL	2.4	2.4	2.4	2.4	2.4	2.4
SUPPLIES	1.0	1.0	1.0	1.0		
EQUIPMENT	10.0					
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	49.5	39.5	39.5	39.5	39.5	39.5
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES (1004) Revenue Code	93.8	93.8	93.8	93.8	93.8	93.8

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	49.5	39.5	39.5	39.5	39.5	39.5
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	49.5	39.5	39.5	39.5	39.5	39.5

Estimate of current year (FY 95) impact: \$ _____

POSITIONS:

FULL-TIME	0	1	1	1	1	1
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

SEE ATTACHED

Prepared By: Juanita M. Hensley Phone: 465-2650
 Division: Motor Vehicles Date: 1/26/96
 Approved by Commissioner: *Ronald L. Otte* Date: 1/29/96
 Agency: Ronald L. Otte, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO: SSHB 75

Revision Date: January 29, 1996

Dept. Affected: Public Safety

ANALYSIS CONTINUED:

Current law, AS 28.15.181 requires the revocation of a driver's license for any felony conviction in which a commission of a motor vehicle was used.

This bill requires the court to revoke a driver's license of a person who has been convicted of vehicle theft. It is estimated that there will be approximately 547 convictions a year.

This bill impacts the Division of Motor Vehicles by resulting in a minimum of 1,094 updates to the driving record of the person's whose license's are being revoked. One computer entry to add the revocation to the driving record; and another entry to end the revocation. Existing law requires the division to notify a person by certified mail any time action is taken to revoke or suspend a driver's license. Reinstating the driver's license will also impact the DMV field offices by reissuing a driver's license to the person when the revocation has ended. It is estimated 90 percent of all persons whose license is revoked will reinstate their driving privilege. A \$100 reinstatement fee is charged anytime a person has had their license revoked within 10 years preceding application for a driver's license. It is estimated 247 individual's will pay the \$100. If the license was suspended or revoked more than one time within the 10 years preceding application for a driver's license, the reinstatement fee is increased to \$250. It is estimated 247 will pay the \$250. A person will also have to pay the license reissuance fee of \$15 prior to the license being issued. The amount of additional new general fund program receipt revenue generated will is approximately \$93.8

Total number of revocations received from the courts to DMV	547
Total number of certified letters mailed	547
Total number of license reinstated 90%	494

OPERATING

FY97

FY98

Personal Services

Salary and Benefits

Motor Vehicle Representative II	\$36.1	\$36.1
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Contractual

Computer line charges (Mainframe connection) \$0.5	\$0.5	\$0.5
Postage Certified Mail 547 @ \$2.52 each	\$1.4	\$1.4
Telephone lease & line charges	\$0.5	\$0.5

Supplies

Routine office supplies, paper, pencils, pens, etc.	\$1.0	\$1.0
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Equipment

Complete Computer Workstation, desk, chair, file cabinet, monitor, hard drive, printer (One time costs)	\$10.0	
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<u>TOTAL OPERATING</u>	\$49.5	\$39.5
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REVENUE

494 Reinstatements 247 @\$100, 247 @\$250	\$86.4	\$86.4
494 License reissues @\$15	\$7.4	\$7.4

<u>TOTAL REVENUE</u>	\$93.8	\$93.8
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