

**ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672**

**8903 SENATE JUDICIARY**

# FISCAL NOTE

Revision Date: January 23, 1996 Dept. Affected: Community & Regional Affairs  
 Title: An Act relating to the disposal of firearms and ammunition by the state or a municipality BRU: none  
 Component: none  
 Sponsor: Sen. Miller, Leman, Sharp, et al.  
 Requestor: Senate State Affairs COMPONENT SERIAL NO. \_\_\_\_\_

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current (FY94) impact \$ none

ANALYSIS: (Attach a separate page if necessary)  
  
 This legislation would have no fiscal impact on the department.

Prepared by Remond Henderson, Director *Remond Henderson* Phone 465-4708  
 Division Division of Administrative Services Date 1/23/95  
 Approved by Commissioner *[Signature]* Date 1/23/95  
 Agency Community & Regional Affairs

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# FISCAL NOTE

**STATE OF ALASKA**  
**1996 LEGISLATIVE SESSION**

**BILL NO: SB 219**

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
 Title: Disposal of firearms and ammunition by the BRU: Alaska State Troopers  
state and municipalities. Component: Detachments  
 Sponsor: Senator Miller  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 0799

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

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

**FUNDING: (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	-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.)**

This bill does not have a fiscal impact on the Division of Alaska State Troopers.

Prepared By: Lt. Dan Lowden Phone: 465-5505  
 Division: Alaska State Troopers Date: January 24, 1996  
 Approved by Commissioner: *Ronald I. Ote* Date: 1/24/96  
 Agency: Ronald I. Ote, Department of Public Safety

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**SB**

**228**

TONY KNOWLES, GOVERNOR

**DEPARTMENT OF REVENUE**

OFFICE OF THE COMMISSIONER

P.O. BOX 110400  
JUNEAU, ALASKA 99811-0400  
TELEPHONE: (907) 465-2300  
FACSIMILE: (907) 465-2389

January 30, 1996

The Honorable Robin Taylor  
Alaska State Legislature  
Senate Judiciary Committee  
State Capitol, Room 30  
Juneau, AK 99801-1182

RE: Senate Bill 228, Unclaimed Property

Dear Senator Taylor:

SB 228, would update the statutes for the Unclaimed Property Program. This bill has its first referral in your committee and I am writing to ask that you schedule the legislation for a hearing.

Under this program the state acts as a perpetual custodian of abandoned personal property. Examples of abandoned property include money left in bank savings accounts or deposits left with utility companies and the business cannot locate the owner. Thus property becomes abandoned or unclaimed. The purpose of the act is to protect, safeguard and account for property until it is claimed by the owner. When an owner or heir comes forward, the state must surrender either the property in its original form or the proceeds from its sale. The proposed changes would streamline the process for both businesses and the state.

SB 228 is the product of extensive work by employees of our department, auditors from the Office of Management and Budget and the National Conference of Commissioners on Uniform State Laws. I look forward to working with you and request that you and your committee give this your prompt attention.

Thank you for your consideration.

Sincerely,

Wilson L. Condon  
Commissioner

96-011

**ALASKA DEPARTMENT OF REVENUE  
INCOME AND EXCISE AUDIT DIVISION  
March 12, 1996**

**Issue Paper for CSHB 434, Unclaimed Property Act**

**MERITS FOR AMENDING UNCLAIMED PROPERTY Program ACT (UCP,) AS 34.45.**

**OVERVIEW**

Under this program the state acts as a perpetual custodian of abandoned personal property. Examples of abandoned property include money left in bank savings accounts or deposits left with utility companies and the business cannot locate the owner. Thus property becomes abandoned or unclaimed. The purpose of the act is to protect, safeguard and account for property until it is claimed by the owner. When an owner or heir comes forward, the state must surrender either the property in its original form or the proceeds from its sale.

Financially the program costs approximately \$185,000 annually (3 full time employees) and deposits into the general fund range between \$1.5 and \$2.0 million. Over the past three years over three thousand people have been located by UCP staff and had their property returned.

**NEED FOR CHANGE**

Changes are needed so we can reduce the administrative paper work required to operate the program and increase the efforts to locate owners and additional unclaimed property. In relation to this the Office of Management and Budget (OMB) completed an audit in October 1995 and working together with UCP staff developed the following recommended changes in UCP statutes.

- Income & Excise Audit Division require holders to report once annually and to remit the abandoned property to the state at the same time. Current law requires remittance subsequent to reporting.
- Require all holders to report unclaimed property to the state on the same date. Two different time periods are used now and one date would be more efficient.
- Raise the level of property value below which aggregate holder reporting is allowed. Also increase the property value required for individual notification. All values would be set consistently at \$100 throughout the UCP statutes. This would reduce paperwork for businesses and the state and prevent us from paying more to return property than it is worth.
- Adopt the draft language proposed by the National Conference of Commissioners of Uniform State Laws as it relates to the reporting requirements of mutual fund companies.
- Changes notification requirements to eliminate duplicate mail notices.
- Require the publishing of property owners' names only after the property in the state's custody.

**Need for Change, continued**

Income and Excise Audit also recommends the following change:

- Require heirs to identify in writing the nature and value of property and fees charged for information leading to the location of the property. Also allows a contract to be valid for six months and compensation percentages to have a maximum value.

**RECOMMENDATION**

These statutory changes are needed in order to more efficiently and effectively administer the program. Statutory dual reporting by the holder and dual processing by the state will be eliminated. Funds will be received at the time of reporting eliminating duplicate posting and reconciling. More efforts can be applied to locating owners as well as holder education and compliance. These changes will benefit firms and entities (i.e. banks, insurance companies and utilities) reporting unclaimed property, the State of Alaska and Alaska's unclaimed property owners. Efforts to locate the rightful owners can be increased.



February 23, 1995

KeyBank  
Post Office Box 100420  
Anchorage, AK., 99510-0420

(907) 562-6100

Rachel Marshall  
State of Alaska  
Unclaimed Property Section  
P.O. Box 110420  
Juneau, AK 99811-0420

Via FAX

Dear Rachel:

Key Bank of Alaska has reviewed the proposed changes to the Unclaimed Property Act AS 34.45.

- \*Aggregating accounts with balances less than \$100 will streamline the paperwork.
- \*Key Bank currently pays and delivers all property shown on the report by November 1st each year. This eliminates having to go through the process again for May. It also eliminates the confusion of determining who has the property when the names are published in the paper.
- \*Key Bank agrees that there needs to be rules for heirfinders. Customers are harassed at times by these people and then realize very little gain. It also causes problems when the Bank is trying to locate the customer to return the property at the same time the heirfinder is trying to engage them in a contract.

The proposed changes appear to reduce paperwork and streamline the process of escheating abandoned property. Key Bank supports these recommendations.

Sincerely,

Jennifer Ferguson  
Assistant Vice President  
Bank Operations



# CHUGACH ELECTRIC

ASSOCIATION, INC.

February 28, 1996

Ms. Rachael E. Marshall  
Administrator  
State of Alaska  
Department of Revenue  
Unclaimed Property Section  
P.O. Box 110420  
Juneau, AK 99811-0420

Via fax 907-465-2375

Dear Rachael:

I have reviewed the proposed unclaimed property statute changes as you requested. I apologize for the tardiness of my reply - Chugach is in the processing of closing its books for the year and also in the middle of its annual audit.

Overall, I found that the proposed changes simplify reporting requirements for entities such as ours. Raising the value of the property to be reported from \$25 to \$100 will significantly reduce our paperwork, and thus make the filing easier.

Section 8 (a) requires payment of unclaimed property at the time of filing the report which I believe is what Chugach Electric has historically done anyway, so I am in agreement with that change as well.

Thank you for the opportunity to review these proposed changes.

Sincerely,

A handwritten signature in cursive script that reads "Jody Wolfe".

Jody Wolfe  
Accounting Manager

JW/te  
Jody@CHUGACH.COM

## State Farm Insurance Companies



One State Farm Plaza  
Bloomington, IL 61710-0001

Thomas M. Deighan  
Counsel  
(309) 766-2050  
Telecopy (309) 766-8694 or  
766-1910

February 23, 1996

Ms. Rachel E. Marshall  
Department of Revenue  
Unclaimed Property Division  
P.O. Box 110420  
Juneau, AK 99811-0420

Re: Alaska Unclaimed Property Act

Dear Ms. Rachel:

This letter is to confirm that State Farm Mutual Automobile Insurance Company supports the proposed amendments to the Alaska Unclaimed Property Law.

Raising the aggregate limit, raising the property value limit for mail notice, and requiring all holders to report and pay on November 1 would significantly reduce the burden of complying with the terms of the Act.

Sincerely,

A handwritten signature in cursive script that reads "Thomas M. Deighan".

Thomas M. Deighan



## Trial Courts

State of Alaska

THIRD JUDICIAL DISTRICT  
303 K STREET  
ANCHORAGE, ALASKA  
99501

February 26, 1996

OFFICE OF THE CLERK

Rachael E. Marshall, Administrator  
Unclaimed Property Section  
P O Box 110420  
Juneau, AK 99811

Dear Ms. Marshall:

In a recent letter received from you, I was asked to give my thoughts on the proposed changes in legislation for unclaimed property. For the past two years, the court system has submitted reports and funds to the Unclaimed Property Section by November 1st. Previously, the process was completed in three steps; reports submitted by November 1st, research and issuance of checks to customer after publication, and any unclaimed funds submitted by May 1st.

Using the previous process, customers were directed by the publication to contact the Unclaimed Property Section for instructions. The customer was then referred to the appropriate court for disbursement of funds. The court issued checks only after research and proper verification. This process confused customers, thus conveying the appearance of poor customer service.

Transferring funds to the Unclaimed Property Section with the reports has decreased clerical workload, increased efficiency and promoted good customer service. I support the proposed changes in legislation.

If anything further is needed, please contact me at 907-264-0465.

Sincerely,

Cathy Franklin,  
Supervisor, Trial Court Accounting

SB 228

ALASKA DEPARTMENT OF REVENUE  
INCOME AND EXCISE AUDIT DIVISION

January 12, 1996

**MERITS FOR AMENDING UNCLAIMED PROPERTY Program ACT (UCP,) AS 34.45.**

**OVERVIEW**

Under this program the state acts as a perpetual custodian of abandoned personal property. Examples of abandoned property include money left in bank savings accounts or deposits left with utility companies and the business cannot locate the owner. Thus property becomes abandoned or unclaimed. The purpose of the act is to protect, safeguard and account for property until it is claimed by the owner. When an owner or heir comes forward, the state must surrender either the property in its original form or the proceeds from its sale.

Financially the program costs approximately \$185,000 annually (3 full time employees) and deposits into the general fund range between \$1.5 and \$2.0 million. Over the past three years over three thousand people have been located by UCP staff and had their property returned.

**NEED FOR CHANGE**

Changes are needed so we can reduce the administrative paper work required to operate the program and increase the efforts to locate owners and additional unclaimed property. In relation to this the Office of Management and Budget (OMB) completed an audit in October 1995 and working together with UCP staff developed the following recommended changes in UCP statutes.

- Income & Excise Audit Division require holders to report once annually and to remit the abandoned property to the state when reported.
- Require all holders to report unclaimed property to the state on the same date.
- Raise the level of property value below which aggregate holder reporting is allowed so it is consistent with the state's notification requirements. *\$100*
- Adopt the draft language proposed by the National Conference of Commissioners of Uniform State Laws as it relates to the reporting requirements of mutual fund companies.
- Changes notification requirements to eliminate duplicate mail notices.
- Require the publishing of property owners' names only after the property in the state's custody.
- Increase the property value required for notification.

Income and Excise Audit also recommends the following change:

- Require heirs to identify in writing the nature and value of property and fee charged for information leading to the location of the property. Also allows a contract to be valid for six months and compensation percentages to have a maximum value.

*10% 10%*

*Bob Bartholomew  
465-4273*

*3 people operate program*

**RECOMMENDATION**

These statutory changes are needed in order to more efficiently and effectively administer the program. Statutory dual reporting by the holder and dual processing by the state will be eliminated. Funds will be received at the time of reporting eliminating duplicate posting and reconciling. More efforts can be applied to locating owners as well as holder education and compliance. These changes will benefit firms and entities (i.e. banks, insurance companies and utilities) reporting unclaimed property, the State of Alaska and Alaska's unclaimed property owners. Efforts to locate the rightful owners can be increased.

**S B**

**238**

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. SB 238

Revision Date: \_\_\_\_\_ Dept. Affected: Department of Law  
 Title: "...relating to the care and regulation of the care of animals...relating to crimes involving animals." BRU: Criminal Division  
 Sponsor: Senator Phillips Component: Criminal Division  
 Requester: Senate Judiciary Committee COMPONENT SERIAL NO. 2085

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

**POSITIONS**

POSITIONS	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
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 state laws in several ways to provide for the care and regulation of the care of animals, and the bill amends laws relating to crimes involving animals. First, the bill authorizes a peace officer to seize and arrange for the shelter and care of an animal found to be treated or confined under conditions constituting cruelty to animals.

Second, the bill provides for the issuance of search warrants where there is probable cause to believe violations of the state's cruelty to animal laws has occurred or is occurring.

Third, the bill provides that employees of the Department of Environmental Conservation, designated by the commissioner of environmental conservation, and peace officers shall be responsible for enforcement of the state's cruelty to animals laws.

*Richard I. Pegues*

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: 1/28/96  
 Date: 1/26/96

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**FISCAL NOTE**

FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. SB 238

ANALYSIS CONTINUATION:

Fourth, the bill provides that the Department of Environmental Conservation shall annually provide voluntary rabies vaccinations to animals at reduced cost to the owners of the animals. The bill further provides that the cost of a vaccination may not exceed the cost to the department of the amount of vaccination administered to the animal.

Fifth, the bill provides that the Department of Environmental Conservation shall establish minimum standards for the proper care of animals. These standards cover food, water, indoor shelter, outdoor shelter, space, sanitation, and medical care to maintain an animal in good health.

Sixth, the bill establishes an animal abuser registration program to be maintained by the Department of Environmental Conservation, which requires that a person convicted of an animal abuse offense register with the department within seven days after being released from a correctional facility, or within seven days of conviction for a violation of an animal abuse offense if the animal abuser is not sentenced to a term of incarceration, or within 14 days of becoming physically present in the state. An animal abuser's requirement to register ends 10 years following the abuser's unconditional discharge from a conviction for an animal abuse offense.

Seventh, the bill amends the state's existing cruelty to animal statutes to provide two levels of criminal conduct, cruelty to animals in the first degree and cruelty to animals in the second degree. Cruelty to animals in the first degree is a class A misdemeanor and includes: intentionally inflicting severe and prolonged physical pain or suffering on an animal; killing or injuring an animal by the use of a decompression chamber; killing a dog or cat for the purpose of preparing or serving the animal for human consumption; killing or injuring a domestic animal by the use of poison; or committing the offense of cruelty to animals in the second degree and, as a result of that offense, causing the death of the animal or causing severe pain or suffering to the animal. The bill further provides that a person convicted of cruelty to animals in the first degree is guilty of a class C felony if, within the preceding seven years, the person was convicted of the same offense.

The offense of cruelty to animals in the second degree, which would be a class B misdemeanor, includes: recklessly abandoning a domestic animal; recklessly failing to provide care by failing to provide an animal with proper food, water, shelter, rest, sanitation, ventilation, space, or medical attention; failing, while operating a propelling vehicle and striking and injuring an animal, to stop as close as possible to the scene of the accident and notifying the owner of the animal if the owner can reasonably be discovered, and notifying the appropriate law enforcement agency; keeping a dog, unless the property on which the dog is kept contains, or is contiguous with, a permanently occupied residence by a person who is responsible for the daily care, maintenance and supervision of the dog; and setting a steel jaw, leg-hold, snare, spring, or similar trap that has the capacity to injure or kill an animal. It would be a defense for a prosecution under this last provision that a defendant's conduct in setting a trap was for a commercially reasonable purpose, or necessarily incident to lawful hunting or trapping activities.

The number of cruelty to animal offenses referred to the Department of Law is small, and there will probably not be a fiscal impact for the department. We do note, however, that the bill establishes substantial new responsibilities for the Department of Environmental Conservation that may have a fiscal impact on that department. Moreover, the Department of Law believes that the new duties encompassed by this bill will serve to increase the size of state government in an area that is primarily a local matter. Consequently, the department further believes these duties are the proper responsibility of municipalities and should be the subject of local ordinance rather than state statute.

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. SB 238

Revision Date: \_\_\_\_\_ Dept. Affected: Corrections  
 Title: "An Act relating to the care and regulation of the BRU: State Wide Programs  
care of animals; relating to registration of animal abuse offenders;..." Component: \_\_\_\_\_  
 Sponsor: Senator Phillips  
 Requester: Senate Judiciary COMPONENT SERIAL NO. #1381

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

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

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

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

This bill amends AS 11.61.140 and adds AS 11.61.142 to create two levels of criminal conduct, cruelty to animals in the first degree and cruelty to animals in the second degree. Cruelty to animals in the first degree is a class A misdemeanor. The bill further provides a new sub-section AS 11.61.140 (e) that a person convicted of cruelty to animals in the first degree is guilty of a class C felony if, the person was previously convicted of the same offense within the past seven years. Cruelty to animals in the second degree is a class B misdemeanor.

The number of cruelty to animals cases are very small and there is little or no impact on the Department of Corrections.

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

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

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# FISCAL NOTE

**STATE OF ALASKA**  
**1996 LEGISLATIVE SESSION**

**BILL NO: SB 238**

Revision Date: \_\_\_\_\_ Dept. Affect: Public Safety  
 Title: Cruelty to Animals BRU: Alaska State Troopers  
 Component: Detachments  
 Sponsor: Senator Phillips  
 Requestor: Senate Judiciary 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	13.6	13.6	13.6	13.6	13.6	13.6
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>13.6</b>	<b>13.6</b>	<b>13.6</b>	<b>13.6</b>	<b>13.6</b>	<b>13.6</b>
<b>CAPITAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
<b>CHANGE IN REVENUES ( )</b> Revenue Code	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

**FUNDING: (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF	13.6	13.6	13.6	13.6	13.6	13.6
1005 GF/Program						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>13.6</b>	<b>13.6</b>	<b>13.6</b>	<b>13.6</b>	<b>13.6</b>	<b>13.6</b>

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 Phone: 465-5505  
 Division: Alaska State Troopers Date: February 2, 1996  
 Approved by Commissioner: *Dee Smith* Date: 2/15/96  
 Agency: Ronald L. Ote, Department of Public Safety

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# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO: SB 238

Revision Date: February 2, 1996

Dept. Affected: Public Safety

## ANALYSIS CONTINUED:

During 1995, the Alaska State Troopers investigated 20 cruelty to animal cases and 831 animal related offenses. Of the 831 animal related offenses most were likely to have been "barking dog" type cases. For this fiscal note it was assumed that 200 (about one fourth of the 831) would become criminal acts if this bill were to be enacted.

To investigate these new offenses it will cost the division, \$7,600.

200  
x one hour (estimated average investigation time for these offenses)  
x \$38 (average trooper cost per hour, straight time)  

---

\$7,600 Total for investigating new offenses

It was estimated that one fourth of the offenses would involve repeat offenders under the bill and would be charged as a felony. The time need to investigate these new felony offenses is included in the estimate above. However, every felony charge must be presented to a grand jury or a superior court judge in a preliminary hearing. To have the investigating trooper testify at the grand jury or a preliminary hearing it cost the division, \$5,976.

4 (one fourth of the 20 cruelty cases)  
+ 50 (one fourth of the estimated 200 new cases)  

---

54 new felony cases  
18 (one third of the 54 new felony cases estimated to be worked by troopers assigned to day shift)  
x one hour (time estimated for these troopers to testify at the grand jury or preliminary hearing)  
x \$38 (average trooper cost per hour straight time)  

---

\$684 Total for day shift troopers to testify at the grand jury or preliminary hearing

36 (two thirds of the 54 new felony cases estimated to be worked by trooper assigned to swing and graveyard shifts)  
x three hours (the minimum number of hours required by contract, to be paid for overtime not contiguous with shift)  
x \$49 (average trooper cost per hour, overtime)  

---

\$5,292 Total for swing and graveyard shift troopers to testify at the grand jury or preliminary hearing.

---

\$5,976 Total for troopers to testify at the grand jury or preliminary hearing

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\$13,576 Total for the division to respond to, investigate, and prosecute the new offenses.

Note: the average trooper cost per hour are averages, the actual cost are affected by seniority, shift differential, geographic differentials, etc

**FISCAL NOTE**

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. SB 238

Revision Date: \_\_\_\_\_  
Title: Cruelty to Animals  
Sponsor: Senator Phillips  
Requestor: \_\_\_\_\_

Department Affected: Environmental Conservation  
BRU: Environmental Health  
Component: Animal Industries

**COMPONENT SERIAL NO.**

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	191.4	191.4	191.4	191.4	191.4	191.4
TRAVEL	178.0	178.0	178.0	178.0	178.0	178.0
CONTRACTUAL	11.8	6.8	6.8	6.8	6.8	6.8
SUPPLIES	127.9	127.9	127.9	127.9	127.9	127.9
EQUIPMENT	9.5	2.0	2.0	2.0	2.0	2.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>518.6</b>	<b>506.1</b>	<b>506.1</b>	<b>506.1</b>	<b>506.1</b>	<b>506.1</b>

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
----------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

**FUND SOURCE**

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 CF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 OP	393.6	393.6	393.6	393.6	393.6	393.6
1005 CF/Program Receipts	125.0	125.0	125.0	125.0	125.0	125.0
1006 OPM/OTLA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>518.6</b>	<b>518.6</b>	<b>518.6</b>	<b>518.6</b>	<b>518.6</b>	<b>518.6</b>

Estimate of any current year (FY 96) cost: 0.0

**POSITIONS:**

FULL-TIME	4	4	4	4	4	4
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: Jarice Adair  
Division: Director, Division of Environmental Health

Phone: 269-7643  
Date: 2/5/96

Approved by Commissioner: [Signature]  
Agency: Department of Environmental Conservation

Date: 2/1/96

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SB 238  
Fiscal Note Analysis - DEC

Personal Services:

Vet Assistant	73.5
Environmental Tech (2)	84.0
Admin. Clerk II	33.9
Total PS	191.4

Travel:

Investigatory Travel:	78.0	(estimates about 70 investigations a year)
Rabies Travel:	100.0	(the bill requires rabies be offered at every municipality in the state. Estimating that travel is difficult; please see attached two pages for a listing of all municipalities where this service would be required to be offered)
Total:	178.0	

Contractual:

Lab Testing	3.3	
Training:	3.5	
Animal Abuse Awareness		
Equine Abuse Awareness		
Dept. Of Law	5.0	(Regulation development; first year only)
Total	11.8	

Supplies:

Photographic supplies	.2
Office Supplies	2
Syringes/Euthanasia	1.5
Misc.	1.0
Total	2.9

Equipment:

Office equipment	2.0	(first year only)
Photographic	1.0	(first year only)
Computers for new staff	9.5	(first year only)
Necropsy kit	1.0	
Vet equipment	1.0	
Total	9.5	

**CITIES WITHIN ORGANIZED BOROUGHS**

**Aleutians East Borough**  
 Akutan ..... Second Class  
 Cold Bay ..... Second Class  
 False Pass ..... Second Class  
 King Cove ..... First Class  
 Sand Point ..... First Class

**Denali Borough**  
 Anderson ..... Second Class

**Fairbanks North Star Borough**  
 Fairbanks ..... Home Rule  
 North Pole ..... Home Rule

**Kenai Peninsula Borough**  
 Homer ..... First Class  
 Kachemak ..... Second Class  
 Kenai ..... Home Rule  
 Galdvick ..... First Class  
 Seward ..... Home Rule  
 Soldotna ..... First Class

**Ketchikan Gateway Borough**  
 Ketchikan ..... Home Rule  
 Saxman ..... Second Class

**Haines Borough**  
 Haines ..... First Class

**Kodiak Island Borough**  
 Kodiak ..... Second Class  
 Kodiak ..... Home Rule  
 Larsen Bay ..... Second Class  
 Old Harbor ..... Second Class  
 Ozunika ..... Second Class  
 Port Lions ..... Second Class

**Lake and Peninsula Borough**  
 Chignik ..... Second Class  
 Egegik ..... Second Class  
 Newhalen ..... Second Class  
 Nondalton ..... Second Class  
 Pilot Point ..... Second Class  
 Port Heiden ..... Second Class

**Matanuska-Susitna Borough**  
 Houston ..... Second Class  
 Palmer ..... Home Rule  
 Wasilla ..... First Class

**North Slope Borough**  
 Anaktuvuk Pass ..... Second Class  
 Atkasuk ..... Second Class  
 Barrow ..... First Class  
 Kaktovik ..... Second Class  
 Nuiqsut ..... Second Class  
 Point Hope ..... Second Class  
 Wainwright ..... Second Class

**Northwest Arctic Borough**  
 Ambler ..... Second Class  
 Buckland ..... Second Class  
 Deering ..... Second Class  
 Kiana ..... Second Class  
 Kivalina ..... Second Class  
 Kobuk ..... Second Class  
 Kotzebue ..... Second Class  
 Noomik ..... Second Class  
 Selawik ..... Second Class  
 Snungnak ..... Second Class

→ \* **ORGANIZED BOROUGHS - UNIFIED MUNICIPALITIES**

	<u>Classification</u>	<u>Page</u>
Aleutians East Borough .....	Second Class .....	1
Municipality of Anchorage .....	Unified Home Rule .....	2
Bristol Bay Borough .....	Second Class .....	3
Denali Borough .....	Home Rule .....	4
Fairbanks North Star Borough .....	Second Class .....	5
Haines Borough .....	Third Class .....	6
City and Borough of Juneau .....	Unified Home Rule .....	7
Kenai Peninsula Borough .....	Second Class .....	8
Ketchikan Gateway Borough .....	Second Class .....	9
Kodiak Island Borough .....	Second Class .....	10
Lake and Peninsula Borough .....	Home Rule .....	11
Matanuska-Susitna Borough .....	Second Class .....	12
North Slope Borough .....	Home Rule .....	13
Northwest Arctic Borough .....	Home Rule .....	14
City and Borough of Sitka .....	Unified Home Rule .....	15
City and Borough of Yakutat .....	Home Rule .....	16



JUDICIARY COMMITTEE  
DELIVERY ACCEPTANCE LOG

MEETING DATE 2/5/96

BILL NUMBERS SB 238

LEGISLATOR                      ACCEPTED BY                      TIME                      DATE

SEN. GREEN. RM 423      John Green 3:00                      2/2/96

SEN. MILLER. RM 125      Miller

SEN. ADAMS RM 417      Adams

SEN. ELLIS RM 9      Ellis

9-LS1495\F  
Luckhaupt  
4/1/96

CS FOR SENATE BILL NO. 238( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): SENATOR PHILLIPS

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the care and regulation of the care of animals; and  
2 relating to crimes involving animals."

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

4 \* Section 1. AS 03.53 is amended by adding a new section to read:

5 ARTICLE 2. CARE OF ANIMALS.

6 Sec. 03.53.100. STANDARDS OF PROPER CARE FOR ANIMALS. An  
7 animal that is in the possession, custody, or care of a person shall be properly cared for.  
8 At a minimum, each animal must be provided

9 (1) food and water that is sufficient to maintain the animal in good  
10 health; if potable water is not provided to an animal at all times, it must be provided  
11 daily and in sufficient quantity to maintain the good health of the animal;

12 (2) shelter; shelter provided an animal indoors must be maintained at a  
13 temperature and with the amount of ventilation compatible with the good health of the  
14 animal, shelter provided an animal outdoors must

1 (A) provide sufficient shade to protect the animal from sunlight  
2 likely to cause heat exhaustion of an animal;

3 (B) protect the animal from inclement weather to an extent  
4 sufficient to maintain the animal in good health;

5 (C) be structurally sound and maintained in good repair to protect  
6 the animal from injury and to contain the animal;

7 (3) space, whether provided indoors or outdoors, that is sufficient to  
8 allow the animal adequate freedom of movement so as to maintain the good health of  
9 the animal and so that the animal is free from debility, stress, and abnormal behavior  
10 patterns;

11 (4) sanitation of indoor or outdoor enclosures or shelters that includes  
12 periodic cleaning to remove excreta and other waste material, dirt, and trash;

13 (5) medical care that is provided at times and to the extent necessary to  
14 maintain the animal in good health.

15 \* Sec. 2. AS 11.61.140 is amended to read:

16 Sec. 11.61.140. CRUELTY TO ANIMALS. (a) A person commits the crime  
17 of cruelty to animals in the first degree if the person

18 (1) intentionally inflicts severe and prolonged physical pain or suffering  
19 on an animal;

20 (2) violates AS 11.61.142 [RECKLESSLY NEGLECTS AN ANIMAL]  
21 and, as a result of that violation [NEGLECT], causes the death of the animal or causes  
22 severe pain or suffering to the animal; [OR]

23 (3) kills or injures an animal by the use of a decompression chamber;  
24 or

25 (4) kills or injures a domestic animal by the use of poison.

26 (b) It is a defense to a prosecution under

27 (1) (a)(1), (2), or (4) [OR (2),] of this section that the conduct of the  
28 defendant

29 (A) [(1)] conformed to accepted veterinary practice; or

30 (B) [(2)] was part of scientific research governed by accepted  
31 standards;

32 (2) (a)(1) or (2) of this section that the conduct of the defendant [OR

1 (3)] was necessarily incident to lawful hunting or trapping activities;

2 (3) (a)(1) of this section that the conduct of the defendant involved  
3 the circumstances set out in AS 11.61.142(a)(4) and was

4 (A) for a commercially reasonable purpose; or

5 (B) for the capture of a rodent or other pest within a  
6 structure or adjacent to a structure.

7 (c) In this section,

8 (1) "animal" means a vertebrate living creature not a human being, but  
9 does not include fish;

10 (2) "domestic animal" means an animal as defined under  
11 AS 11.61.140 that is tame by nature, has become accustomed to man by the passage  
12 of time, or has been subjected to the will of human beings to the extent that the  
13 animal is without the disposition to escape the dominion of human beings.

14 (d) Except as provided in (e) of this section, cruelty [CRUELTY] to animals  
15 in the first degree is a class A misdemeanor.

16 \* Sec. 3. AS 11.61.140 is amended by adding new subsections to read:

17 (e) A person convicted under this section is guilty of a class C felony if, within  
18 the preceding seven years, the person was convicted under this section or a law or  
19 ordinance of this or another jurisdiction with elements substantially similar to those of  
20 the offenses described in this section.

21 (f) In addition to any other penalty provided by law, a court may order a  
22 defendant convicted under this section not to own or care for animals for a period of  
23 time not less than one year nor more than 10 years.

24 (g) An animal that is the subject of a prosecution under this section may be  
25 forfeited by the court to the state if the defendant is the owner of the animal and the  
26 defendant is convicted under this section.

27 \* Sec. 4. AS 11.61 is amended by adding a new section to read:

28 Sec. 11.61.142. CRUELTY TO ANIMALS IN THE SECOND DEGREE. (a)  
29 A person commits the crime of cruelty to animals in the second degree if the person

30 (1) recklessly abandons a domestic animal;

31 (2) owns or is responsible for the care of an animal and recklessly fails  
32 to provide proper care by failing to provide the animal with proper food, water, shelter,

1 rest, sanitation, ventilation, space, or medical attention;

2 (3) while operating a propelled vehicle, strikes and injures an animal and  
3 fails to

4 (A) stop as close as possible to the scene of the accident; and

5 (B) notify

6 (i) the owner of the animal if the owner of the animal can  
7 be reasonably discovered; and

8 (ii) the appropriate law enforcement agency; or

9 (4) sets a steel jaw, leg-hold, snare, spring, or similar trap that has the  
10 capacity to injure or kill an animal.

11 (b) It is a defense to a prosecution under (a)(4) of this section that the  
12 defendant's conduct in setting the trap was

13 (1) for a commercially reasonable purpose;

14 (2) for the capture of a rodent or other pest within a structure or adjacent  
15 to a structure; or

16 (3) necessarily incident to lawful hunting or trapping activities.

17 (c) Proof that an animal has been left unattended by the defendant for 72 hours  
18 or more is prima facie evidence that an animal has been abandoned under (a)(1) of this  
19 section.

20 (d) Proof that a defendant's provision of food, water, shelter, sanitation,  
21 ventilation, space, or medical attention under (a)(2) of this section does not meet the  
22 standards of care set under AS 03.53.100 is prima facie evidence that proper care has not  
23 been provided to the animal under (a)(2) of this section.

24 (e) An animal that is the subject of a prosecution under this section may be  
25 forfeited by the court to the state if the defendant is the owner of the animal and the  
26 defendant is convicted under this section.

27 (f) In this section, "animal" and "domestic animal" have the meanings given in  
28 AS 11.61.140.

29 (g) Cruelty to animals in the second degree is a class B misdemeanor. In  
30 addition to any other penalty provided by law, a court may order a defendant convicted  
31 under this section not to own or care for animals for a period of time not less than one  
32 year nor more than 10 years.

pg 1 of 2

February 4, 1996

To: Senate Judiciary Committee  
From: Carol Jensen  
RE: SB 238 Care of Animals

Funding seems to be a very big concern in animal welfare bills. However, if the law is rewritten to close huge loopholes that presently exist, allowing (or forcing) more offenders to be charged and successfully prosecuted, the high mandatory fines that should be set will more than pay for the investigation and court cases.

This bill is a good start to a long-needed change in our almost non-existent domestic animal law. However, we need to change the statute to make it more specific and inclusive. The present wording gives too much leeway to the offender and makes it practically impossible to prosecute anyone no matter how obvious the cruelty and neglect is. Believe me, we have more than our share of animal abuse and neglect in this state. Countless animals are left starving, dehydrating and freezing to death while DA's, law enforcement people and veterinarians claim everything is alright; then the animals die and they still take no action because there isn't enough evidence or "intentional" abuse. We need to first of all get the word "intentional" out of the statute. Animal owners have been counseled repeatedly about proper animal care, been threatened with the animals being taken into protective custody, etc. and still the abuse continues with authorities doing nothing.

The term "good health" needs to be defined. Presently "good health" apparently means "not yet dead". For horses, the International Scale for Conditioning should be used. For other animals, body weight, coat health, and other standards of accepted veterinary care should be written into the bill. The State Veterinarian and local humane organizations and veterinarian groups should be asked to provide input.

Other points that need to be written in:

Fresh water must be provided AT ALL TIMES to prevent dehydration.

A State Humane Officer needs to be appointed.

Sec. 03.53.100 Seizure: (b) the officer should only be allowed to kill an animal if there is no veterinarian within a 50-mile radius to which the animal can be transported or a vet that can be called out immediately to either provide

pg 2 of 2

medical care or euthanize the animal. Otherwise you may have VPO's killing animals randomly.

Sec. 03.53.140 Standards: (1) add "space for exercise and clean confinement area. (2) ...compatible with the good health and comfort of the animal. (2)B add and comfort. (3) D (4) delete periodic cleaning and add regular cleaning.

Section 3 AS 11.61.140(b) (pg. 5): Delete B was part of scientific research governed by accepted standards. Animals should not be subjected to pain or injury in scientific research. What are "accepted standards"? Animals in research labs through the US are subjected to excruciating torture and confinement. The government does nothing to prevent or ease this unnecessary suffering or curtail unnecessary experiments being done on animals.

Sec. 4 AS 11.61.140 (pg. 5) Cruelty should be a Class C felony for the first offense.

Sec. 6 11.61.142 Cruelty...Second Degree (page 6): (1) Delete recklessly. Anytime someone abandons an animal it is reckless, irresponsible and cruel. (2) delete recklessly... this word is a large loophole for offenders to crawl through (like "intentionally"). (3) Add iii: If the animal is not dead, take whatever action is necessary to get immediate medical attention and care to the animal.

Why are standards developed by the Environmental Conservation Dept.? Shouldn't it be the Public Safety Dept. with input from the State Veterinarian and other veterinarian organizations throughout the state?

AS 03.53.140 (g) make second degree cruelty a felony (first offense).

We need very high fines (mandatory minimum \$1,000 for each first offense) and high maximums.

Thank you,  
Carol Jensen

F A X

Gaudin Roberts  
 HC 1 Box 6310, 550 Hyer Rd.  
 Palmer, Alaska 99845-9605

Date: 2.5.96

Tel: (907) 376-7676  
 Fax: (907) 376-4682

To: Senator Taylor Fax No: (907) 465-3922  
State of Alaska  
 From: Gaudin Roberts Reference: HB238  
 Subject: animal cruelty No. of Pages: 1  
 (Including cover)  
Teleconference schedule 1:30 pm

If you do not receive all pages, or if there are any problems with this transmission, please call

Dear Sen. Taylor,

After the state fair last year I sold a pair of llamas to a lady in Soldotna. A week later I went to see them at their new home and am upset at what I found. Contacting Dr. Bert Gou, the Soldotna animal abuser, the SPCA in Anchorage, and my own veterinarian I have come to this conclusion: we need better animal cruelty laws! No law exists today that can allow me to remove those animals from their situation. Only on their death and a substantiating necropsy showing neglect, starvation, or similar would I have the opportunity to seek charges against them. We need this cruelty bill passed! The lack of it makes <sup>us</sup> both sides of this issue criminals! I would be happy to elaborate on the specifics of this situation, but to be brief I hope you understand my frustration. I am seeing an awful abuse here and my offer to buy these animals back has been refused. Please pass this bill. If I could, I'd make it much more substantiated as I am an animal fancier and ashamed to "look the other way" at cruelty. My appreciation of your efforts,  
 Gaudin Roberts



# ALASKA STATE LEGISLATURE

SENATOR RANDY PHILLIPS

SENATE DISTRICT L

SESSION  
State Capitol  
Juneau, AK 99801  
(907) 465-4949  
800-478-4950  
Fax: 465-4979

INTERIM  
P.O. Box 142  
Eagle River AK 99577  
(907) 694-4949  
Fax: 694-4848

## Memorandum

TO: Members of the Senate Judiciary Committee

FROM: Senator Randy Phillips

DATE: February 1, 1996

RE: Sponsor Statement, SB 238

---

The Society for the Prevention of Cruelty to Animals contacted me this past fall with concerns about the lack of enforcement of animal cruelty laws in Alaska. These concerns include lack of standards for animal care, vague animal cruelty statutes and lack of resources for the investigation of complaints. I worked with the SPCA and with the group MUSH with P.R.I.D.E. to craft a bill that would meet some of these concerns.

SB 238 amends state laws in the following ways:

- Provides minimum standards for the care of animals
- Authorizes a peace officer to seize and shelter animals that have been abandoned or not properly cared for
- Provides for private individuals to obtain search warrants to allow for investigation of cruelty complaints, provides that the individual will be accompanied by an appropriate peace officer and/or veterinarian
- Provides for voluntary rabies vaccinations at cost
- Provides for an animal abuser registry
- Provides for two levels of criminal conduct, cruelty to animals in the second degree, a class B misdemeanor and cruelty to animals in the first degree, a class A misdemeanor

SPONSOR STATEMENT

- Provides that the second offense of cruelty in the first degree is a class C felony

It is not the intention of this legislation to interfere with any lawful hunting or trapping activities or the working of dogs or other domestic animals in customary and traditional ways.

# MUSH WITH PRIDE NEWS

Providing Responsible Information on a Dog's Environment



Will Forsberg, President  
Box 378  
Healy, Ak. 99743

Sen. Randy Phillips  
State Capitol  
Juneau, Ak, 99801

Feb. 3, 1996

RE: S.B. 238- The Animal Cruelty Bill

Sen. Phillips,

I would like to thank you for introducing S.B. 238. Our state needs a strengthened animal cruelty statute to allow troopers and other peace officers to quickly resolve cases of extreme abuse or neglect of animals. Peace officers are forced to spend too much time watching animals suffer under the current inadequate statute.

I believe that the minimal care standards proposed in S.B. 238 are well founded and already within the norm in most legitimate mushing kennels. These standards are necessary so that animal owners know what is acceptable and so that peace officers can evaluate kennel conditions when investigating a complaint.

It is important that this bill specifies various penalties for degrees of abuse or neglect so that minor cases can be addressed before they become extreme. The present law only specifies one level of penalty for cruelty offenses.

We are concerned, however, about the following points:

Sec. 03.53.100 a & b - Are peace officers in the state of Alaska required to undergo training sufficient to render a qualified judgement before seizing an animal or humanely destroying an animal? If not, we would suggest such training be required.

Sec. 03.53.140.(3) - space requirements cannot be predicated on "abnormal behavior patterns" - this is too vague and subjective. People who are unfamiliar with the behavior of a shy sleddog when penned or chained may consider this shy behavior to be an "abnormal behavior pattern" or even a symptom of abuse. Many sleddogs exhibit shy or frightened behavior in the presence of strangers simply because they are not pets and are not used to seeing lots of people and to being handled.

Page 6, line 18 of the bill- (5) of the new section added to sec. 11.61.142 - We believe that a prohibition on keeping dogs on a vacant lot is counter-productive to public safety. Title 03.55.070 gives Village Councils the power to regulate dogs within a 20 mile radius of the village. Because of the close proximity of many residences in bush villages we believe that

SUPPORTING DOCUMENTS

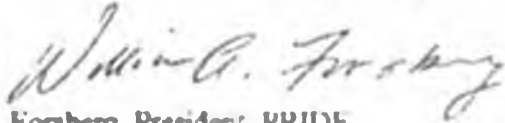
sled dogs should not be kenneled in the village proper but are best chained outside of the village away from areas frequented by children. Alaskan villages have a frightening rate of serious dog maulings of children. We believe that (1) of this section which prohibits the reckless abandonment of a domestic animal is sufficient to protect animals which are kenneled on an unoccupied lot.

Page 5, line 27 & page 7, line 13- This specifies that a court "shall" order a convicted offender to not own or care for animals for one to ten years. This is too inflexible, especially for the 2nd degree offense, which could be a relatively minor offense. Suggest changing the wording to "may order a defendant ...".

Finally, we are concerned about the increasing number of maulings of children by dogs in Alaska. Several children are killed by dogs in Alaska every year and a dozen more are hospitalized with severe injuries. As the sport of dog sledding grows in Alaska we see a need for a vicious and dangerous dog provision in the State statutes. Dogs which have exhibited a tendency to bite or attack people or domestic animals may be legally killed by any person if running at large under Title 03.55.010 & .030. Dogs which are deemed vicious under Title 03.55.020 should receive special treatment such as mandatory confinement in a pen. The Municipality of Anchorage's Title 17 contains examples of classification and treatment of vicious dogs.

We believe that S.B. 238 is a step in the right direction for animal protection in extreme cases and would urge the State legislature to give it full consideration.

Sincerely,



William A. Forsberg, President, PRIDE

# Animal protection bill introduced

## Proposed law could affect Alaska mushers, as well as pet owners

By KATE RIPLEY  
Staff Writer

A bill that has been introduced in the legislature would allow peace officers to seize animals deemed abused or neglected by their owners, set standards for the proper care of pets and require known animal abusers to register with the state.

Senate Bill 236, sponsored by Sen. Randy Phillips of Eagle River, came at the urging of the Alaska Society for the Prevention of Cruelty to Animals and Mushers with PRIDE, an educational group of dog mushers.

PRIDE president Will Forsberg, a musher from Healy, said he's concerned with several of the bill's provisions but overall believes it's on target.

"This looks like a law which legitimate mushers will have no problem living with," Forsberg said. "The basic concept of

having some sort of law to cover these extreme cases is a good idea."

Last April state authorities euthanized 81 severely malnourished dogs at a homestead along the Glenn Highway near Chistochina. Dog owner Charlotte Fitzhugh had a record of animal cruelty complaints. A neighbor pestered authorities for two years to get Fitzhugh out of the dog business.

The current law, Forsberg said, allowed the Fitzhugh case to drag on too long. Currently, a person can be charged with animal cruelty only if it can be shown that he or she intentionally inflicted severe and prolonged physical pain or suffering on an animal.

"Reckless neglect" occurs under the law only if the animal dies or suffers severe pain.

The proposed revision would

establish a lesser classification for animal cruelty in which people could be charged if they recklessly abandon an animal or recklessly fail to provide proper food, water, shelter, rest, sanitation, ventilation, space or medical attention. Abandonment would be considered after 72 hours.

Under the bill a neighbor or any person with reason to believe someone has violated the law could apply for a search warrant in the state Superior Court. A state trooper could then search the alleged abuser's property and seize animals deemed abused or neglected. The court would determine if a veterinarian should accompany the trooper.

Sen. Phillips could not be reached for comment Sunday. But Rep. Gene Theriault of North Pole, whose district includes a large mushing contingent in Two Rivers, said the bill likely faces an uphill battle.

"I would be a little bit leery of adding yet one more thing onto the troopers' list of things to do," said Theriault.

The Republicans also expressed concern about minimum standards of care set out in statute.

Under the bill, shelter for an outdoor animal would have to provide enough shade to protect the animal from heat exhaustion, be structurally sound and in good repair. Further, space for "adequate freedom of movement" would be required, and the space must be kept clean. Medical care to keep the animal in good health also would be required.

"What's adequate to me might not be adequate to someone else," Theriault said. "With a huge dog yard, what's adequate shade?"

ATTENTION:  
Jerry  
Burrill

# MUSH WITH PRIDE

Providing Responsible Information on a Dog's Environment



Will Forsberg, President  
Box 378  
Healy, Alaska, 99743  
Ph or fax 907 683 2644

Sen. Randy Phillips  
State Capitol  
Juneau, AK, 99801

December 18, 1995

RE: State animal control laws

Dear Senator Phillips,

On behalf of the 400 member mushers' educational group, "Mush with PRIDE", I would like to thank you for considering legislation which would strengthen Alaska's animal control laws.

We agree with the Alaska S.P.C.A. that the current state anti-cruelty law is inadequate because it is too vague and difficult to enforce. We believe that current law should be revised to address the following issues relating to domestic animals:

1- Identification and kenneling regulations for vicious or dangerous animals. Alaska has ninety times the national per capita rate of death due to dog maulings. Every year 2 or 3 children are killed by dogs and a dozen more are hospitalized (see enclosed article). This is a public health problem in rural villages which is spreading to more populated areas as the popularity of dog sledding increases. Most of these deaths and injuries are preventable if the dogs are well socialized and properly kenneled away from areas frequented by children. The full extent of this epidemic is not known because state law does not require the reporting by medical officials of all dog bites and attacks.

We would suggest:

- mandatory reporting of all dog bites to the State Department of Health.
- mandatory fencing of dog kennels in areas frequented by children.
- classification and restriction of vicious dogs (see enclosed sample laws)

We do not believe huskies to be any more dangerous than other breeds. However, some mushers do not socialize their sled dogs adequately enough to prevent biting. Even well socialized dogs often react differently to children than to adults. Many adults and children do not realize that sled dogs can be dangerous. PRIDE is initiating an educational program (see enclosed) but our resources are limited. We would suggest an educational program through DCRA to alert parents and children to the dangers of strange dogs.

2- Expansion of state anti-cruelty laws. The current state law is very subjective and general and therefore very hard to enforce. In a recent case of obvious abuse by a previously convicted offender the authorities (district attorney) refused to indict until dogs had literally starved to death on their chains. Musers attempted to intervene for the dogs by supplying dog food but this only prolonged the problem. On contacting the dogs' owner we found that she was not capable of providing food for the 90 or more dogs but would not give them up. On visiting the premises we found that 10 or more dogs were loose and had become feral. They constituted a substantial threat to local children and other dog teams. After many months the case was resolved in court and most of the dogs destroyed. Incidents such as this are beyond the ability of groups such as PRIDE to resolve with peer pressure or education. More specific laws such as those provided by the ASPCA are needed so that local or state authorities can intervene to remedy these issues before they become so serious. We would suggest:

- enacting more specific humane legislation.
- appointing a State Humane Officer to investigate complaints.
- authorizing all certified state police to enforce humane laws.
- adopt a graduated system of citations for lesser offenses and first time offenders
- adopt strict penalties for serious violations and repeat offenders

We believe that the legislation suggested by the ASPCA needs the following revisions:

DEFINITIONS-- "Animals" This must specify domestic animals.

"Vicious dog"-- Should be better clarified (see enclosed)

#### Under heading CRUELTY TO ANIMALS

"Number 1- No person may intentionally or with criminal negligence kill or abandon an animal." This wording is too restrictive. Dog owners frequently are required to euthanize dogs which are sick, injured, aged, vicious or inadequate for the dog's own good. Often they are in remote areas where veterinarians or shelters are not available. This needs better wording or exceptions to allow for humane euthanization.

We would suggest sticking with the existing statute AS 11.61.140(a) Sec. 3 with the following minor revision- "No person may: (1) intentionally inflict severe and prolonged physical pain or suffering on an animal; (2) recklessly neglect an animal and, as a result of that neglect, cause the death of or physical injury to the animal or recklessly cause severe pain, physical injury or suffering to the animal, or (3) intentionally or with criminal negligence abandon an animal." (Also see enclosed Anchorage Municipal Code 17.10.060 "Cruelty to Animals", which is generally acceptable as long as Subsection B exceptions are included and definitions of terms per AMC 17.05.010 are utilized.)

#### Under Cruelty to Animals

Number 4- We see no compelling reason to prohibit keeping dogs on vacant property as long as the dogs are checked and fed regularly and are not abandoned. In fact, in some instances it may be safer for the children of a rural community to have the sled dogs staked out in an area away from town instead of right between cabins or houses where unwitting children may wander too close. Under some circumstances dogs quartered on vacant lots may require perimeter fencing for public safety.

Also under Cruelty to Animals

We would remove the following sentence- " No person may use any type of trap that might physically harm an animal for non-commercial reasons." This prohibition is too restrictive. It is sometimes necessary to trap unsocialized sleddogs which have gotten loose and can not be caught in any other way. This can be done safely with small padded traps as long as the dog is quickly removed from the trap. The alternative could be shooting the dog. Also, any perceived restriction on trapping in this legislation will doom it to failure. We would support a prohibition on setting traps in public trails which are used by dog teams.

Under the section titled Animal Cruelty and Abandonment, number 2.

We do not believe that all law enforcement officers are qualified to make a judgement on cruelty charges without first being certified by a State Humane officer or veterinarian. We would therefore change the wording to: 2) "Any **certified** law enforcement officer or other law enforcement officers in conjunction with the State Humane officer or on advisement of a certified veterinarian, may..... "

The suggested measures from the ASPCA are a good start but should be aired in public meetings and reviewed by animal user groups. Again, PRIDE members are most concerned with control of dangerous and vicious dogs, safe kenneling practices and enforcement of minimal humane standards. I have enclosed a copy of relevant sections of Anchorage Municipal Code Title 17, as well as PRIDE's Guidelines, a safety pamphlet for school children and parents and articles on dog maulings and dog abuse. I hope this is of some help in establishing the need for better regulation and aiming toward workable solutions. I would welcome the chance to review any legislation.

Sincerely,



William A. Forsberg, President, Mush with PRIDE



# THE ALASKA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, INC.

SPCA State Headquarters and Spay Clinic • 549 W. International Airport Road • Anchorage, Alaska 99518  
Phone: 562-2999

## Animal Cruelty and Abandonment

Animals; neglected or abandoned; police powers.

- (1) No person may abandon any animal.
- (2) Any law enforcement officer may remove, shelter and care for any animal found to be cruelly exposed to the weather, starved or denied adequate water, neglected, abandoned or otherwise treated in a cruel manner and may deliver such animal to another person to be sheltered, cared for and given medical attention, if necessary. In all cases the owner, if known, shall be immediately notified and such officer, or other person, having possession of the animal shall have a lien thereon for its care, keeping and medical attention and the expense of notice.
- (3) If the owner or custodian is unknown and cannot with reasonable effort be ascertained, or does not within 5 days after notice redeem the animal by paying the expenses incurred, it may be treated as a stray and dealt with as such.
- (4) Whenever in the opinion of any such officer an animal is hopelessly injured or diseased so as to be beyond the probability of recovery it shall be lawful for such officer to kill such animal and the owner thereof shall not recover damages for the killing of such animal unless he shall prove that such killing was unwarranted.
- (5) An animal left unattended for 72 hours or more shall be deemed abandoned.

## Providing proper food and drink to confined animals.

No person owning or responsible for confining or impounding any animal may fail to supply the animal with a sufficient supply of food and water as prescribed in this section.

- (1) Food. The food shall be sufficient to maintain all animals in good health.
- (2) Water. If potable water is not accessible to the animals at all times, it shall be provided daily and in sufficient quantity for the health of the animal.

## Providing proper shelter.

No person owning or responsible for confining or impounding any animal may fail to provide the animal with proper shelter as prescribed in this section. In the case of farm animals, nothing in this section shall be construed as imposing shelter requirements or standards more stringent than normally accepted husbandry practices in the particular county where the animal or shelter is located.

- (1) Indoor Standards. Minimum indoor standards of shelter shall include:
  - (a) Ambient temperatures. The ambient temperature shall be compatible with the health of the animal.
  - (b) Ventilation. Indoor housing facilities shall be adequately ventilated by natural or mechanical means to provide for the health of the animals at all times.
- (2) Outdoor Standards. Minimum outdoor standards of shelter shall include:



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- (a) Shelter from sunlight. When sunlight is likely to cause heat exhaustion of an animal tied or caged outside, sufficient shade by natural or artificial means shall be provided to protect the animal from direct sunlight. As used in this paragraph, "caged" does not include farm fencing used to confine farm animals.
- (b) Shelter from inclement weather. 1. Animals generally. Natural or artificial shelter appropriate to the local climatic conditions for the species concerned shall be provided as necessary for the health of the animal.
2. Dogs. If a dog is tied or confined unattended outdoors under weather conditions which adversely affect the health of the dog, a shelter of suitable size to accommodate the dog shall be provided.
- (3) Space standards. Minimum space requirements for both indoor and outdoor enclosures shall include:
- (a) Structural strength. The housing facilities shall be structurally sound and maintained in good repair to protect the animals from injury and to contain the animals.
- (b) Space requirements. Enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal adequate freedom of movement. Inadequate space may be indicated by evidence of debility, stress or abnormal behavior patterns.
- (4) Sanitation Standards. Minimum standards of sanitation for both indoor and outdoor enclosures shall include periodic cleaning to remove excreta and other waste materials, dirt, and trash so as to minimize health hazards.

**Investigation of cruelty complaints.** Any person who has reason to believe that a violation of this chapter has taken place or is taking place may apply to any circuit court for a search warrant. The court shall examine under oath the person so applying and any witnesses the person may produce and shall take the person's sworn affidavit in writing. The affidavit shall set forth the facts tending to establish probable cause to believe that a violation of this chapter has occurred or is occurring. If the court is satisfied that probable cause exists, it shall issue a search warrant directing a law enforcement officer in the county to proceed immediately to the location of the alleged violation with a doctor of veterinary medicine, if the court determines that a veterinarian is necessary for purposes of the search, and directing the law enforcement officer to search the place designated in the warrant, retaining in his or her custody subject to the order of the court such property or things as are specified in the warrant, including any animal. The warrant shall be executed and returned to the court which issued the warrant.

No dogs or cats shall be used for the purpose of human consumption.

**Penalties.** Class A Misdemeanor, \$5000 Maximum fine, 1 year Maximum, Warning issued and probation for convicted person to report to the state humane official with current states of address and phone.

"Kindness Uplifts The World"

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Would like to see definite fines instituted to cover court cost incurred. Progressive penalty for repeat convictions to include felony charge.

A sentencing court shall require a criminal violator to pay restitution to a person, including any local humane society or county or municipal pound or a law enforcement officer, for any pecuniary loss suffered by the person as a result of the crime, including expenses in keeping any animal that is involved in the crime. This requirement applies regardless of whether the criminal violator is placed on probation or a repeat offender. If restitution is ordered, the court shall consider the financial resources and future ability of the payment. Upon the application of any interested party, the court shall schedule and hold an evidentiary hearing to determine the value of any pecuniary loss under this paragraph.

A sentencing court may order that an animal be delivered to the local humane society or the county or municipal pound or to a law enforcement officer if a person commits a crime under this chapter, the person is the owner of the animal that is involved in the crime and the court considers the order to be reasonable and appropriate. The society, pound or officer shall release the animal to person other than the owner or dispose of the animal in a proper and humane manner.

The Society for the Prevention of Cruelty of Animals, (SPCA) would be willing to have a state office in Anchorage located at it's current address to serve as a communications headquarters to assist the state veterinarian, state troopers, private citizens, animal control, and other humane organizations.

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## DEFINITIONS

"Adequate Shelter" means either the domicile or garage of the owner or a separate structure which protects the animal from wind, precipitation, sun and cold.

"Animal" means all members of the vertebrate kingdom Animalia.

"Business Facility" means a premises where a person derives income from the physical harboring of animals, included but no limited to buying/selling, training, boarding and grooming.

"Current rabies vaccination" means a vaccination administered in accordance with Alaska state law.

"Vicious dog" means any dog, UNPROVOKED, inflicts injury on a human being, serious enough to require extensive professional medical attention.

## ENFORCEMENT

Enforcement of these statutes will be the responsibility of all official state, local or designated law enforcement officer.

## INSPECTIONS

An officer may inspect premises where animals are kept based upon the United State Constitution and the Alaska state laws.

#### MAINTENANCE & SANITATION

A person who owns an animal shall maintain all pens, yards and structures in a clean and sanitary condition.

#### DISEASED ANIMALS

No person may sell an animal which the person knows to be diseased, injures or otherwise physically defective without disclosing to the buyer the nature of the disease, injury or defect.

#### CRUELTY TO ANIMALS

No person may:

1. intentionally or with criminal negligence kill or abandon an animal;
2. intentionally or with criminal negligence injure, torment, poison, provoke or otherwise abuse an animal;
3. maintain an animal in other than a humane manner;
4. keep dogs on vacant property unless such property contains a contiguous permanently occupied residence, occupied by the dog's owner or a designated agent, who shall be responsible for the daily care, maintenance and supervision of the animal or animals.

Any person involved in the injury of an animal must stop as close as possible to the scene and report such an injury to the owner, if known, or to the proper authority.

No person may use any type of trap (such as steel jaw traps, snares, spring traps) that might physically harm an animal for non-commercial reasons.

To preserve an animal's health or safety, an officer or designated agent may take an animal into protective custody. If an animal has been placed in protective custody due to charges of cruelty against the owner the animal will not be subject to redemption until such

time as a legal determination of the cruelty charges has been made. Costs of 'care and keep' shall be born by the owner while in protective custody

#### RABIES IMMUNIZATION

To help owners to keep their animals current on rabies vaccinations, the State or designated agent will make rabies vaccinations available at a nominal cost on at least a yearly or less basis.

#### ABANDONED ANIMALS

An animal may be considered abandoned if the owner or custodian has left them unattended for 72 hours or more. Any animal lost animal may be considered abandoned only if every effort has been made to find its owner. The normal period would be 5 days before being considered abandoned.

#### PENALTIES

Penalties to violators will vary from "fines" to imprisonment. Severe cases will be treated as felonies. Anyone convicted of cruelty charges must not be allowed to own or care for animals and shall report to the proper authorities as to their whereabouts on a yearly basis to assure that they are abiding by these restrictions.

All costs involved of the 'care and keep' of the 'owned' animals will be born by the owners and not the State.

NOTE: The current SEC. 11.61.145 Promoting and exhibition  
of fighting animals should stand aas written.

Chapter 17.05

GENERAL PROVISIONS

Sections:

17.05.010	Definitions.
17.05.020	Animal Control Office.
17.05.030	Animal control officers.
17.05.040	Powers and duties of animal control officers.
17.05.045	Enforcement.
17.05.050	Records.
17.05.060	Penalties and remedies.
17.05.070	Citation procedure.
17.05.080	Regulations.
17.05.090	Inspections.
17.05.100	Animal Control Appeals Board.
17.05.110	Law enforcement animals.

17.05.010 Definitions.

As used in Title 17:

- A. "Adequate shelter" means either the domicile or garage of the owner or a separate structure which protects the animal from wind, precipitation and sun. These minimum standards may be altered based upon written recommendations made by a disinterested licensed veterinarian. The chief animal control officer will be responsible for the final determination.
- B. "Animal" means all members of the vertebrate kingdom Animalia.
- C. "At large" means not under restraint.
- D. "Attack" means, for the purposes of a human victim, that an animal:
  - 1. bites a person without provocation, or
  - 2. takes action without provocation and while unconfined which action creates a reasonable apprehension of such injury to that person, whether or not the animal actually touches the person.

- E. "Cat" means a member of the genus and species Felis domestica.
- F. A "cattery" means a premises where a person owns four or more cats over the age of four months.
- G. "Business facility" means a premises where a person derives income from the physical harboring of animals, included but not limited to buying/selling, training, boarding and grooming, and which is not a dog fancier's facility, dog musher's facility or cattery.
- H. "Criminal negligence" A person acts with "criminal negligence" with respect to a result or to a circumstance described by a provision of law defining an offense when the person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.
- I. "Current rabies vaccination" means a vaccination:
1. as specified in the current "Compendium of Animal Rabies Vaccines" prepared by the Rabies Subcommittee of the National Academy of Sciences and by the National Association of State Public Health Veterinarians, Inc.;
  2. administered in accordance with state law; and
  3. evidenced by a current rabies vaccination certificate in a form approved by the State Division of Public Health and signed by a currently licensed veterinarian.
- J. "Dog" means a member of the genus and species Canis familiaris.
- K. "Dog fancier's facility" means a premises where a person owns four or more dogs over the age of four months, and which is not a dog musher's facility, or a business facility.

- L. "Dog musher's facility" means a premises where a person owns four or more dogs over the age of four months principally for the purpose of dog mushing, and which is not a dog fancier's facility or business facility.
- M. "Humane manner" means care of an animal to include, but not be limited to: adequate heat, ventilation, sanitary and adequate shelter, appropriate space, necessary restraint, wholesome food and water, consistent with the normal requirements and feeding habits of the animal's size, species and breed.
- N. "Intentional" A person acts intentionally with respect to a result described by a provision of law defining an offense when the person's conscious objective is to cause that result; when intentionally causing a particular result is an element of an offense, that intent need not be the person's only objective.
- O. "Officer" means a person charged by law with the duty to enforce provisions of this title.
- P. "To own" an animal includes any one or more of the following: having title to, keeping, harboring, having custody of, or having control of the animal.
- Q. "Person" includes individual, joint venture, partnership, corporation or unincorporated association.
- R. "Provocation" consists of conduct which is directed by a person or an animal toward an animal that may reasonably be expected to arouse rage, fear, protective instinct or fury in the animal. Any animal which is at large cannot be considered to be provoked by an animal that is under restraint.
- S. "Restraint" means:
1. physical confinement, as by leash, chain, fence or building; or
  2. under competent voice control when an animal is engaged in an activity or form of training requiring that it not be physically confined; or
  3. under competent voice control when an animal is on the property of its owner.

2. No dog may be declared dangerous if the dog was protecting or defending a person within the immediate vicinity of the dog from an unjustified attack or assault.
  3. No dog may be declared dangerous if the injury or damage to a domestic animal was sustained while the dog was working as a hunting dog, herding dog, or predator control dog on the property of, or under the control of its owner, or keeper and the damage or injury was to a species or type of domestic animal appropriate to the work of the dog.
  4. No dog shall be declared dangerous if the dog has been trained to attack persons independently or upon oral command while under the control and supervision of an authorized government or law enforcement unit and the act is directly associated with the proper execution of its duties.
- Y. "Vicious dog" means an dog which according to the records of the Animal Control Office has inflicted injury on a human being, serious enough to require treatment by a medical professional, without provocation on public or private property. Upon verification of the dog in question, the Animal Control Office must notify the owner by certified mail or personal service upon the owner.
- Z. "Vicious dog owner" means any person who owns, possesses, keeps, exercises control over, maintains, harbors, transports, sells or advertises for sale a vicious dog.
- AA. "Breeder" means any person who intentionally breeds a dog and subsequently sells, trades, gives away or otherwise disposes of the offspring. (Adapted from GAAB 17.05.010, am AO 78-65A, AO 83-97 (effective November 21, 1982), AO 86-39) AO 89-25(S), AO 90-27(S-1), AO 91-85(S-1), AO 92-75(S)).

17.05.020 Animal Control Office.

- A. There shall be an Animal Control Office which, except as this title provides otherwise, shall be the entity responsible for the administration of this title.

## Chapter 17.10

### STANDARDS FOR THE KEEPING OF ANIMALS

#### Sections:

- 17.10.010 Animal creating a disturbance.
- 17.10.020 Control and confinement of animals.
- 17.10.030 Maintenance and sanitation.
- 17.10.040 Diseased animals.
- 17.10.050 Animals near street.
- 17.10.060 Cruelty to animals.

#### 17.10.010 Animal creating a disturbance.

No person may permit an animal which he owns to annoy another person by interfering with the latter's sleep, work or reasonable right to peace or privacy by making repeated or continued noise. (Adapted from AO 50-76, am AO 78-65A).

#### 17.10.020 Control and confinement of animals.

- A. A person who owns a dog or a cat shall keep that animal under restraint at all times.
- B. A person who owns an animal other than a dog that is capable of annoying or endangering other persons or damaging their property shall keep the animal under restraint at all times.
- C. A person who owns an animal which has attacked another animal or a person without provocation shall at all times either confine the animal in a building or a secure enclosure or otherwise secure the animal so it cannot injure other persons or property.
- D. A person who owns a female dog or cat in heat or during ovulation shall keep the dog or cat under restraint in such a manner that it cannot come into contact with a male of its species except for planned breeding purposes, provided that a female sled dog in heat shall be confined unless it is restrained by proper harnessing in a team in such a manner that it cannot come in contact with a male dog except for planned breeding purposes.

E. No person other than an officer performing his duties under this title may release an animal from restraint without its owner's consent, except to preserve the animal's life. (Adapted from AO 50-76, GAAB 17.05.070, new, GAAB 17.15.040, am AO 78-65A, AO 83-97 (effective November 21, 1983), AO 86-39).

17.10.030 Maintenance and sanitation.

A person who owns an animal shall maintain all structures, pens and yards where he keeps the animal, and all areas adjacent thereto, in a clean and sanitary condition and free from objectionable odor. (Adapted from AO 50-76, am AO 78-65A).

17.10.040 Diseased animals.

No person may sell an animal which the person knows to be diseased, injured or otherwise physically defective without disclosing to the buyer the nature of the disease, injury or defect. (AO 50-76, am AO 78-65A).

17.10.050 Animals near street.

No person may tie, stake or otherwise confine an animal within a street, sidewalk, alley or public place, or in such a manner that the animal may enter a street, alley or public place, except for the purpose of participation in a race, show or other temporary sporting or festive event. (Adapted from AO 50-76, am AO 78-65A, AO 86-39).

17.10.060 Cruelty to animals.

- A. No person may:
1. intentionally or with criminal negligence kill or abandon an animal;
  2. intentionally or with criminal negligence injure, torment, poison, provoke or otherwise abuse an animal;
  3. maintain an animal in other than a humane manner;

- X
4. maintain an animal showing symptoms of an infectious or contagious disease without keeping the animal confined in a building or secure enclosure and under proper care;
  5. keep dogs on vacant property unless such property contains a contiguous permanently occupied residence, occupied by the dog's owner, or the owner's designated agent, who shall be responsible for the daily care, maintenance and supervision of the animals.
- B. Subsection A of this section does not apply to:
1. impounding, destruction or other disposition of an animal in a humane manner as authorized by law;
  2. killing or injuring an animal where necessary to protect a human being or domesticated animal from death or bodily injury;
  3. the humane destruction of an animal by its owner or the owner's authorized agent.
- C. No person may use a tranquilizer gun to capture an animal unless it is the only reasonable means of preventing death or bodily injury to a human being or domesticated animal.
- D. Animal fighting.
1. No person may:
    - a. cause an animal to fight another animal or human being, whether for amusement of himself or others or for financial gain; or
    - b. train, or keep for the purpose of training, an animal for exhibition in combat with an animal or human being.
  2. No person may permit his premises to be used for the purposes described in paragraph 1 of this subsection, or be present as a spectator at an exhibition described in paragraph 1 of this subsection.

## Chapter 17.40

### DEALING WITH DANGEROUS DOGS

#### Sections:

- 17.40.010 Tattooed--Certificate of registrations.
- 17.40.020 Confinement.
- 17.40.030 Conditions of ownership.
- 17.40.040 Insurance requirement.
- 17.40.050 Penalties--Applicable to dangerous dogs.
- 17.40.060 Procedure for challenge of dangerous dog designation.
- 17.40.065 Signs.

#### 17.40.010 Tattooed--Certificate of registration.

Individual dogs that are classified as dangerous are required to be tattooed and have a Certificate of Registration identifying the name and address of the owners. Tattoos will be administered by the Animal Control Office and payment shall be made in accordance with AMCR 17.05.001A10.

- A. The Animal Control Office may also require two photographs of the animal clearly showing its color and approximate size.
- B. If the dog in question dies, is sold, transferred or permanently removed from the municipality where the owner or keeper resides, the owner of the dangerous dog shall notify the Animal Control Office of the changed condition and new location and/or ownership of the dog in writing within five working days. (AO 91-85(S-1)).

#### 17.40.020 Confinement.

A dangerous dog, while on the owner's property, shall at all times be kept indoors, or in a six sided enclosure which meets the following requirements:

- A. The enclosure must have secure sides and a secure top;
- B. The enclosure must have a bottom permanently attached to the sides or the sides embedded into the ground not less than one foot; and
- C. The enclosure must be of such a material and close in such a manner that the animal cannot exit the enclosure on its own.

17.40.050 Penalties--Applicable to dangerous dogs.

A person who violates this section shall, upon conviction, be subject to a fine as set forth in the attached table, imprisonment for not more than six months or both. The court may also require that the defendant complete community work service as provided in AS 12.55.055. A mandatory imprisonment of 72 hours is required for any violation listed on the table as bite and slash, prolonged bite, multiple bites or multiple attacks or predatory attacks of the degree greater or equal to four. (AO 91-85(S-1)).

17.40.060 Procedure for challenge of dangerous dog designation.

The owner of a dangerous dog as defined in Section 17.05.010 of this code may seek review of the designation through a challenge to the accuracy of the records of the Animal Control Center within 15 days of receipt of notice by certified mail or by personal service as provided for in the definition of "dangerous dog" in Section 17.05.010 by applying for an administrative hearing before the chief animal control officer or his/her designee who shall hold a hearing pursuant to Chapter 3.60 of this code. (AO 91-85(S-1), AO 92-75(S)).

17.40.065 Signs.

All owners, keepers or harborers of any dangerous dog shall be required to display in a prominent place on their premises a sign easily readable by the public using the words "Dangerous Dog." (AO 91-85(S-1)).

THE FOLLOWING PAGES MAY  
NOT FILM LEGIBLY BECAUSE OF  
THE POOR QUALITY OF THE ORIGINAL

SECRET  
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SECRET

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17-50

(Supp. #56 9/30/91)

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\$100	\$200	\$400	<b>SKIN PUNCTURE</b> - single bite that punctures skin followed by immediate release.	Visitor bitten by dog that is confined to premise.	2
\$125	\$250	\$500	<b>BITE AND TEAR</b> - single bite with tearing of flesh caused by victim pulling away or weight of dog (dog jumps and bites and then drops to ground causing tearing).	Person bitten by dog that is on leash with owner or another person responsible for the dog.	3
\$200	\$400	\$800	<b>BITE AND SLASH</b> - single bite with tearing of flesh caused by dog shaking head side to side.	Person bitten by dog that is off leash with owner (or another person responsible for the dog) in the vicinity.	4
\$250	\$500	\$1,000	<b>PROLONGED BITE</b> - bite and hold for more than five seconds producing substantial bruising around two or more opposing puncture wounds.	Person bitten by a dog that is roaming unattended.	5
\$350	\$700	\$1,400	<b>MULTIPLE BITES OR MULTIPLE ATTACKS</b> - more than two bites in a single attack or more than two attacks in a single incident.		
\$500	\$1,000	\$2,000	<b>PREDATORY ATTACK</b> - multiple bite attack (whether aggressive or playful) resulting in consumption of flesh and/or death of a victim.		

**SEB**

**242**

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. SB 242

Revision Date: \_\_\_\_\_ Dept. Affected: Department of Law  
 Title: "An Act relating to sentencing felony offenses." BRU: Criminal Division  
 Component: Criminal Division  
 Sponsor: Senator Pearce  
 Requester: Senate Judiciary Committee COMPONENT SERIAL NO. 2085

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

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

**POSITIONS**

POSITIONS	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
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 Alaska's felony presumptive sentencing laws (AS 12.55.125) to increase the presumptive terms of imprisonment if the defendant possessed a firearm during the commission of the offense. The increased sentences range from one to three years depending on the severity of the offense, or if the defendant is a repeat felony offender. The minimum presumptive sentences range from two to twenty-five years if the offense does not involve possession of a firearm. The Department of Law takes 40 to 50 of these offenses to trial each year. We expect that the incremental sentencing increases proposed in the bill will result in some additional trials; however, the number is not quantifiable. For this reason, the fiscal note shows a zero impact. However, there will be an impact on the department's prosecutors as they attempt to handle an over increasing caseload without any additional resources.

*Richard I. Pegues*

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 Division: Administrative Services Division Date: 1/30/96  
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 1/30/96  
 Agency: Department of Law

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**Drue Pearce**  
*President of the Senate*

## Sponsor Statement for Senate Bill 242

2/6/96

Senate Bill 242 would increase the penalty a criminal receives for committing a felony with a firearm. Society recognizes that using a firearm to threaten the life of another person is one of the gravest crimes a person can commit. Many Alaskans seek to punish those who commit such life threatening crimes by ensuring they receive harsher penalties.

Currently, Alaska's felony sentencing statutes give judges sentencing guidelines for specific crimes. This bill increases some "presumptive sentencing guidelines" and thus augments the time certain felons would spend in prison by expanding the sentence for crimes committed with guns. Inmates would still get time off for "good behavior." This allows our prison system continued use of this behavioral tool. However, criminals will soon know that if they use guns during the commission of their crime they will receive harsher sentences. This bill does not affect misdemeanors. Increased terms would apply to all acts committed on or after the effective date of this bill.

## Criminal Felony Sentencing in Alaska January 24, 1996

Felony Committed	Minimum Sentence	Maximum Sentence	Current Presumptive Sentence	Presumptive Sentence after passage of SB-???
Unclassified Felonies, <i>AS 12.55.125(a)-(b), (i).</i> First Degree Murder, <i>AS 11.41.100.</i>	20 years.	99 years.	No presumptive term. There is a mandatory term of 99 years for those convicted of torture murders and certain other murders, including murder of a police officer.	No change.
2nd Degree Murder, <i>AS 11.41.110.</i> Kidnapping, <i>AS 11.41.300.</i> 1st Degree Misconduct w/Controlled Substance, <i>AS 11.71.010: et al.</i>	5 years.	99 years.	No presumptive term.	No change.
1st Degree Sex Assault, <i>AS 11.41.410.</i> 1st Degree Sex Abuse of a Minor, <i>AS 11.41.434.</i>	No minimum.	30 years.	1st felony conviction - 8 years. 1st felony conviction & possessed firearm, etc. - 10 years. 2nd felony conviction - 15 years. 3rd felony conviction - 25 years.	No change. 11 years. 18 years. 28 years.
Class A Felonies, <i>AS 12.55.125(c).</i> Examples include: 1st Degree Assault, <i>AS 11.41.200.</i> 1st Degree Arson, <i>AS 11.46.400.</i> 1st Degree Robbery, <i>AS 11.41.500.</i> 1st Degree Promoting Prostitution, <i>AS 11.66.110.</i> 2nd Degree Misconduct Involving Controlled Substance, <i>AS 11.71.020: et al.</i>	No minimum.	20 years.	1st felony conviction - 5 years. 1st felony conviction & possessed firearm - 7 years. 1st felony conviction & offense directed at a police officer, firefighter, or other listed person - 7 years. 2nd felony conviction - 10 years 3rd felony conviction - 15 years.	No change. 8 years. No change. 13 years. 18 years.
Class B felonies, <i>AS 12.55.125(d).</i> Examples include: 2nd Degree Assault, <i>AS 11.41.210.</i> 2nd Degree Sex Assault, <i>AS 11.41.420.</i> 2nd Degree Sex Abuse of Minor, <i>AS 11.41.436.</i> 2nd Degree Robbery, <i>AS 11.41.510.</i> 1st Degree Burglary, <i>AS 11.46.300.</i> 1st Degree Forgery, <i>AS 11.46.500.</i> 2nd Degree Escape, <i>AS 11.56.310.</i> 2nd Degree Misconduct Involving Weapons, <i>AS 11.61.195.</i> 3rd Degree Misconduct w/Controlled Substance, <i>AS 11.71.030: et al.</i>	No minimum.	10 years.	1st felony conviction - no presumptive term. 1st felony conviction & offense directed at a police officer, firefighter, or other listed person - 2 years. 2nd felony conviction - 4 years 3rd felony conviction - 6 years.	No change. No change. 6 years. 8 years.

SUPPORTING DOCUMENTS

Felony Committed	Minimum Sentence	Maximum Sentence	Current Presumptive Sentence	Presumptive Sentence after passage of SB-???
<p>Class C felonies, <i>AS 12.55.125(e)</i>.  Examples include:  Criminally negligent homicide, <i>AS 11.41.130</i>.  3rd Degree Assault, <i>AS 11.41.220</i>.  1st Degree Stalking, <i>AS 11.41.260</i>.  3rd Degree Sex Assault, <i>AS 11.41.425</i>.  3rd Degree Sex Abuse of Minor, <i>AS 11.41.438</i>.  Incest, <i>AS 11.41.450</i>.  2nd Degree Theft, <i>AS 11.46.130</i>.  Obtaining Credit Card Fraudulently, <i>AS 11.46.290</i>.  2nd Degree Burglary, <i>AS 11.46.310</i>.  Commercial Bribery, <i>AS 11.46.670</i>.  3rd Degree Escape, <i>AS 11.56.320</i>.  1st Degree Harming Police Dog, <i>AS 11.56.705</i>.  Riot, <i>AS 11.61.100</i>.  3rd Degree Misconduct w/Weapons, <i>AS 11.61.200</i>.  4th Degree Misconduct w/Controlled Substances, <i>AS 11.71.040</i>.  and a host of others</p>	No minimum.	5 years.	1st felony conviction - no presumptive term. 1st felony conviction & offense directed at police officer, firefighter, or other listed person - 1 year. 1st felony conviction & guide outfit without a license - 1 year. 2nd felony conviction - 2 years. 3rd felony conviction - 3 years.	No change.  No change.  No change. 3 years. 4 years.
All Misdemeanor Crimes				No change.

## Pertinent Alaska Felony Statutes

### Unclassified Felonies:

#### Sec. 12.55.125. SENTENCES OF IMPRISONMENT FOR FELONIES.

(a) A defendant convicted of murder in the first degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years. A defendant convicted of murder in the first degree shall be sentenced to a mandatory term of imprisonment of 99 years when

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

(2) the defendant has been previously convicted of

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

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

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

(3) the court finds by clear and convincing evidence that the defendant subjected the murder victim to substantial physical torture.

(b) A defendant convicted of murder in the second degree, attempted murder in the first degree, conspiracy to commit murder in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree shall be sentenced to a definite term of imprisonment of at least five years but not more than 99 years.

(i) A defendant convicted of sexual assault in the first degree or sexual abuse of a minor in the first degree may be sentenced to a definite term of imprisonment of not more than 30 years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in

(2) of this subsection, eight years;

(2) if the offense is a first felony conviction, and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 10 years;

(3) if the offense is a second felony conviction, 15 years;

(4) if the offense is a third felony conviction, 25 years.

### First Degree Murder: Sec. 11.41.100.

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

(1) with intent to cause the death of another person, the person

(A) causes the death of any person; or

(B) compels or induces any person to commit suicide through duress or deception; or

(2) the person knowingly engages, under circumstances manifesting extreme indifference to the value of human life, in a pattern or practice of assault or torture of a child under the age of 16, and one of the acts of assault or torture results in the death of the child; for purposes of this paragraph, a person "engages in a pattern or practice of assault or torture" if the person inflicts serious physical injury to the child by at least two separate acts, and one of the acts results in the death of the child.

(b) Murder in the first degree is an unclassified felony and is punishable as provided in AS 12.55.

**Kidnapping: Sec. 11.41.300.**

- (a) A person commits the crime of kidnapping if
- (1) the person restrains another with intent to
    - (A) hold the restrained person for ransom, reward, or other payment;
    - (B) use the restrained person as a shield or hostage;
    - (C) inflict physical injury upon or sexually assault the restrained person or place the restrained person or a third person in apprehension that any person will be subjected to serious physical injury or sexual assault;
    - (D) interfere with the performance of a governmental or political function;
    - (E) facilitate the commission of a felony or flight after commission of a felony; or
  - (2) the person restrains another
    - (A) by secreting and holding the restrained person in a place where the restrained person is not likely to be found; or
    - (B) under circumstances which expose the restrained person to a substantial risk of serious physical injury.
- (b) In a prosecution under (a)(2)(A) of this section, it is an affirmative defense that
- (1) the defendant was a relative of the victim;
  - (2) the victim was a child under 18 years of age or an incompetent person; and
  - (3) the primary intent of the defendant was to assume custody of the victim.
- (c) Except as provided in (d) of this section, kidnapping is an unclassified felony and is punishable as provided in AS 12.55.
- (d) In a prosecution for kidnapping, it is an affirmative defense which reduces the crime to a class A felony that the defendant voluntarily caused the release of the victim alive in a safe place before arrest, or within 24 hours after arrest, without having caused serious physical injury to the victim and without having engaged in conduct described in AS 11.41.410(a) or 11.41.420.

**1<sup>ST</sup> Degree Misconduct w/Controlled Substance: Sec. 11.71.010.**

- (a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the first degree if the person
- (1) delivers any amount of a schedule IA controlled substance to a person under 19 years of age who is at least three years younger than the person delivering the substance;
  - (2) delivers any amount of a schedule IIA or IIIA controlled substance to a person under 19 years of age who is at least three years younger than the person delivering the substance; or
  - (3) engages in a continuing criminal enterprise.
- (b) For purposes of this section, a person is engaged in a "continuing criminal enterprise" if
- (1) the person commits a violation of this chapter which is punishable as a felony; and
  - (2) that violation is a part of a continuing series of five or more violations of this chapter
    - (A) which the person undertakes in concert with at least five other persons organized, supervised, or otherwise managed by the person; and
    - (B) from which the person obtains substantial income or resources.
- (c) Misconduct involving a controlled substance in the first degree is an unclassified felony and is punishable as provided in AS 12.55

**1<sup>st</sup> Degree Sex Assault: Sec. 11.41.410.**

(a) An offender commits the crime of sexual assault in the first degree if

- (1) the offender engages in sexual penetration with another person without consent of that person;
- (2) the offender attempts to engage in sexual penetration with another person without consent of that person and causes serious physical injury to that person;
- (3) the offender engages in sexual penetration with another person
  - (A) who the offender knows is mentally incapable; and
  - (B) who is entrusted to the offender's care
    - (i) by authority of law; or
    - (ii) in a facility or program that is required by law to be licensed by the Department of Health and Social Services; or
- (4) the offender engages in sexual penetration with a person who the offender knows is unaware that a sexual act is being committed and
  - (A) the offender is a health care worker; and
  - (B) the offense takes place during the course of professional treatment of the victim.

(b) Sexual assault in the first degree is an unclassified felony and is punishable as provided in AS 12.55.

**1<sup>st</sup> Degree Sex Assault of a Minor: Sec. 11.41.434.**

(a) An offender commits the crime of sexual abuse of a minor in the first degree if

- (1) being 16 years of age or older, the offender engages in sexual penetration with a person who is under 13 years of age or aids, induces, causes, or encourages a person who is under 13 years of age to engage in sexual penetration with another person;
- (2) being 18 years of age or older, the offender engages in sexual penetration with a person who is under 18 years of age, and the offender is the victim's natural parent, stepparent, adopted parent, or legal guardian; or
- (3) being 18 years of age or older, the offender engages in sexual penetration with a person who is under 16 years of age, and
  - (A) the victim at the time of the offense is residing in the same household as the offender and the offender has authority over the victim; or
  - (B) the offender occupies a position of authority in relation to the victim.

(b) Sexual abuse of a minor in the first degree is an unclassified felony and is punishable as provided in AS 12.55.

## Class A Felonies:

### 1<sup>st</sup> Degree Assault: Sec. 11.41.200.

- (a) A person commits the crime of assault in the first degree if
- (1) that person recklessly causes serious physical injury to another by means of a dangerous instrument;
  - (2) with intent to cause serious physical injury to another, the person causes serious physical injury to any person;
  - (3) the person knowingly engages in conduct that results in serious physical injury to another under circumstances manifesting extreme indifference to the value of human life; or
  - (4) that person recklessly causes serious physical injury to another by repeated assaults using a dangerous instrument, even if each assault individually does not cause serious physical injury.
- (b) Assault in the first degree is a class A felony.

### 1<sup>st</sup> Degree Arson: Sec. 11.46.400.

- (a) A person commits the crime of arson in the first degree if the person intentionally damages any property by starting a fire or causing an explosion and by that act recklessly places another person in danger of serious physical injury. For purposes of this section, "another person" includes but is not limited to fire and police service personnel or other public employees who respond to emergencies, regardless of rank, functions, or duties being performed.
- (b) Arson in the first degree is a class A felony.

### 1<sup>st</sup> Degree Robbery: Sec. 11.41.500.

- (a) A person commits the crime of robbery in the first degree if the person violates AS 11.41.510 and, in the course of violating that section or in immediate flight thereafter, that person or another participant
- (1) is armed with a deadly weapon or represents by words or other conduct that either that person or another participant is so armed;
  - (2) uses or attempts to use a dangerous instrument or a defensive weapon or represents by words or other conduct that either that person or another participant is armed with a dangerous instrument or a defensive weapon; or
  - (3) causes or attempts to cause serious physical injury to any person.
- (b) Robbery in the first degree is a class A felony.

### 1<sup>st</sup> Degree Promoting Prostitution: Sec. 11.66.110.

- (a) A person commits the crime of promoting prostitution in the first degree if the person
- (1) induces or causes a person to engage in prostitution through the use of force;
  - (2) as other than a patron of a prostitute, induces or causes a person under 16 years of age to engage in prostitution, or
  - (3) induces or causes a person in that person's legal custody to engage in prostitution.
- (b) In a prosecution under (a)(2) of this section, it is not a defense that the defendant reasonably believed that the person induced or caused to engage in prostitution was 16 years of age or older.
- (c) Except as provided in (d) of this section, promoting prostitution in the first degree is a class B felony.
- (d) A person convicted under (a)(2) of this section is guilty of a class A felony.

### 2<sup>nd</sup> Degree Misconduct Involving Controlled Substance: Sec. 11.71.020.

- (a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the second degree if the person manufactures or delivers any amount of a schedule IA controlled substance or possesses any amount of a schedule IA controlled substance with intent to manufacture or deliver.
- (b) Misconduct involving a controlled substance in the second degree is a class A felony.

## **Class B Felonies:**

(d) A defendant convicted of a class B felony may be sentenced to a definite term of imprisonment of not more than 10 years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

- (1) if the offense is a second felony conviction, four years;
- (2) if the offense is a third felony conviction, six years;
- (3) if the offense is a first felony conviction, and the defendant knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional officer, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, two years.

### **2<sup>nd</sup> Degree Assault: Sec. 11.41.210.**

- (a) A person commits the crime of assault in the second degree if
- (1) with intent to cause physical injury to another person, that person causes physical injury to another person by means of a dangerous instrument;
  - (2) that person recklessly causes serious physical injury to another person; or
  - (3) that person recklessly causes serious physical injury to another by repeated assaults, even if each assault individually does not cause serious physical injury.
- (b) Assault in the second degree is a class B felony.

### **2<sup>nd</sup> Degree Sex Assault: Sec. 11.41.420.**

- (a) An offender commits the crime of sexual assault in the second degree if
- (1) the offender engages in sexual contact with another person without consent of that person;
  - (2) the offender engages in sexual contact with a person
    - (A) who the offender knows is mentally incapable, and
    - (B) who is entrusted to the offender's care
      - (i) by authority of law; or
      - (ii) in a facility or program that is required by law to be licensed by the Department of Health and Social Services;
  - (3) the offender engages in sexual penetration with a person who the offender knows is
    - (A) mentally incapable,
    - (B) incapacitated; or
    - (C) unaware that a sexual act is being committed; or
  - (4) the offender engages in sexual contact with a person who the offender knows is unaware that a sexual act is being committed and
    - (A) the offender is a health care worker; and
    - (B) the offense takes place during the course of professional treatment of the victim.
- (b) Sexual assault in the second degree is a class B felony.

**2<sup>nd</sup> Degree Sex Abuse of a Minor: Sec. 11.41.436.**

- (a) An offender commits the crime of sexual abuse of a minor in the second degree if
- (1) being 16 years of age or older, the offender engages in sexual penetration with a person who is 13, 14, or 15 years of age and at least three years younger than the offender, or aids, induces, causes or encourages a person who is 13, 14, or 15 years of age and at least three years younger than the offender to engage in sexual penetration with another person;
  - (2) being 16 years of age or older, the offender engages in sexual contact with a person who is under 13 years of age or aids, induces, causes, or encourages a person under 13 years of age to engage in sexual contact with another person;
  - (3) being 18 years of age or older, the offender engages in sexual contact with a person who is under 18 years of age, and the offender is the victim's natural parent, stepparent, adopted parent, or legal guardian;
  - (4) being 16 years of age or older, the offender aids, induces, causes, or encourages a person who is under 16 years of age to engage in conduct described in AS 11.41.455(a)(2) - (6); or
  - (5) being 18 years of age or older, the offender engages in sexual contact with a person who is under 16 years of age, and
    - (A) the victim at the time of the offense is residing in the same household as the offender and the offender has authority over the victim; or
    - (B) the offender occupies a position of authority in relation to the victim.
- (b) Sexual abuse of a minor in the second degree is a class B felony.

**2<sup>nd</sup> Degree Robbery: Sec. 11.41.510.**

- (a) A person commits the crime of robbery in the second degree if, in the course of taking or attempting to take property from the immediate presence and control of another, the person uses or threatens the immediate use of force upon any person with intent to
- (1) prevent or overcome resistance to the taking of the property or the retention of the property after taking; or
  - (2) compel any person to deliver the property or engage in other conduct which might aid in the taking of the property.
- (b) Robbery in the second degree is a class B felony.

**1<sup>st</sup> Degree Burglary: Sec. 11.46.300.**

- (a) A person commits the crime of burglary in the first degree if the person violates AS 11.46.310 and
- (1) the building is a dwelling; or
  - (2) in effecting entry or while in the building or immediate flight from the building, the person
    - (A) is armed with a firearm
    - (B) causes or attempts to cause physical injury to a person, or
    - (C) uses or threatens to use a dangerous instrument.
- (b) Burglary in the first degree is a class B felony.

**1<sup>st</sup> Degree Forgery: Sec. 11.46.500.**

- (a) A person commits the crime of forgery in the first degree if the person violates AS 11.46.510 and the written instrument is or purports to be
- (1) part of an issue of money, securities, postage, revenue stamps, or other valuable instruments issued by a government or governmental agency; or
  - (2) part of an issue of stock, bonds, or other instruments representing interests in or claims against an organization or its property.
- (b) Forgery in the first degree is a class B felony.

**2<sup>nd</sup> Degree Escape: Sec. 11.56.310.**

- (a) One commits the crime of escape in the second degree if, without lawful authority, one
- (1) removes oneself from
    - (A) a correctional facility while under official detention;
    - (B) official detention for a felony or for extradition; or
    - (C) official detention and during the escape, or at any time before being restored to official detention, one possesses on or about oneself a firearm; or
  - (2) violates AS 11.56.340 and during the time of the unlawful evasion, or at any time before being restored to official detention, one possesses on or about oneself a firearm.
- (b) Escape in the second degree is a class B felony.

**2<sup>nd</sup> Degree Misconduct Involving Weapons: Sec. 11.61.195.**

- (a) A person commits the crime of misconduct involving weapons in the second degree if the person knowingly
- (1) possesses a firearm during the commission of an offense under AS 11.71.010 - 11.71.040; or
  - (2) violates AS 11.61.200(a)(1) and is within the grounds of or on a parking lot immediately adjacent to
    - (A) a public or private preschool, elementary, junior high, or secondary school without the permission of the chief administrative officer of the school or district or the designee of the chief administrative officer, or
    - (B) a center, other than a private residence, licensed under AS 47.33 or AS 47.35 or recognized by the federal government for the care of children.
- (b) Misconduct involving weapons in the second degree is a class B felony.

**3<sup>rd</sup> Degree Misconduct w/Controlled Substance: Sec. 11.71.030.**

- (a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the third degree if the person
- (1) manufactures or delivers any amount of a schedule IIA or IIIA controlled substance or possesses any amount of a schedule IIA or IIIA controlled substance with intent to manufacture or deliver;
  - (2) delivers any amount of a schedule IVA, VA, or VIA controlled substance to a person under 19 years of age who is at least three years younger than the person delivering the substance; or
  - (3) possesses any amount of a schedule IA or IIA controlled substance
    - (A) with reckless disregard that the possession occurs
      - (i) on or within 500 feet of school grounds; or
      - (ii) at or within 500 feet of a recreation or youth center; or
    - (B) on a school bus.
- (b) It is an affirmative defense to a prosecution under (a)(3)(A) of this section that the prohibited conduct took place entirely within a private residence located within 500 feet of the school grounds or recreation or youth center, and that the prohibited conduct did not involve distributing, dispensing, or possessing with the intent to distribute or dispense a controlled substance for profit. Nothing in this subsection precludes a prosecution under any other provision of this section or any other section of this chapter.
- (c) Misconduct involving a controlled substance in the third degree is a class B felony.

## Class C Felonies:

(e) A defendant convicted of a class C felony may be sentenced to a definite term of imprisonment of not more than five years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

- (1) if the offense is a second felony conviction, two years;
- (2) if the offense is a third felony conviction, three years;
- (3) if the offense is a first felony conviction, and the defendant knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional officer, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, one year;
- (4) if the offense is a first felony conviction, and the defendant violated AS 08.54.520(a), (7) - (10), one year.

### Criminally Negligent Homicide: Sec. 11.41.130.

(a) A person commits the crime of criminally negligent homicide if, with criminal negligence, the person causes the death of another person.

(b) Criminally negligent homicide is a class C felony.

### 3<sup>rd</sup> Degree Assault: Sec. 11.41.220.

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

(1) recklessly

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

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

(C) while being 18 years of age or older

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

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

(2) with intent to place another person in fear of death or serious physical injury to the person or the person's family member makes repeated threats to cause death or serious physical injury to another person; or

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

(b) In a prosecution under (a)(3) of this section, it is 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.

(c) In this section, "the person's family member" means

(1) a spouse, child, grandchild, parent, grandparent, sibling, uncle, aunt, nephew, or niece, of the person, whether related by blood, marriage, or adoption;

(2) a person who lives or has lived, in a spousal relationship with the person;

(3) a person who lives in the same household as the person; or

(4) a person who is a former spouse of the person or is or has been in a dating, courtship, or engagement relationship with the person

(d) Assault in the third degree is a class C felony.

**1<sup>st</sup> Degree Stalking: Sec. 11.41.260.**

- (a) A person commits the crime of stalking in the first degree if the person violates AS 11.41.270 and
- (1) the actions constituting the offense are in violation of an order issued under AS 25.35.010(b) or 25.35.020;
  - (2) the actions constituting the offense are in violation of a condition of probation, release before trial, release after conviction, or parole;
  - (3) the victim is under 16 years of age;
  - (4) at any time during the course of conduct constituting the offense the defendant possessed a deadly weapon;
  - (5) the defendant has been previously convicted of a crime under this section, AS 11.41.270, or AS 11.56.740, or a law or ordinance of this or another jurisdiction with elements similar to a crime under this section, AS 11.41.270, or AS 11.56.740; or
  - (6) the defendant has been previously convicted of a crime, or an attempt or solicitation to commit a crime, under (A) AS 11.41.100 - 11.41.250, 11.41.300 - 11.41.460, AS 11.56.810, AS 11.61.120, or (B) a law or an ordinance of this or another jurisdiction with elements similar to a crime, or an attempt or solicitation to commit a crime, under AS 11.41.100 - 11.41.250, 11.41.300 - 11.41.460, AS 11.56.810, or AS 11.61.120, involving the same victim as the present offense.
- (b) In this section, "course of conduct" and "victim" have the meanings given in AS 11.41.270(b).
- (c) Stalking in the first degree is a class C felony.

**3<sup>rd</sup> Degree Sex Assault: Sec. 11.41.425.**

- (a) An offender commits the crime of sexual assault in the third degree if the offender engages in sexual contact with a person who the offender knows is
- (1) mentally incapable;
  - (2) incapacitated; or
  - (3) unaware that a sexual act is being committed.
- (b) Sexual assault in the third degree is a class C felony.

**3<sup>rd</sup> Degree Sex Abuse of Minor: Sec. 11.41.438**

- (a) An offender commits the crime of sexual abuse of a minor in the third degree if
- (1) being 16 years of age or older, the offender engages in sexual contact with a person who is 13, 14, or 15 years of age and at least three years younger than the offender; or
  - (2) being 18 years of age or older, the offender engages in sexual penetration with a person who is 16 or 17 years of age and at least three years younger than the offender, and the offender occupies a position of authority in relation to the victim.
- (b) Sexual abuse of a minor in the third degree is a class C felony.

**Incest: Sec. 11.41.450.**

- (a) A person commits the crime of incest if, being 18 years of age or older, that person engages in sexual penetration with another who is related, either legitimately or illegitimately, as
- (1) an ancestor or descendant of the whole or half blood,
  - (2) a brother or sister of the whole or half blood, or
  - (3) an uncle, aunt, nephew, or niece by blood
- (b) Incest is a class C felony.

**2<sup>nd</sup> Degree Theft: Sec. 11.46.130.**

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

- (1) the value of the property or services is \$500 or more but less than \$25,000;
- (2) the property is a firearm or explosive;
- (3) the property is taken from the person of another;
- (4) the property is taken from a vessel and is vessel safety or survival equipment;
- (5) the property is taken from an aircraft and the property is aircraft safety or survival equipment; or
- (6) the value of the property is \$50 or more but less than \$500 and within the preceding five years the person has been convicted and sentenced on two or more separate occasions in this or another jurisdiction of
  - (A) AS 11.46.120, or an offense under another law or ordinance with similar elements;
  - (B) a crime set out in this subsection or an offense under another law or ordinance with similar elements;
  - (C) AS 11.46.140(a)(1) or (2), or an offense under another law or ordinance with similar elements; or
  - (D) AS 11.46.220(c)(1) or (c)(2)(A), or an offense under another law or ordinance with similar elements.

(b) In this section,

- (1) "aircraft" means a contrivance used or designed for navigation of flight in air;
- (2) "aircraft safety or survival equipment" means equipment required to be carried on an aircraft under AS 02.30.010 or AS 02.35.110;
- (3) "vessel" means every description of watercraft, other than a seaplane on water, used or capable of being used as a means of transportation on water;
- (4) "vessel safety or survival equipment" means personal flotation devices; immersion suits; personal flotation device lights; survival craft; equipment necessary for the proper operation of survival craft; emergency position indicating radio beacons; fire extinguishers and supporting equipment; firefighters' outfits; and self contained breathing apparatuses; in this subparagraph, "survival craft" means a device designed to enable a person to survive the loss of a vessel, and includes buoyant apparatuses, inflatable buoyant apparatuses, life floats, inflatable life rafts, and auxiliary craft, including skiffs, usable as survival craft.

(c) Theft in the second degree is a class C felony.

**Obtaining Credit Card Fraudulently: Sec. 11.46.290.**

(a) A person commits the crime of obtaining a credit card by fraudulent means if

- (1) the person buys a credit card from a person other than the issuer or, as other than the issuer, the person sells a credit card,
- (2) with intent to defraud, the person obtains control of a credit card as a security for debt; or
- (3) with intent to defraud, the person makes a false statement in an application for a credit card.

(b) Obtaining a credit card by fraudulent means under (a)(1) or (2) of this section is a class C felony. Obtaining a credit card by fraudulent means under (a)(3) of this section is a class A misdemeanor.

**2<sup>nd</sup> Degree Burglary: Sec. 11.46.310.**

(a) A person commits the crime of burglary in the second degree if the person enters or remains unlawfully in a building with intent to commit a crime in the building.

(b) Burglary in the second degree is a class C felony.

**Commercial Bribery: Sec. 11.46.670.**

(a) A person commits the crime of commercial bribery if, knowing that another is subject to a duty described in AS 11.46.660(a) and with intent to influence the other to violate that duty, the person confers, offers to confer, or agrees to confer a benefit on the other.

(b) Commercial bribery is a class C felony.

**3<sup>rd</sup> Degree Escape: Sec. 11.56.320.**

(a) One commits the crime of escape in the third degree if one

(1) removes oneself from official detention during any lawful movement or activity incident to confinement within a correctional facility for a misdemeanor; or

(2) violates AS 11.56.340 and leaves or attempts to leave the state.

(b) Escape in the third degree is a class C felony.

**1<sup>st</sup> Degree Harming Police Dog: Sec. 11.56.705.**

(a) A person commits the crime of harming a police dog in the first degree if the person intentionally kills or causes serious physical injury to a police dog, knowing the dog to be a police dog.

(b) Harming a police dog in the first degree is a class C felony.

**Riot: Sec. 11.61.100.**

(a) A person commits the crime of riot if, while participating with five or more others, the person engages in tumultuous and violent conduct in a public place and thereby causes, or creates a substantial risk of causing damage to property or physical injury to a person.

(b) Riot is a class C felony.

**3<sup>rd</sup> Degree Misconduct w/Weapons: Sec. 11.61.200.**

- (a) A person commits the crime of misconduct involving weapons in the third degree if the person
- (1) knowingly possesses a firearm capable of being concealed on one's person after having been convicted of a felony or adjudicated a delinquent minor for conduct that would constitute a felony if committed by an adult by a court of this state, a court of the United States, or a court of another state or territory;
  - (2) knowingly sells or transfers a firearm capable of being concealed on one's person to a person who has been convicted of a felony by a court of this state, a court of the United States, or a court of another state or territory;
  - (3) manufactures, possesses, transports, sells, or transfers a prohibited weapon;
  - (4) knowingly sells or transfers a firearm to another whose physical or mental condition is substantially impaired as a result of the introduction of an intoxicating liquor or controlled substance into that other person's body;
  - (5) removes, covers, alters, or destroys the manufacturer's serial number on a firearm with intent to render the firearm untraceable;
  - (6) possesses a firearm on which the manufacturer's serial number has been removed, covered, altered, or destroyed, knowing that the serial number has been removed, covered, altered, or destroyed with the intent of rendering the firearm untraceable;
  - (7) violates AS 11.46.320 and, during the violation, possesses on the person a firearm when the person's physical or mental condition is impaired as a result of the introduction of an intoxicating liquor or controlled substance into the person's body;
  - (8) violates AS 11.46.320 or 11.46.330 by entering or remaining unlawfully on premises or in a propelled vehicle in violation of a provision of an order issued under AS 25.35.010(b) or 25.35.020 and, during the violation, possesses on the person a defensive weapon or a deadly weapon, other than an ordinary pocketknife;
  - (9) communicates in person with another in violation of AS 11.56.740 and, during the communication, possesses on the person a defensive weapon or a deadly weapon, other than an ordinary pocketknife;
  - (10) resides in a dwelling knowing that there is a firearm capable of being concealed on one's person or a prohibited weapon in the dwelling if the person has been convicted of a felony by a court of this state, a court of the United States, or a court of another state or territory, unless the person has written authorization to live in a dwelling in which there is a concealable weapon described in this paragraph from a court of competent jurisdiction or from the head of the law enforcement agency of the community in which the dwelling is located; or
  - (11) discharges a firearm from a propelled vehicle while the vehicle is being operated.

(b) It is an affirmative defense to a prosecution

- (1) under (a)(1) of this section that
  - (A) the person convicted of the prior offense on which the action is based received a pardon for that conviction;
  - (B) the underlying conviction upon which the action is based has been set aside under AS 12.55.085 or as a result of post-conviction proceedings; or
  - (C) a period of 10 years or more has elapsed between the date of the person's unconditional discharge on the prior offense or adjudication of juvenile delinquency and the date of the violation of (a)(1) of this section, and the prior conviction or adjudication of juvenile delinquency did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory;
- (2) under (a)(2) or (10) of this section that
  - (A) the person convicted of the prior offense on which the action is based received a pardon for that conviction;
  - (B) the underlying conviction upon which the action is based has been set aside under AS 12.55.085 or as a result of post-conviction proceedings; or
  - (C) a period of 10 years or more has elapsed between the date of the person's unconditional discharge on the prior offense and the date of the violation of (a)(2) or (10) of this section, and the prior conviction did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory.

(c) It is an affirmative defense to a prosecution under (a)(3) of this section that the manufacture, possession, transportation, sale, or transfer of the prohibited weapon was in accordance with registration under 26 U.S.C. 5801-5872 (National Firearms Act).

(d) It is an affirmative defense to a prosecution under (a)(11) of this section that the person was using a firearm while hunting, trapping, or fishing in a manner not prohibited by statute or regulation.

(e) The provisions of (a)(3) and (11) of this section do not apply to a peace officer acting within the scope and authority of the officer's employment.

(f) As used in this section,

(1) "prohibited weapon" means any

(A) explosive, incendiary, or noxious gas

(i) mine or device that is designed, made, or adapted for the purpose of inflicting serious physical injury or death;

(ii) rocket, other than an emergency flare, having a propellant charge of more than four ounces;

(iii) bomb; or

(iv) grenade;

(B) device designed, made, or adapted to muffle the report of a firearm;

(C) firearm that is capable of shooting more than one shot automatically, without manual reloading, by a single function of the trigger; or

(D) rifle with a barrel length of less than 16 inches, shotgun with a barrel length of less than 18 inches, or firearm made from a rifle or shotgun which, as modified, has an overall length of less than 26 inches;

(2) "unconditional discharge" has the meaning ascribed to it in AS 12.55.185.

(g) Misconduct involving weapons in the third degree is a class C felony.

**4<sup>th</sup> Degree Misconduct w/Controlled Substances: Sec. 11.71.040.**

(a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the fourth degree if the person

- (1) manufactures or delivers any amount of a schedule IVA or VA controlled substance or possesses any amount of a schedule IVA or VA controlled substance with intent to manufacture or deliver;
- (2) manufactures or delivers, or possesses with the intent to manufacture or deliver, one or more preparations, compounds, mixtures, or substances of an aggregate weight of one ounce or more containing a schedule VIA controlled substance;
- (3) possesses
  - (A) any amount of a schedule IA or IIA controlled substance;
  - (B) 25 or more tablets, ampules, or syrettes containing a schedule IIIA or IVA controlled substance;
  - (C) one or more preparations, compounds, mixtures, or substances of an aggregate weight of three grams or more containing a schedule IIIA or IVA controlled substance;
  - (D) 50 or more tablets, ampules, or syrettes containing a schedule VA controlled substance;
  - (E) one or more preparations, compounds, mixtures, or substances of an aggregate weight of six grams or more containing a schedule VA controlled substance;
  - (F) one or more preparations, compounds, mixtures, or substances of an aggregate weight of one pound or more containing a schedule VIA controlled substance; or
  - (G) 25 or more plants of the genus cannabis;
- (4) possesses a schedule IIIA, IVA, VA, or VIA controlled substance
  - (A) with reckless disregard that the possession occurs
    - (i) on or within 500 feet of school grounds; or
    - (ii) at or within 500 feet of a recreation or youth center; or
  - (B) on a school bus;
- (5) knowingly keeps or maintains any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place that is used for keeping or distributing controlled substances in violation of a felony offense under this chapter or AS 17.30;
- (6) makes, delivers, or possesses a punch, die, plate, stone, or other thing which prints, imprints, or reproduces a trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of these upon a drug, drug container, or labeling so as to render the drug a counterfeit substance;
- (7) knowingly uses in the course of the manufacture or distribution of a controlled substance a registration number that is fictitious, revoked, suspended, or issued to another person;
- (8) knowingly furnishes false or fraudulent information in or omits material information from any application, report, record, or other document required to be kept or filed under AS 17.30;
- (9) obtains possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge; or
- (10) affixes a false or forged label to a package or other container containing any controlled substance.

(b) It is an affirmative defense to a prosecution under (a)(4)(A) of this section that the prohibited conduct took place entirely within a private residence located within 500 feet of the school ground, or recreation or youth center. Nothing in this subsection precludes a prosecution under any other provision of this section or any other section of this chapter.

(c) Nothing in (a)(5) or (6) of this section precludes a prosecution or civil proceeding brought under any other provision of this section or any other section of this chapter or under AS 17.

(d) Misconduct involving a controlled substance in the fourth degree is a class C felony.

victed of first-degree robbery and the trial court enhanced the defendant's sentence pursuant to AS 12.55.125(c)(2). The defendant appealed, asserting that use of the enhancement statute in conjunction with a crime that required use of a deadly weapon as an element violated the prohibition against double jeopardy. This court rejected that argument, finding that the enhanced presumptive terms operate independently of the elements of the underlying offenses. *Burks* thus foreclosed Chapin's double jeopardy argument. *Id.* at 1192.

(2) - Chapin next argues that the use of a dangerous instrument element in AS 12.55.125(c)(2) must be found by a jury before it can be used to enhance a sentence. He cites *State v. Wedge*, 293 Or. 598, 652 P.2d 773, 778 (1982), which held that the question of whether a defendant used a firearm during the commission of a crime should be decided by a jury. This argument is foreclosed by both fact and law. Here, because the jury had to find that a dangerous instrument or deadly weapon was used in order to convict Chapin of AS 11.41.500, Chapin has been given his jury finding on the issue. Such a finding is not required by Alaska law, however. In *Huf v. State*, 675 P.2d 268 (Alaska App. 1984), the defendant was convicted of first-degree sexual assault and first-degree burglary and was sentenced under the enhancement statute for possessing or using a firearm. The defendant requested that the question be decided by a jury. This court held that the question was a question for the court, not the jury. *Id.* at 271. Thus, *Huf* forecloses Chapin's right to jury trial argument.

#### CONCLUSION

We AFFIRM both Abdulbaqui's and Chapin's convictions. We also AFFIRM Chapin's sentence. However, we VACATE and REMAND Abdulbaqui's sentence for further proceedings consistent with this opinion.

BRYNER, C.J., not participating.

Russell S. BOWELL, Appellant,

STATE of Alaska, Appellee.

No. A-1175.

Court of Appeals of Alaska.

Dec. 5, 1986.

Defendant was convicted in the Superior Court, Fourth Judicial District, Fairbanks, Mary E. Greene, J., of kidnapping and first-degree sexual assault, and he appealed. The Court of Appeals, Singleton, J., held that: (1) to convict defendant as aider and abettor to first-degree sexual assault, State was required to prove that defendant recklessly disregarded victim's lack of consent; (2) jury instruction that was incomplete regarding required mens rea for accomplice liability was not plain error; (3) evidence was sufficient to sustain conviction; and (4) defendant was properly found to have possessed firearm, for purposes of enhanced presumptive term.

Affirmed and remanded.

#### 1. Rape $\S$ 19

To convict defendant as accomplice of perpetrator's first-degree sexual assault of victim, State must prove that defendant knew that perpetrator intended to engage in sexual intercourse with victim, that he intentionally engaged in conduct facilitating perpetrator's efforts, and that, at the time he aided perpetrator, he recklessly disregarded victim's lack of consent. AS 11.16.110(2)(B), 11.41.410(a)(1).

#### 2. Criminal Law $\S$ 1038.1(4)

Jury instruction which was incomplete regarding required mens rea for accomplice liability to first-degree sexual assault was not plain error, where other instructions given, coupled with parties' argument, adequately presented issue of intent to jury. AS 11.16.110(2)(B), 11.41.410(a)(1).

#### 3. Rape $\S$ 51(1)

Evidence that defendant drove car while perpetrator engaged in nonconsensual

al sexual intercourse with victim, that defendant assisted perpetrator by giving him gun, and that defendant was aware of lack of consent by victim was sufficient to sustain conviction for aiding and abetting first-degree sexual assault. AS 11.41.410(a)(1).

#### 4. Criminal Law § 1208.6(2)

Where accomplice furnishes firearm to his principal to aid and abet in sexual assault, trial court may properly find that accomplice possessed firearm for purposes of enhanced presumptive term. AS 12.55.120(i), (i)(2).

William A. Davies, Asst. Public Defender, Fairbanks, and Dana Fabe, Public Defender, Anchorage, for appellant.

Cynthia M. Hora, Asst. Atty. Gen., Office of Special Prosecutions and Appeals, Anchorage, and Harold M. Brown, Atty. Gen., Juneau, for appellee.

Before BRYNER, C.J., and COATS and SINGLETON, JJ.

#### OPINION

SINGLETON, Judge.

Russell S. Bowell was convicted by a jury of kidnapping in violation of AS 11.41.300(a)(1), and first-degree sexual assault in violation of AS 11.41.410(a)(1). Bowell appeals, challenging his conviction. We affirm Bowell's conviction, but remand to permit the trial court to consider Bowell's motion for a new trial.

#### FACTS

James D. Thomas, Bowell's codefendant, sexually assaulted B.S. in the back of a vehicle driven by Bowell. B.S. testified that she had been walking when she observed two men she later learned to be Bowell and Thomas in a Toyota driving slowly by her. Thomas asked her if she wanted a ride, and she accepted. The vehicle apparently had no rear seats. B.S. entered it and sat on the floor where she observed a pit bull, whose name she later learned was "Crusher." Thomas got into the back with her and put the dog in the

passenger seat. B.S. testified that Thomas told her that she would have to pay for her ride, and asked her if she knew how to "give a good blow job." B.S. asked to be let out of the vehicle, but was not permitted to leave.

B.S. testified that Thomas forced her to engage in vaginal, oral and anal intercourse during the following three hours. She also testified that Thomas told Bowell that when he (Thomas) was through, it would be Bowell's turn. Bowell then told Thomas to hurry up because they were running low on "octane." Thomas also threatened B.S. with a gun, as well as threatening that he was going to get a chainsaw, cut off her arms and legs and leave her in a snowbank. Bowell corroborated B.S.'s testimony in part, by testifying that he remembered hearing Thomas mention something about a chainsaw.

In B.S.'s view, Bowell assisted Thomas in coercing the intercourse by responding to Thomas' request to stop and start the car, by obtaining a gun for Thomas to use to overcome B.S.'s resistance, and by keeping "Crusher" out of the back of the car. The most pointed example of this assistance occurred when Thomas told Bowell that B.S. was not cooperating, and asked him to hand back the gun. B.S. testified that Bowell took the gun out of the glove compartment, loaded it, and handed it back to Thomas who placed it against B.S.'s neck.

#### DISCUSSION

The theory of the prosecution identified Bowell as a principal to B.S.'s kidnapping, reasoning that his driving the vehicle and ignoring her pleas to be released, constituted the restraint required for a conviction of kidnapping. AS 11.41.300(a)(1)(C) (a person commits the crime of kidnapping if [he] restrains another person with intent to ... sexually assault the restrained person or place the restrained person ... in apprehension that any person will be subjected to ... sexual assault). Bowell does not challenge his conviction for kidnapping on appeal.

The state also theorized that Bowell was an accomplice to Thomas' first-degree sexu-

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al assault of B.S. Howell vigorously attacks his conviction on this count. He reasons that the accomplice statute is constitutionally defective for failing to require a culpable mental state. Alternatively, he argues, that if a culpable mental state is required by the statute, that fact was not sufficiently communicated to the jury in the relevant jury instructions. Howell concedes that he did not object to the instructions at trial, and therefore must establish plain error in order to prevail on this part of his argument. Alaska R.Crim.P. 47(b). Finally, Howell argued that the trial court should have granted a judgment of acquittal on this issue. We will address each of Howell's arguments in turn.

Howell reasons that AS 11.16.110(2)(B) creates a legal accountability for a person who aids or abets another person in the commission of a criminal offense, but is deficient in failing to provide a "mental element" for "aiding or abetting."

Alaska Statute 11.16.110 provides as follows:

*Legal accountability based upon the conduct of another: Complicity.*

A person is legally accountable for the conduct of another constituting an offense if

... (2) with intent to promote or facilitate the commission of the offense, the person

... (B) aids or abets the other in planning or committing the offense.

The state counters that Howell has misread the statute, and that the introductory language to AS 11.16.110(2)(B), "with intent to promote or facilitate the commission of the offense" supplies the *mens rea* for accomplice liability, while "aids or abets" describes the *actus reus* of the offense. The state's position finds support in the 1977 Commentary to the Tentative Draft of the Alaska Criminal Code Revision Part II at

1. The culpable mental state "intentionally" is defined as follows:

AS 11.81.900. Definitions.

(a) For purposes of this title, unless the context requires otherwise,

(1) a person acts "intentionally" with respect to a result described by a provision of

25, and in the Commentary to the Model Penal Code provision from which our statute is derived, A.L.I., *Model Penal Code and Commentaries Part I § 2.0* (1985). The Commentary states in relevant part:

Subsection (3)(a) requires that the actor have the purpose of promoting or facilitating the commission of the offense, i.e., that he have as his conscious objective the bringing about of conduct that the Code has declared to be criminal. This is not to say that he must know of the criminality of the conduct; there is no more reason here to require knowledge of the criminal law than there is with the principal actor. But he must have the purpose to promote or facilitate the particular conduct that forms the basis for the charge, and thus he will not be liable for conduct that does not fall within this purpose.

*Id.* § 2.06 at 310-11 (footnote omitted).<sup>1</sup>

In summary, in order to be liable as an accomplice for Thomas' sexual assault on B.S., it was necessary that the state prove beyond a reasonable doubt that Howell was aware that Thomas intended to have sexual intercourse with B.S. and, intending to facilitate Thomas in achieving his goal, performed some act of aid or encouragement. While the statute interpreted in this way will adequately provide both the *mens rea* and an *actus reus* for most offenses, it does present certain difficulties in connection with crimes such as first-degree sexual assault, which include the circumstances surrounding an offender's conduct as an element of the offense. The Commentary to the Model Penal Code discusses this problem as follows:

There is a deliberate ambiguity as to whether the purpose requirement [the requirement that in order to be guilty as an accomplice, the actor have the purpose of promoting or facilitating the commission of the offense] extends to cir-

law defining an offense when the person's conscious objective is to cause that result; when intentionally causing a particular result is an element of an offense, that intent need not be the person's only objective....

Cite as 728 P.2d 1220 (Alaska App. 1986)

cumstance elements of the contemplated offense or whether, as in the case of attempts, the policy of the substantive offense on this point should control. The reasoning is the same as in the case of conspiracy, which is set forth in some detail in Section 5.03 Comment 2(c)(ii). The result, therefore, is that the actor must have a purpose with respect to the proscribed conduct or the proscribed result, with his attitude towards the circumstances to be left to resolution by the courts. His attitude towards the criminality of the conduct, *see* Section 2.02(9), is irrelevant here as it is in the other cases, subject of course to the limitation of Section 2.04(3) (ignorance or mistake of fact or law).

A.L.I., *Model Penal Code and Commentaries* Part I § 2.06 n. 37, at 311 (1985).<sup>2</sup>

[1] Under current law, the state's burden to establish a culpable mental state in order to convict a person as an accomplice is a matter of first impression. *See Hensel v. State*, 604 P.2d 222 (Alaska 1979) (considering the issue of the requisite mental

state for accomplice liability under prior law). In *Reynolds v. State*, 664 P.2d 621 (Alaska App.1983), we held that the state must prove a culpable mental state regarding the "circumstance"—lack of consent—in order to convict a principal of the offense of first-degree sexual assault. "In order to prove a violation of AS 11.41.410(a)(1), the state must prove that the defendant knowingly engaged in sexual intercourse and recklessly disregarded his victim's lack of consent." 664 P.2d at 625. Similar reasoning leads us to conclude that the state must prove the same element in order to convict a person of first-degree sexual assault as an accomplice. In other words, in order to convict *Bowell* as an accomplice of *Thomas*' first-degree sexual assault of *B.S.*, the state was required to prove that *Bowell* knew that *Thomas* intended to engage in sexual intercourse with *B.S.*, that he intentionally engaged in conduct facilitating *Thomas*' efforts, and that at the time he aided *Thomas*, he recklessly disregarded *B.S.*'s lack of consent to *Thomas*' overtures.<sup>3</sup>

2. As indicated, the commentary to Model Penal Code § 2.06 discusses a problem which is also discussed in the commentary to Model Penal Code § 5.03, dealing with criminal conspiracy. There the commentators state:

The conspiracy provision in the Code does not attempt to solve the problem (whether culpability with respect to circumstance elements is required) by explicit formulation, nor have the recent legislative revisions. Here, as in the section on complicity, it was believed that the matter is best left to judicial resolution as cases that present the question may arise and that the formulations proposed afford efficient flexibility for satisfactory decision. Under Subsection (1) of Section 5.03 it is enough that the object of the agreement is "conduct that constitutes the crime," which can be held to import no more than the mental state required for the substantive offense into the agreement to commit it. Although the agreement must be made "with the purpose of promoting or facilitating the commission of the crime," it is arguable, though by no means certain, that such a purpose may be proved although the actor did not know of the existence of a circumstance, which did exist in fact, when knowledge of the circumstance is not required for the substantive offense. Rather than press the matter further in this section, the Institute deliberately left the matter to interpretation in the context in which

the issue is presented. Too many variations, many of which cannot be foreseen with any confidence, could otherwise be expected to arise and undermine any more rigid formula. A.L.I., *Model Penal Code and Commentaries* Part I § 5.03, at 413-19 (1985) (footnotes omitted).

3. At *Bowell*'s request, the trial court instructed the jury that *Bowell*'s culpability depended in part upon a finding that *Thomas* recklessly disregarded *B.S.*'s lack of consent. We express no opinion as to whether *Bowell*'s culpability required a finding of this element. As we noted in *Reynolds*, a claim by one charged with sexual assault that he reasonably or unreasonably disregarded his victim's lack of consent is akin to a defense of mistake of fact. 664 P.2d at 624-25. Such a defense might be personal to the actor. Thus, a jury might find that *A* with the active assistance of *B* engaged in sexual intercourse with *C* and that *C* in fact did not consent. The jury might further find that *B*, the accomplice, was aware of and disregarded a substantial risk of *C*'s lack of consent but that *A*, the principal, honestly but unreasonably believed that she consented. We express no opinion as to whether *B* could be properly convicted on such facts. Compare AS 11.16.110(3) [a person is legally accountable for the conduct of another constituting an offense if ... acting with the culpable mental state that is sufficient for the commission of the offense, the person causes an inno-

Bowell next argues that the jury instructions were inadequate in describing the culpable mental state necessary for a finding of accomplice liability to first-degree sexual assault. The jury was instructed that in order to find Russell Bowell guilty of first-degree sexual assault, it had to find:

As to Russell Scott Bowell:

1. That the event in question occurred at or near Fairbanks, in the Fourth Judicial District, State of Alaska, and on or about the 4th day of February, 1985;
2. That the defendant, James D. Thomas, knowingly engaged in sexual penetration with B.S.;
3. That the penetration occurred without the consent of B.S.;
4. That Russell Scott Bowell aided or abetted James D. Thomas in the sexual penetration; and
5. That James D. Thomas recklessly disregarded B.S.'s lack of consent to the sexual penetration.<sup>4</sup>

Bowell claims error because this instruction does not specify a mental state for Bowell's acts. Rather, the only mental state for the jury to consider under this instruction is whether or not Thomas recklessly disregarded B.S.'s nonconsent to intercourse.

[2] Bowell is correct that this instruction is incomplete regarding the required *mens rea* for accomplice liability. Since he did not object to this instruction at trial, he must establish plain error in order to prevail. Alaska R.Crim.P. 47(b). We note that Bowell did more than fail to object to the instruction at trial. It was his counsel who suggested that the mental state as to Bowell should be that Thomas recklessly disregarded B.S.'s lack of consent to the intercourse. Under the totality of the circumstances, we are satisfied that no plain error occurred. We are also satisfied that the other instructions given, coupled with the parties' arguments, adequately present-

cent person or a person who lacks criminal responsibility to engage in the proscribed conduct] with AS 11.16.120(a)(2)(C) [in a prosecution for an offense in which legal accountability is based on the conduct of another person, it is

ed the issue to the jury. See, e.g., *Reynolds v. State*, 664 P.2d at 627-28. See also *Cupp v. Naughten*, 414 U.S. 141, 94 S.Ct. 396, 38 L.Ed.2d 368 (1973) (single instruction to a jury may not be judged in artificial isolation, but must be viewed in the context of the overall charge). The other instructions given informed the jury on accomplice liability:

An accomplice is one who in some manner, knowingly and with criminal intent, aids, abets, assists or participates in a criminal act.

A person need not commit every element of the offense in order to be guilty as an accomplice. However, it is necessary that he in some ways [sic] associate himself with the venture, that he participate in it as in something that he wishes to bring about, that he seek by his actions to make it succeed....

"Aid and abet" means to help, assist, or facilitate the commission of a crime, promote the accomplishment thereof, help in advancing or bringing about, or induce, counsel, or incite as to its commission.

Under the laws of Alaska a person need not directly commit each act constituting the offense charged to be guilty thereof. A person who, with intent to promote or facilitate the commission of the offense, aids or abets another in planning or committing the offense is as guilty as the person or persons who commit the offense personally....

Furthermore, the parties' arguments at closing both expressed the correct legal standard regarding Bowell's culpability. The prosecutor stated:

And then you have to consider, if you found these four things [establishing Thomas' guilt] beyond a reasonable doubt, whether you believe beyond a reasonable doubt that Mr. Bowell aided or abetted and that sexual penetration—in other words, did he know what was hap-

not a defense that the other person is not guilty of the offense].

4. Bowell does not complain of element no. 5 of the instruction on appeal. (See n. 3, *supra*.)

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pening, was he in agreement with it, was it [sic] doing things to help it along, to make it possible for Mr. Thomas to do what he was doing, was he a part of it and was he a participant in the whole situation.

Bowell's counsel argued to the jury without objection by the state:

Now the law is going to be completely read to you. Under the law of the State of Alaska somebody can be guilty as a principal if he aids or abets. Okay? And if a person intends to promote or facilitate the commission of an offense, aids and abets—aids and abets, he is guilty as the person or persons who commit the offense.... In order to aid and abet another to commit a crime it is necessary that the defendant willfully associate himself in some way with the criminal avenger, that he willfully participated in something that he wishes to bring about, that he willfully seeks by some action to make it succeed.... You have to find that he intended to aid and abet Mr. Thomas. And a person acts intentionally with respect to a result when his conscious objective is to cause that result.

We conclude therefore, that Bowell has failed to establish plain error.

Bowell next argues that there was insufficient evidence to convict him of aiding and abetting first-degree sexual assault. Bowell stresses B.S.'s testimony that she would not have been able to escape Thomas' sexual assault even if Bowell had not been present. On review, we must view the evidence and the inferences that may be drawn therefrom in the light most favorable to the prosecution to determine whether there is substantial evidence to support the conviction against Bowell. *Dorman v. State*, 622 P.2d 448, 453 (Alaska 1981). Substantial evidence is defined as such relevant evidence as is adequate to support the conclusion by a reasonable mind that there is no reasonable doubt as to Bowell's guilt. *Id.* at 453 (citations omitted).

[3] Applying this standard, we are satisfied that there is sufficient evidence in the record to enable reasonable jurors to

determine beyond a reasonable doubt that Powell was guilty of aiding and abetting Thomas' sexual assault of B.S. B.S. testified that Thomas was speaking loudly enough for Bowell to hear when he said, "Little girls shouldn't be out hitchhiking in the middle of the night [sic] unless they're asking for something." B.S. asked Bowell to stop and please let her out; Bowell did not stop. When Thomas asked Bowell for the gun, B.S. testified that Bowell retrieved the gun from the glove box, loaded it, and handed it to Thomas. According to B.S., Thomas told Bowell that when Thomas was finished with B.S., it was Bowell's turn. Bowell said, "Hurry up then." B.S. testified that Bowell assisted Thomas in the sexual assault by driving the car, without slowing the rate of speed, to prevent her escape.

We recognize that B.S. testified to a multiplicity of sexual assaults during the approximately three hours that she was in the company of Thomas and Bowell. Given B.S.'s testimony about her actions, and those of Thomas and Bowell, we are satisfied that a reasonable jury could conclude beyond a reasonable doubt that Bowell, at some point, was aware that Thomas was engaging in sexual intercourse with B.S. without her consent, and knowing that, he aided and abetted Thomas. The trial court did not err in denying Bowell's motion for a directed verdict of acquittal.

[4] We will now briefly address Bowell's arguments regarding his sentence. A first offender convicted of first-degree sexual assault is subject to presumptive sentencing. AS 12.55.125(i). If the offense is a first felony conviction and the defendant possessed a fire arm, the presumptive term is ten years. *Id.* (i)(2). Judge Greene found that Bowell's passing a loaded fire arm to Thomas constituted "possession of a fire arm." Bowell argues that only Thomas possessed the fire arm in connection with the offense. *See, e.g., Dailley v. State*, 675 P.2d 657, 661 (Alaska App.1984). We disagree. Where an accomplice furnishes a fire arm to his principal in order to aid and abet a sexual assault, the trial court may properly find that

See, e.g., *Reyn-*  
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the accomplice possessed a fire arm for purposes of the enhanced presumptive term. AS 12.55.125(i)(2). Judge Greene's conclusion was not clearly erroneous. *McClain v. State*, 519 P.2d 811, 813-14 (Alaska 1974).

The judgment of the superior court is **AFFIRMED**. The case is **REMANDED**.

3. *Bowell* raises other issues which we briefly address. First, he contends that the trial court erred in concluding that it had no jurisdiction to consider his motion for new trial based upon newly discovered evidence filed on the same day that he filed his notice of appeal. The parties are in agreement that Judge Greene could have considered the motion and denied it without a remand from this court, but would have needed to request a remand in order to grant the motion. See, e.g., *State v. Salinas*, 362 P.2d 298, 301 (Alaska 1961). It is unnecessary for us to pursue this issue, however, because our affirmance of *Bowell's* conviction will permit the trial court to address his motion for new trial on remand.

*Bowell* also challenges Judge Greene's rejection of a mitigating factor that he committed the

offense under some degree of duress, coercion, threat or compulsion, insufficient to constitute a complete defense but which significantly affected his conduct. AS 12.55.155(d)(3). Since Judge Greene's decision on this issue might be influenced by the so-called newly discovered evidence that *Bowell* seeks to present in support of his motion for a new trial, we will permit reconsideration of this issue on remand. See, e.g., *Hart v. State*, 702 P.2d 651 (Alaska App. 1985). See also *Bynum v. State*, 708 P.2d 1293 (Alaska App. 1985); *Lee v. State*, 673 P.2d 892, 896 (Alaska App. 1983).

Finally, *Bowell* appealed Judge Greene's imposition of consecutive sentences for kidnapping and first-degree assault. However, the lower court has since modified the sentence on appeal and *Bowell* has abandoned this issue.

