

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10678 SENATE STATE AFFAIRS

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FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB238
 () Publish Date: _____

Revision Date/Time (02/06/02): _____ Dept. Affected: DOT&PF
 Title An act relating to state plans and BRU Statewide Aviation
programs for the safety and security of facilities and systems... Component Statewide Aviation
 Sponsor Rules by Request
 Requester SSTA Component No. 1811

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual	10.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	10.0	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)

1002 Federal Receipts						
1003 GF Match						
1004 GF	10.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other	0.0					
TOTAL	10.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 ***The department expects to generate a small amount of revenue \$25.0-\$50.0 in the first year of fine implementation. However, annual revenues should decrease as the fines force users to pay more attention to security procedures.

 The funding request is to cover the cost of adopting regulations to implement section 1 of the bill. These costs are split between the Alaska International Airport System and Statewide Aviation.

Prepared by: Dennis R. Poshard, Assistant to the Commissioner Phone 465-3904
 Division: Commissioner's Office Date/Time 2/7/02 2:03 PM
 Approved by: Joseph L. Perkins, Commissioner Date 2/7/2002
 Agency: Alaska Department of Transportation and Public Facilities

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB238
 () Publish Date: _____

Revision Date/Time (02/15/02): _____ Dept. Affected: DOT&PF
 Title An act relating to state plans and BRU Ted Stevens Anchorage International
programs for the safety and security of facilities and systems... Component Anchorage Airport Safety
 Sponsor Rules by Request
 Requester SSTA Component No. 610

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual	10.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	10.0	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)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (International Airports Revenue Fund)	10.0					
TOTAL	10.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 ***The department expects to generate a small amount of revenue \$25.0-\$50.0 in the first year of fine implementation. However, annual revenues should decrease as the fines force users to pay more attention to security procedures.

 The funding request is to cover the cost of adopting regulations to implement section 1 of the bill. These costs are split between the Alaska International Airport System and Statewide Aviation.

Prepared by: Dennis R. Poshard, Assistant to the Commissioner Phone 465-3904
 Division: Commissioner's Office Date/Time 2/7/02 2:01 PM
 Approved by: Joseph L. Perkins, Commissioner Date 2/7/2002
 Agency: Alaska Department of Transportation and Public Facilities

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Bannister
2/12/02

CS FOR SENATE BILL NO. 238()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to state safety plans, programs, and procedures and to systems,
2 facilities, and infrastructure in the state; exempting from public inspection as public
3 records certain records and information relating to state safety plans, programs, and
4 procedures; and providing for an effective date."

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

6 * Section 1. AS 40.25.120(a) is amended by adding a new paragraph to read:

7 (10) records or information pertaining to a plan, program, or
8 procedures for establishing, maintaining, or restoring security in the state, or to a
9 detailed description or evaluation of systems, facilities, or infrastructure in the state,
10 but only to the extent that the production of the records or information

11 (A) could reasonably be expected to interfere with the
12 implementation or enforcement of the security plan, program, or procedures;

13 (B) would disclose confidential guidelines for investigations or
14 enforcement and the disclosure could reasonably be expected to risk

1 circumvention of the law; or

2 (C) could reasonably be expected to endanger the life or
3 physical safety of an individual or to present a real and substantial risk to the
4 public health and welfare.

5 * Sec. 2. AS 44.17.032 is amended by adding a new section to read:

6 **Sec. 44.17.032. Orders for state security plans, programs, and procedures.**

7 (a) Notwithstanding any contrary provision of law, the principal executive officer of
8 each state agency may issue an order to implement its statutory authority relating to
9 the adoption of a plan, program, or procedure for establishing, maintaining, or
10 restoring security within the state. An order issued under this section is not subject to
11 AS 44.62 (Administrative Procedure Act) and takes effect immediately unless a later
12 effective date is specified. An announcement shall be publicly issued concerning an
13 order issued under this section. This section applies only to plans, programs, or
14 procedures for which the principal executive officer certifies in the order that
15 compliance with the regulation adoption provisions of AS 44.62

16 (1) could reasonably be expected to interfere with the implementation
17 or enforcement of the security plan, program, or procedures;

18 (2) would disclose confidential guidelines for investigations or
19 enforcement and the disclosure could reasonably be expected to risk circumvention of
20 the law; or

21 (3) could reasonably be expected to endanger the life or physical safety
22 of an individual.

23 (b) An order issued under this section is enforceable in the same manner as a
24 regulation adopted under the issuing officer's statutory authority relating to the plan,
25 program, or procedure that is the subject of the order.

26 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

SECTIONAL ANALYSIS OF SB 238

(Re state plans and programs for safety and security of facilities and systems)

Section 1 adds a new section to the Alaska Aeronautics Act (AS 02.15) to allow the Department of Transportation and Public Facilities (DOT/PF) to impose civil administrative penalties of up to \$1100 per incident for violations of an airport security program. Currently, under federal law the Federal Aviation Administration (FAA) may assess a civil penalty of up to this amount for violation of the airport security programs (which are FAA approved). However, the penalty is levied against the state even though nearly all violations are the result of the conduct of airport tenants and contractors. Presently DOT/PF can only pass these fines through to the tenants and contractors under applicable contracts. This amendment will allow DOT/PF to directly fine the responsible parties. This should encourage quicker resolution of airport security violations.

Section 2 amends the exceptions to the public records statute (AS 40.25.120) to provide that records or information pertaining to a security plan, program, or procedures or to a detailed description or evaluation of systems, facilities, or infrastructure in the state are not publicly accessible, to the extent one of the following factors exists. These records or information will be excluded from disclosure to the extent that dissemination: (A) could reasonably be expected to interfere with the implementation or enforcement of the security plan, program, or procedures; (B) would disclose confidential guidelines for investigations or enforcement and the disclosure could reasonably be expected to risk circumvention of the law; or (C) could reasonably be expected to endanger the life or physical safety of an individual or to present a real and substantial risk to the public health and welfare.

Section 3 amends AS 44.17 (organization and administration of departments) to add a new section providing that the principal executive officer of each state agency, or board or commission with regulation adoption authority, may adopt a security plan, program, or procedure within its statutory authority by order. The order adopting the security plan, program, or procedure is not subject to the Administrative Procedure Act (APA, AS 44.62), therefore a public notice, review, and comment process is not required. For this section to apply, the principal executive officer must certify that compliance with the APA either: (A) could reasonably be expected to interfere with the implementation or enforcement of the security plan, program, or procedures; (B) would disclose confidential guidelines for investigations or enforcement and the disclosure could reasonably be expected to risk circumvention of the law; or (C) could reasonably be expected to endanger the life or physical safety of an individual.

3 mechanisms

FAA fine for violation of FAA regs

① ↳ contractual arrangement allows pass-through (tenants only)
• FAA fine
• They report to FAA

② Badged security individual can be stripped

③ Criminal charge (misdemeanor) can be filed

they need another tool to enforce rules/regs.

Int'l Airports don't run into very many problems

↳ IA Security Personnel

Rural, smaller airports are where they have the most difficulty

What about "secure" programs not subject to APA?

↳ if it requires a change in the way the public interacts or uses a public facility, it has to go through APA

SB

239

Volume 02 Number 16
Thursday, January 24, 2002
ISSN 1523-5718

News In Brief

News Briefs
Employers Revisiting Military Leave, Survey Finds

Roughly three out of 10 employers have made adjustments to policies governing Military service since the Sept. 11 terrorist attacks, according to a BNA Web survey of 146 organizations.

Twenty-nine percent of surveyed employers have instituted more generous or Lenient provisions for military leave and reservists within the past few months, survey Results show. Greater leniency regarding military leave has been far more common among firms with 1,000 or more workers (49 percent) than in smaller establishments (21 percent). By industry, utilities (60 percent), manufacturers (41 percent), and service companies (38 percent) have been the most inclined to offer enhanced military leave benefits.

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**Telephone Survey
1/27-28/02**

Salary/benefits an employee receives when called to duty as a National Guard member or reservist, by the President or the Governor

Home Depot

Tanya 1-800-654-0688

Supplements salary up to 100% for first 30 days, continues health, life, AD&D, etc. for 90 days, duration of absence is limited to 5 years

Chugach Electric

Mary 563-7494

Do not supplement salary, continues health insurance for 3 months then COBRA is available, do not limit duration of absence

GCI

Gwen Brew 265-5600

Supplement salary up to 75%, offer COBRA, do not limit duration of absence

Fred Meyers

Bernice Lloyd 269-1700

Do not supplement salary; offer COBRA, do not limit the duration of the absence

Costco

Lisa 344-6436

Do not supplement salary, continue health insurance for 6 months, do not limit the duration of the absence

Providence Alaska Medical Center

Shanny Moore 565-6467

Allow 2 weeks per year, receive regular salary and benefits

Matanuska Electric

Heidi Kelly 761-9219

No policy, situation has not arose

Golden Valley Electric

Theresa Brand-Sharp 458-5740

No policy, situation has not arose

ACS

Joanie Melchert 564-1924

Out of office through Wednesday

BP Exploration

Melinda Andrews 564-5653 left msg

Safeway

Melinda Stone 1-623-869-6100 ext 3800 left msg

Municipal Light & Power

Karen Moore 343-4514

Out until Tuesday

Sears

1-888-887-3277

Unable to reach a live person

Fairbanks Gold Mining Co.

488-4653 ext. 2863

Wells Fargo

1-877-479-3557 #0 #3

415-396-2927

612-667-8334

415-396-8077 Arnel Killian

510-464-1942 George Innies out of office until 2/4

Implementation of Uniformed Services Employee Return and Reemployment Act (USERRA)

	Military pay augmentation	Health Coverage continuation, non-COBRA	Other Arrangements?
Alabama			
Alaska			
Arizona			
Arkansas			
California			
Colorado			
Connecticut			
Delaware			
District of Columbia	15 days of paid military leave; unused portion carried to next year.	Coverage continues at no additional cost to employee for first 365 days of service; EE pays cost to continue beyond first year up to 18 months.	Life insurance continued for 12 months; if employee returns immediately after service period ends, absence is credited as time served for retirement.
Florida			
Georgia	18 days of fully paid service; unpaid military leave thereafter.	Cobra	EE can purchase service credit for up to 5 years of active service absence by indebtedness.
Hawaii			
Idaho	USERRA only	COBRA only	none
Illinois			
Indiana			
Iowa			
Kansas	USERRA; returning employees can buy back any leave cashed in if within 30 days of return.	COBRA	USERRA
Kentucky	10 days of military leave; USERRA	COBRA or intermittent paid leave use;	Life insurance continued for 12 months

Implementation of Uniformed Services Employee Return and Reemployment Act (USERRA)

	Military pay augmentation	Health Coverage continuation, non-COBRA	Other Arrangements?
Louisiana	15 days military leave; USERRA	COBRA, except that ER will pay premium if EE does not	none, but options under consideration
Maine	17 days per year annual training duty pay only	COBRA only	none
Maryland		ER pays ER and EE portions of HI contribution for duration of active service	Other options like augmented pay and income credit for retirement are being considered
Massachusetts			
Michigan	Augmented pay for first 30 days of military absence	Benefits continue for same 30 day period; no employer contribution after 30 days, but dependent coverage subject to COBRA	Returned military employee gets service credit for time on active service.
Minnesota			
Mississippi			
Missouri			
Montana	USERRA only	If period of service less than 31 days, ER pays contribution; for longer than 31 days, COBRA or military coverage	
Nebraska			
Nevada	differential pay	none	none
New Hampshire	no	ER pays health and dental for period of active service	
New Jersey			

Implementation of Uniformed Services Employee Return and Reemployment Act (USERRA)

	Military pay augmentation	Health Coverage continuation, non-COBRA	Other Arrangements?
New Mexico	Regular 15 days military leave, plus an addition 15 days authorized by Gov.; can use leave.	COBRA after paid leave is exhausted.	none
New York	22 workdays military leave	no comment	none
North Carolina	15 days per year paid military leave, but can draw on succeeding year's 15 days if necessary. National Guard called to duty get 30 days full pay, then augmented pay after that.	COBRA only	General Assembly is considering deferred taxes and renewals, but nothing definite yet.
North Dakota	Military leave for first 30 days of active duty; no provision for subsidizing difference between military pay and regular pay.	State agencies are encouraged to continue premium contributions; not required.	none
Ohio	Employees get 22 days of military leave per year; up to \$500 per month subsidy for NG who are state employees.	Regular coverage for 30 days; COBRA after	none

Implementation of Uniformed Services Employee Return and Reemployment Act (USERRA)

	Military pay augmentation	Health Coverage continuation, non-COBRA	Other Arrangements?
Oklahoma	Full state pay for first 20 days of military leave in any federal fiscal year; agencies have option to pay afterward.	No provision to continue premium contribution after first 120 days; employees may be allowed to use portions of accrued leave to constitute "pay status" for purposes of contribution by employer.	none
Oregon	USERRA only		
Pennsylvania	15 additional days of paid military leave;	coverage continues through active service period	\$500 stipend per month of active service, paid upon reemployment; retirement credit continues - ER pays ER portion if EE pays EE portion
Rhode Island			
South Carolina			
South Dakota			
Tennessee			
Texas	studying options for policy decisions		
Utah	USERRA only, but under review		
Vermont			
Virginia	no	Employer pays ER contribution for 18 mo period under COBRA, if EE selects to continue coverage	Use of accrued leave
Washington			
West Virginia			

Implementation of Uniformed Services Employee Return and Reemployment Act (USERRA)

	Military pay augmentation	Health Coverage continuation, non-COBRA	Other Arrangements?
Wisconsin	no for regular military; yes for employed National Guard who are activated	coverage continues through active service period	none
Wyoming	15 days per year paid military leave.	Health Ins premium contributions continue; flexible spending accounts are open to adjustment	Upon reemployment, ER will make all retirement contributions to make EE whole for active service

SB 239, relating to State Employees who are called to Active Duty as Reserve or Auxiliary Members of the Armed Forces of the United States

What does this bill accomplish?

HB 327 will allow the Governor to ensure that state employees who are members of reserve and auxiliary military units, including the Alaska National Guard and Alaska Naval Militia, will not be financially penalized when called to active military duty in certain circumstances.

Why is it needed?

The events of September 11, 2001 had many far-reaching impacts. An area of concern to the Governor was that sudden activation of military reservists and National Guard members who are employees of the State of Alaska could create financial and other hardships for the employees and for their families.

The intent of HB 327 is to allow the Governor, by Administrative Order, to reduce, or eliminate any hardships on the employee and the employee's family created by a drastic reduction in income, health insurance coverage, or any negative effects on future retirement benefits.

The effect of the bill is retroactive to September 11, 2001.

SECTIONAL ANALYSIS OF SB 239
(Re state employees called to active military duty)

Section 1 adds a new section to AS 39.90 (public officers and employees; miscellaneous provisions) to provide that the governor, by administrative order, may authorize state employees in the military reserve or auxiliary component, including the Alaska National Guard and the Alaska Naval Militia, and who are called to active duty, to continue to receive the equivalent of their state compensation and some or all of their state benefits. These benefits may include credited service in the state retirement system, membership in the supplemental employee benefits system, and group life and health insurance. The Department of Administration may adopt emergency regulations to implement the order, including regulations regarding the scope of compensation and benefits and any allocation between the state and the state employee of contributions relating to the benefits.

Section 2 amends the uncodified law provides that this act applies to existing collective bargaining agreements only if they are modified to accept the provisions of this act.

Section 3 makes this act retroactive to September 11, 2001.

SB

240

CS FOR SENATE BILL NO. 240(STA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the crimes of murder, conspiracy, criminal mischief, and terroristic**
2 **threatening; making conforming amendments; and providing for an effective date."**

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

4 *** Section 1. AS 09.50.070(c) is amended to read:**

5 (c) In this section, "serious criminal offense" means the following offenses:

- 6 (1) murder in any degree;
- 7 (2) manslaughter;
- 8 (3) criminally negligent homicide;
- 9 (4) assault in any degree;
- 10 (5) kidnapping;
- 11 (6) sexual assault in any degree;
- 12 (7) sexual abuse of a minor in any degree;
- 13 (8) robbery in any degree;
- 14 (9) coercion;

- 1 (10) extortion;
- 2 (11) arson in any degree;
- 3 (12) burglary in any degree;
- 4 (13) criminal mischief in the first, second, [OR] third . or fourth
- 5 degree;
- 6 (14) driving while intoxicated or another crime resulting from the
- 7 operation of a motor vehicle, boat, or airplane when the offender is intoxicated;
- 8 (15) a crime involving domestic violence, as defined in AS 18.66.990.

9 * Sec. 2. AS 11.31.120(i)(2) is amended to read:

- 10 (2) "serious felony offense" means an offense
- 11 (A) against the person under AS 11.41, punishable as an
- 12 unclassified or class A felony; [OR]
- 13 (B) involving controlled substances under AS 11.71,
- 14 punishable as an unclassified, class A, or class B felony;
- 15 (C) that is criminal mischief in the first degree under
- 16 AS 11.46.480; or
- 17 (D) that is terroristic threatening in the first degree under
- 18 AS 11.56.807.

19 * Sec. 3. AS 11.41.100(a) is amended to read:

- 20 (a) A person commits the crime of murder in the first degree if
- 21 (1) with intent to cause the death of another person, the person
- 22 (A) causes the death of any person; or
- 23 (B) compels or induces any person to commit suicide through
- 24 duress or deception;
- 25 (2) the person knowingly engages in conduct directed toward a child
- 26 under the age of 16 and the person with criminal negligence inflicts serious physical
- 27 injury on the child by at least two separate acts, and one of the acts results in the death
- 28 of the child; [OR]
- 29 (3) acting alone or with one or more persons, the person commits or
- 30 attempts to commit a sexual offense against or kidnapping of a child under 16 years of
- 31 age and, in the course of or in furtherance of the offense or in immediate flight from

1 that offense, any person causes the death of the child; in this paragraph, "sexual
2 offense" means an offense defined in AS 11.41.410 - 11.41.470;

3 (4) acting alone or with one or more persons, the person commits
4 or attempts to commit criminal mischief in the first degree under
5 AS 11.46.480(a)(3) and, in the course of or in furtherance of the offense or in
6 immediate flight from that offense, any person causes the death of a person other
7 than one of the participants; or

8 (5) acting alone or with one or more persons, the person commits
9 terroristic threatening in the first degree under AS 11.56.807 and, in the course of
10 or in furtherance of the offense or in immediate flight from that offense, any
11 person causes the death of a person other than one of the participants.

12 * Sec. 4. AS 11.41.260(a) is amended to read:

13 (a) A person commits the crime of stalking in the first degree if the person
14 violates AS 11.41.270 and

15 (1) the actions constituting the offense are in violation of an order
16 issued or filed under AS 18.66.100 - 18.66.180 or issued under former
17 AS 25.35.010(b) or 25.35.020;

18 (2) the actions constituting the offense are in violation of a condition of
19 probation, release before trial, release after conviction, or parole;

20 (3) the victim is under 16 years of age;

21 (4) at any time during the course of conduct constituting the offense,
22 the defendant possessed a deadly weapon;

23 (5) the defendant has been previously convicted of a crime under this
24 section, AS 11.41.270, or AS 11.56.740, or a law or ordinance of this or another
25 jurisdiction with elements similar to a crime under this section, AS 11.41.270, or
26 AS 11.56.740; or

27 (6) the defendant has been previously convicted of a crime, or an
28 attempt or solicitation to commit a crime, under (A) AS 11.41.100 - 11.41.250,
29 11.41.300 - 11.41.460, AS 11.56.807, 11.56.810 [AS 11.56.810], AS 11.61.120, or (B)
30 a law or an ordinance of this or another jurisdiction with elements similar to a crime,
31 or an attempt or solicitation to commit a crime, under AS 11.41.100 - 11.41.250,

1 11.41.300 - 11.41.460, AS 11.56.807, 11.56.810 [AS 11.56.810], or AS 11.61.120,
2 involving the same victim as the present offense.

3 * Sec. 5. AS 11.46.480(a) is amended to read:

4 (a) A person commits the crime of criminal mischief in the first degree if,
5 having no right to do so or any reasonable ground to believe the person has such a
6 right,

7 (1) with intent to cause a substantial interruption or impairment of a
8 service rendered to the public by a utility or by an organization that [WHICH] deals
9 with emergencies involving danger to life or property, the person damages or tampers
10 with property of that utility or organization and causes substantial interruption or
11 impairment of service to the public;

12 (2) with intent to damage property of another by the use of widely
13 dangerous means, the person damages property of another in an amount exceeding
14 \$100,000 by the use of widely dangerous means;

15 (3) the person intentionally damages an oil or gas pipeline or
16 supporting facility; or

17 (4) with intent to cause physical injury to another person, the person [:]

18 (A) tampers with food, air, water, or an item that is a [FOOD,]
19 drug [,] or cosmetic, or a container for food, air, water, or the item; or

20 (B) delivers, dispenses, or distributes food, air, water, or an
21 item described in (A) of this paragraph knowing that a person has tampered
22 with the food, air, water, or item or a container for the food, water, or item.

23 * Sec. 6. AS 11.46.480(b) is amended to read:

24 (b) Criminal mischief in the first degree is a class A [B] felony.

25 * Sec. 7. AS 11.46.480(c)(1) is amended to read:

26 (1) "deliver" means the actual, constructive, or attempted transfer from
27 one person to another of food, air, water, or an item;

28 * Sec. 8. AS 11.46.480(c)(3) is amended to read:

29 (3) "distribute" means to deliver food, air, water, or an item, whether or not
30 there is any money or other item of value exchanged; it includes sale, gift, or
31 exchange;

1 * Sec. 9. AS 11.46 is amended by adding a new section to read:

2 **Sec. 11.46.481. Criminal mischief in the second degree.** (a) A person
3 commits the crime of criminal mischief in the second degree if, having no right to do
4 so or any reasonable ground to believe the person has such a right, the person tampers
5 with an oil or gas pipeline or supporting facility or an airplane or helicopter with
6 reckless disregard for the risk of harm to or loss of the property;

7 (b) Criminal mischief in the second degree is a class B felony.

8 * Sec. 10. AS 11.46.482(a) is amended to read:

9 (a) A person commits the crime of criminal mischief in the third [SECOND]
10 degree if, having no right to do so or any reasonable ground to believe the person has
11 such a right,

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

14 (2) [THE PERSON TAMPERS WITH AN OIL OR GAS PIPELINE
15 OR SUPPORTING FACILITY OR AN AIRPLANE OR HELICOPTER WITH
16 RECKLESS DISREGARD FOR THE RISK OF HARM TO OR LOSS OF THE
17 PROPERTY;

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

20 (3) [(4) REPEALED

21 (5) REPEALED

22 (6)] the person knowingly

23 (A) defaces, damages, or desecrates a cemetery or the contents
24 of a cemetery or a tomb, grave, or memorial regardless of whether the tomb,
25 grave, or memorial is in a cemetery or whether the cemetery, tomb, grave, or
26 memorial appears to be abandoned, lost, or neglected;

27 (B) removes human remains or associated burial artifacts from
28 a cemetery, tomb, grave, or memorial regardless of whether the cemetery,
29 tomb, grave, or memorial appears to be abandoned, lost, or neglected.

30 * Sec. 11. AS 11.46.482(b) is amended to read:

31 (b) It is an affirmative defense to a prosecution under (a)(3) [(a)(6)] of this

1 section that the defendant, at the time of the offense, was

2 (1) an employee of the cemetery and was engaged in an authorized
3 activity on behalf of the cemetery; or

4 (2) authorized by law or state permit to engage in the conduct.

5 * Sec. 12. AS 11.46.482(d) is amended to read:

6 (d) Criminal mischief in the third [SECOND] degree is a class C felony.

7 * Sec. 13. AS 11.46.484 is amended to read:

8 **Sec. 11.46.484. Criminal mischief in the fourth [THIRD] degree.** (a) A
9 person commits the crime of criminal mischief in the fourth [THIRD] degree if,
10 having no right to do so or any reasonable ground to believe the person has such a
11 right

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

14 (2) [REPEALED

15 (3) REPEALED

16 (4)] the person tampers with a fire protection device in a building that
17 is a public place;

18 (3) [(5)] the person knowingly accesses a computer, computer system,
19 computer program, computer network, or part of a computer system or network;

20 (4) [(6)] the person uses a device to descramble an electronic signal
21 that has been scrambled to prevent unauthorized receipt or viewing of the signal unless
22 the device is used only to descramble signals received directly from a satellite or
23 unless the person owned the device before September 18, 1984; or

24 (5) [(7)] the person knowingly removes, relocates, defaces, alters,
25 obscures, shoots at, destroys, or otherwise tampers with an official traffic control
26 device or damages the work upon a highway under construction.

27 * Sec. 14. AS 11.46.484(b) is amended to read:

28 (b) Criminal mischief in the fourth [THIRD] degree is a class A
29 misdemeanor.

30 * Sec. 15. AS 11.46.486 is amended to read:

31 **Sec. 11.46.486. Criminal mischief in the fifth [FOURTH] degree.** (a) A

1 person commits the crime of criminal mischief in the fifth [FOURTH] degree if,
2 having no right to do so or any reasonable ground to believe the person has such a
3 right,

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

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

9 (3) the person rides in a propelled vehicle knowing it has been stolen
10 or that it is being used in violation of AS 11.46.360 or 11.46.365(a)(1).

11 (b) Criminal mischief in the fifth [FOURTH] degree is a class B
12 misdemeanor.

13 * Sec. 16. AS 11.46.487 is amended to read:

14 Sec. 11.46.487. **Forfeiture of property upon conviction.** Firearms and other
15 personal property, except a motor vehicle, used in aid of a violation of AS 11.46.460,
16 11.46.462, or 11.46.484(a)(5) [11.46.484(a)(7)] may be forfeited to the state upon
17 conviction of the offender for the crime.

18 * Sec. 17. AS 11.56.800(a) is amended to read:

19 (a) A person commits the crime of false information or report if the person
20 knowingly

21 (1) gives false information to a peace officer

22 (A) with the intent of implicating another in an offense; or

23 (B) concerning the person's identity while the person is

24 (i) under arrest, detention, or investigation for a crime;

25 or

26 (ii) being served with an arrest warrant or being issued a
27 citation;

28 (2) makes a false report to a peace officer that a crime has occurred or
29 is about to occur;

30 (3) makes a false report or gives a false alarm, under circumstances
31 not amounting to terroristic threatening in the second degree under

1 AS 11.56.810, that a fire or other incident dangerous to life or property calling for an
2 emergency response has occurred or is about to occur; or

3 (4) makes a false report to the Department of Natural Resources under
4 AS 46.17 concerning the condition of a dam or reservoir.

5 * Sec. 18. AS 11.56 is amended by adding a new section to read:

6 **Sec. 11.56.807. Terroristic threatening in the first degree.** (a) A person
7 commits the crime of terroristic threatening in the first degree if the person sends,
8 delivers, attempts to send or deliver, or solicits the sending or delivery of an envelope,
9 package, or any other item containing a biological or chemical substance or an
10 imitation biological or chemical substance with intent

11 (1) to place a person in fear of physical injury to any person;

12 (2) to cause evacuation of a building, public place, business premises,
13 or means of public transportation; or

14 (3) to cause serious public inconvenience.

15 (b) In this section,

16 (1) "biological or chemical substance" means a material that is harmful
17 to the health of a person;

18 (2) "imitation biological or chemical substance" means a material that
19 by its appearance would lead a reasonable person to believe that it is harmful to the
20 health of a person.

21 (c) Terroristic threatening in the first degree is a class B felony.

22 * Sec. 19. AS 11.56.810 is amended to read

23 **Sec. 11.56.810. Terroristic threatening in the second degree.** (a) A person
24 commits the crime of terroristic threatening in the second degree if the person
25 knowingly makes a false report

26 (1) that a circumstance dangerous to human life exists or is about to
27 exist and

28 (A) [(1)] places a person in fear of physical injury to any
29 person;

30 (B) [(2)] causes evacuation of a building, public place,
31 business premises, or means of public transportation; [OR]

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(C) [(3)] causes serious public inconvenience;

(D) that claims that a biological or chemical substance that is harmful to the health of a person has been sent or is present in a building, public place, business premises, or means of public transportation; or

(2) that threatens damage to an oil or gas pipeline or supporting facility.

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

* Sec. 20. AS 11.56.810 is amended by adding a new subsection to read:

(c) In this section, "oil or gas pipeline or supporting facility" has the meaning given in AS 11.46.490.

* Sec. 21. AS 12.61.120(b) is amended to read:

(b) If the defendant is proceeding without counsel in a case involving a charged violation of AS 11.41, AS 11.46.300 - 11.46.330, AS 11.56.740, 11.56.807, 11.56.810, AS 11.61.190 - 11.61.210, or a crime involving domestic violence [,] and the court finds that the defendant may pose a continuing threat to the victim of or witness to the offense charged, the court shall protect the address and telephone number of the victim or witness by providing the information only to a person specified by the court or by imposing other restrictions that the court considers necessary. When an address or telephone number is released to a person specified by the court under this subsection, that person, who shall be ordered not to disclose the information to the defendant, shall contact the victim or witness on behalf of the defendant, and the defendant shall meet or speak with the victim or witness only in the presence of that person.

* Sec. 22. AS 18.66.990(3) is amended to read:

(3) "domestic violence" and "crime involving domestic violence" mean one or more of the following offenses or an offense under a law or ordinance of another jurisdiction having elements similar to these offenses, or an attempt to commit the offense, by a household member against another household member:

(A) a crime against the person under AS 11.41;

(B) burglary under AS 11.46.300 - 11.46.310;

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- (C) criminal trespass under AS 11.46.320 - 11.46.330;
- (D) arson or criminally negligent burning under AS 11.46.400 - 11.46.430;
- (E) criminal mischief under AS 11.46.480 - 11.46.486;
- (F) terroristic threatening under AS 11.56.807 or 11.56.810 [AS 11.56.810];
- (G) violating a domestic violence order under AS 11.56.740;
- or
- (H) harassment under AS 11.61.120(a)(2) - (4);

* Sec. 23. The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. This Act applies to offenses committed on or after the effective date of this Act.

* Sec. 24. This Act takes effect immediately under AS 01.10.070(c).

A M E N D M E N T

OFFERED IN THE SENATE

TO: SB 240

Page 1, following line 4:

Insert new bill sections to read:

****Section 1.** AS 11.31.120(i)(2) is amended to read:

(2) "serious felony offense" means an offense

(A) against a person under AS 11.41, punishable as an unclassified or class A felony; [OR]

(B) involving controlled substances under AS 11.71, punishable as an unclassified, class A or class B felony;

(C) that is damaging an oil or gas pipeline or supporting facility under AS 11.46.470;

(D) that is terroristic threatening in the first degree under AS 11.56.807; or

(E) that is criminal mischief in the first degree under AS 11.46.430.

***Sec. 2.** AS 11.41.100(a) is amended to read:

(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;

(2) the person knowingly engages in conduct directed toward a child under the age of 16 and the person with criminal negligence inflicts serious physical injury on the child by at least two separate acts, and one of the acts results in the death of the child; [OR]

(3) acting alone or with one or more persons, the person commits or attempts to commit a sexual offense against or kidnapping of a child under 16 years of age and, in the course of or in furtherance of the offense or the immediate flight from that offense, any person causes the death of the child; in this paragraph, "sexual offense" means an offense defined in AS 11.41.410 - 11.41.470;

(4) acting alone or with one or more persons, the person commits or attempts to commit damaging an oil or gas pipeline facility under AS 11.46.470 and, in the course of or in furtherance of the offense or in immediate flight from that offense, any person causes the death of a person other than one of the participants; or

(5) acting alone or with one or more persons, the person commits terroristic threatening in the first degree under AS 11.56.807 and, in the course of or in furtherance of the offense or in immediate flight from that offense, any person causes the death of a person other than one of the participants.

Page 4, line 7:

Following **“containing”**:

Insert **“a biological and chemical substance or”**

Page 4, lines 13 - 15:

Delete all material and insert:

“(b) In this section

(1) “a chemical or biological substance” means a material that is harmful to the health of a person;

(2) “an imitation chemical or biological substance” means a material that by its appearance or by representations would lead a reasonable person to believe that it is harmful to the health of a person.”

CS FOR SENAT ` BILL NO. 240(STA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the crimes of damaging an oil or gas pipeline or supporting facility,**
2 **criminal mischief, and terroristic threatening; making conforming amendments; and**
3 **providing for an effective date."**

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

5 *** Section 1. AS 11.41.260(a) is amended to read:**

6 (a) A person commits the crime of stalking in the first degree if the person
7 violates AS 11.41.270 and

8 (1) the actions constituting the offense are in violation of an order
9 issued or filed under AS 18.66.100 - 18.66.180 or issued under former
10 AS 25.35.010(b) or 25.35.020;

11 (2) the actions constituting the offense are in violation of a condition of
12 probation, release before trial, release after conviction, or parole;

13 (3) the victim is under 16 years of age;

14 (4) at any time during the course of conduct constituting the offense,

1 the defendant possessed a deadly weapon;

2 (5) the defendant has been previously convicted of a crime under this
3 section, AS 11.41.270, or AS 11.56.740, or a law or ordinance of this or another
4 jurisdiction with elements similar to a crime under this section, AS ^o11.41.270, or
5 AS 11.56.740; or

6 (6) the defendant has been previously convicted of a crime, or an
7 attempt or solicitation to commit a crime, under (A) AS 11.41.100 - 11.41.250,
8 11.41.300 - 11.41.460, AS 11.56.807, 11.56.810 [AS 11.56.810], AS 11.61.120, or (B)
9 a law or an ordinance of this or another jurisdiction with elements similar to a crime,
10 or an attempt or solicitation to commit a crime, under AS 11.41.100 - 11.41.250,
11 11.41.300 - 11.41.460, AS 11.56.807, 11.56.810 [AS 11.56.810], or AS 11.61.120,
12 involving the same victim as the present offense.

13 * Sec. 2. AS 11.46 is amended by adding a new section to read:

14 **Sec. 11.46.470. Damaging an oil or gas pipeline or supporting facility. (a)**

15 A person commits the crime of damaging an oil or gas pipeline or supporting facility
16 if, having no right to do so or any reasonable ground to believe the person has such a
17 right, the person intentionally damages an oil or gas pipeline or supporting facility.

18 (b) Damaging an oil or gas pipeline or supporting facility is a class A felony.

19 * Sec. 3. AS 11.46.480(a) is amended to read:

20 (a) A person commits the crime of criminal mischief in the first degree if,
21 having no right to do so or any reasonable ground to believe the person has such a
22 right,

23 (1) with intent to cause a substantial interruption or impairment of a
24 service rendered to the public by a utility or by an organization that [WHICH] deals
25 with emergencies involving danger to life or property, the person damages or tampers
26 with property of that utility or organization and causes substantial interruption or
27 impairment of service to the public;

28 (2) with intent to damage property of another by the use of widely
29 dangerous means, the person damages property of another in an amount exceeding
30 \$100,000 by the use of widely dangerous means;

31 (3) the person tampers with [INTENTIONALLY DAMAGES] an oil

1 or gas pipeline or supporting facility or an airplane or helicopter, with reckless
2 disregard for the risk of harm to or loss of the property; or

3 (4) with intent to cause physical injury to another person, the person[:]

4 (A) tampers with food, air, water, or an item that is a [FOOD,]
5 drug [,] or cosmetic, or a container for food, air, water, or the item; or

6 (B) delivers, dispenses, or distributes food, air, water, or an
7 item described in (A) of this paragraph knowing that a person has tampered
8 with the food, air, water, or item or a container for the food, water, or item.

9 * Sec. 4. AS 11.46.480(c)(1) is amended to read:

10 (1) "deliver" means the actual, constructive, or attempted transfer from
11 one person to another of food, air, water, or an item;

12 * Sec. 5. AS 11.46.480(c)(3) is amended to read:

13 (3) "distribute" means to deliver food, air, water, or an item, whether
14 or not there is any money or other item of value exchanged; it includes sale, gift, or
15 exchange;

16 * Sec. 6. AS 11.56.800(a) is amended to read:

17 (a) A person commits the crime of false information or report if the person
18 knowingly

19 (1) gives false information to a peace officer

20 (A) with the intent of implicating another in an offense; or

21 (B) concerning the person's identity while the person is

22 (i) under arrest, detention, or investigation for a crime;

23 or

24 (ii) being served with an arrest warrant or being issued a

25 citation;

26 (2) makes a false report to a peace officer that a crime has occurred or
27 is about to occur;

28 (3) makes a false report or gives a false alarm, under circumstances
29 not amounting to terroristic threatening in the second degree under
30 AS 11.56.810, that a fire or other incident dangerous to life or property calling for an
31 emergency response has occurred or is about to occur; or

1 (4) makes a false report to the Department of Natural Resources under
2 AS 46.17 concerning the condition of a dam or reservoir.

3 * Sec. 7. AS 11.56 is amended by adding a new section to read:

4 **Sec. 11.56.807. Terroristic threatening in the first degree.** (a) A person
5 commits the crime of terroristic threatening in the first degree if the person sends,
6 delivers, attempts to send or deliver, or solicits the sending or delivery of an envelope,
7 package, or any other item containing an imitation biological or chemical substance
8 with intent

9 (1) to place a person in fear of physical injury to any person;

10 (2) to cause evacuation of a building, public place, business premises,
11 or means of public transportation; or

12 (3) to cause serious public inconvenience.

13 (b) In this section, "imitation biological or chemical substance" means a
14 material that by its appearance would lead a reasonable person to believe that it is
15 harmful to the health of a person.

16 (c) Terroristic threatening in the first degree is a class B felony.

17 * Sec. 8. AS 11.56.810 is amended to read

18 **Sec. 11.56.810. Terroristic threatening in the second degree.** (a) A person
19 commits the crime of terroristic threatening in the second degree if the person
20 knowingly makes a false report

21 (1) that a circumstance dangerous to human life exists or is about to
22 exist and

23 (A) [(1)] places a person in fear of physical injury to any
24 person;

25 (B) [(2)] causes evacuation of a building, public place,
26 business premises, or means of public transportation; [OR]

27 (C) [(3)] causes serious public inconvenience;

28 (D) that claims that a biological or chemical substance that
29 is harmful to the health of a person has been sent or is present in a
30 building, public place, business premises, or means of public
31 transportation; or

1 **(2) that threatens damage to an oil or gas pipeline or supporting**
2 **facility.**

3 (b) Terroristic threatening **in the second degree** is a class C felony.

4 * Sec. 9. AS 11.56.810 is amended by adding a new subsection to read:

5 (c) In this section, "oil or gas pipeline or supporting facility" has the meaning
6 given in AS 11.46.490.

7 * Sec. 10. AS 12.61.120(b) is amended to read:

8 (b) If the defendant is proceeding without counsel in a case involving a
9 charged violation of AS 11.41, AS 11.46.300 - 11.46.330, AS 11.56.740, **11.56.807,**
10 11.56.810, AS 11.61.190 - 11.61.210, or a crime involving domestic violence [,] and
11 the court finds that the defendant may pose a continuing threat to the victim of or
12 witness to the offense charged, the court shall protect the address and telephone
13 number of the victim or witness by providing the information only to a person
14 specified by the court or by imposing other restrictions that the court considers
15 necessary. When an address or telephone number is released to a person specified by
16 the court under this subsection, that person, who shall be ordered not to disclose the
17 information to the defendant, shall contact the victim or witness on behalf of the
18 defendant, and the defendant shall meet or speak with the victim or witness only in the
19 presence of that person.

20 * Sec. 11. AS 18.66.990(3) is amended to read:

21 (3) "domestic violence" and "crime involving domestic violence" mean
22 one or more of the following offenses or an offense under a law or ordinance of
23 another jurisdiction having elements similar to these offenses, or an attempt to commit
24 the offense, by a household member against another household member:

25 (A) a crime against the person under AS 11.41;

26 (B) burglary under AS 11.46.300 - 11.46.310;

27 (C) criminal trespass under AS 11.46.320 - 11.46.330;

28 (D) arson or criminally negligent burning under AS 11.46.400 -
29 11.46.430;

30 (E) criminal mischief under AS 11.46.480 - 11.46.486;

31 (F) terroristic threatening under **AS 11.56.807 or 11.56.810**

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[AS 11.56.810];

(G) violating a domestic violence order under AS 11.56.740;

or

(H) harassment under AS 11.61.120(a)(2) - (4);

* Sec. 12. AS 11.46.482(a)(2) is repealed.

* Sec. 13. The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. This Act applies to offenses committed on or after the effective date of this Act.

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

tutes.

by statute

statutes. When all or part of it so repealing the accusation, the statute or part of it otherwise specified in

a motor vehicle without the driver's license on the repeal date. June 28,

not bar, suspend, or revoke, or other remedy regardless of whether the offense is in this title. (§ 10 ch 166)

or demonstrate a legislative intent. See *State v. Fred Meyer of Alaska*, 908 P.2d 454 (Alaska Ct. App. 1999).

constitutes an offense

statute. (§ 10 ch 166)

with the authorizing statute; to which the regulation is necessary to carry out the purpose of the statute. See *State v. State*, 705 P.2d 1280 (Alaska Ct. App. 1985).

Alaska, 698 P.2d 174 (Alaska Ct. App. 1985).

State, 908 P.2d 454 (Alaska Ct. App. 1999).

S.

Alaska Rules of Criminal Procedure

Sec. 11.81.250. Classification of offenses. (a) For purposes of sentencing under AS 12.55, all offenses defined in this title, except murder in the first and second degree, attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, sexual assault in the first degree, sexual abuse of a minor in the first degree, misconduct involving a controlled substance in the first degree, and kidnapping, are classified on the basis of their seriousness, according to the type of injury characteristically caused or risked by commission of the offense and the culpability of the offender. Except for murder in the first and second degree, attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, sexual assault in the first degree, sexual abuse of a minor in the first degree, misconduct involving a controlled substance in the first degree, and kidnapping, the offenses in this title are classified into the following categories:

(1) class A felonies, which characteristically involve conduct resulting in serious physical injury or a substantial risk of serious physical injury to a person;

(2) class B felonies, which characteristically involve conduct resulting in less severe violence against a person than class A felonies, aggravated offenses against property interests, or aggravated offenses against public administration or order;

(3) class C felonies, which characteristically involve conduct serious enough to deserve felony classification but not serious enough to be classified as A or B felonies;

(4) class A misdemeanors, which characteristically involve less severe violence against a person, less serious offenses against property interests, less serious offenses against public administration or order, or less serious offenses against public health and decency than felonies;

(5) class B misdemeanors, which characteristically involve a minor risk of physical injury to a person, minor offenses against property interests, minor offenses against public administration or order, or minor offenses against public health and decency;

(6) violations, which characteristically involve conduct inappropriate to an orderly society but which do not denote criminality in their commission.

(b) The classification of each felony defined in this title, except murder in the first and second degree, attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, sexual assault in the first degree, sexual abuse of a minor in the first degree, misconduct involving a controlled substance in the first degree, and kidnapping, is designated in the section defining it. A felony under Alaska law defined outside this title for which no penalty is specifically provided is a class C felony.

(c) The classification of each misdemeanor defined in this title is designated in the section defining it. A misdemeanor under Alaska law defined outside this title for which no penalty is provided is a class A misdemeanor. (§ 10 ch 166 SLA 1978; am §§ 9, 10 ch 143 SLA 1982; am §§ 17, 18 ch 37 SLA 1986; am §§ 2, 3 ch 59 SLA 1988; am §§ 7, 8 ch 54 SLA 1999)

Cross references. — For increase in classification of misdemeanors committed in connection with a criminal street gang, see AS 12.55.137.

Effect of amendments. — The 1986 amendment inserted "sexual abuse of a minor in the first degree, misconduct involving a controlled substance in the first degree," in two places in the introductory language of subsection (a) and in the first sentence of subsection (b).

The 1988 amendment inserted "attempted murder in the first degree" in both sentences in the introductory paragraph of subsection (a) and in the first sentence in subsection (b).

The first 1999 amendment, effective June 5, 1999, inserted "solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree" in the first and second sentences of subsection (a) and in the first sentence in subsection (b).

NOTES TO DECISIONS

For cases construing former AS 11.75.030, which provided for the division of crimes into felonies and misdemeanors, see note to AS 11.81.900.

Strict liability commercial fishing violations. — Penalties for strict liability commercial fishing violations under AS 16.05.722(a), including a maxi-

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 employee 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;

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

(4) the defendant is convicted of the murder of and personally caused the death of a person, other than a participant, during a robbery.

(b) A defendant convicted of attempted murder in the first degree, solicitation to commit 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. A defendant convicted of murder in the second degree shall be sentenced to a definite term of imprisonment of at least 10 years but not more than 99 years. A defendant convicted of murder in the second degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years when the defendant is convicted of the murder of a child under 16 years of age and the court finds by clear and convincing evidence that the defendant (1) was a natural parent, a stepparent, an adopted parent, a legal guardian, or a person occupying a position of authority in relation to the child; or (2) caused the death of the child by committing a crime against a person under AS 11.41.200 — 11.41.530. In this subsection, "legal guardian" and "position of authority" have the meanings given in AS 11.41.470.

(c) A defendant convicted of a class A felony may be sentenced to a definite term of imprisonment of not more than 20 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, five years;

(2) if the offense is a first felony conviction

(A) other than for manslaughter and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, or knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional employee, 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, seven years;

(B) for manslaughter and the conduct resulting in the conviction was knowingly directed towards a child under the age of 16, seven years;

(3) if the offense is a second felony conviction, 10 years;

(4) if the offense is a third felony conviction and the defendant is not subject to sentencing under (1) of this section, 15 years.

(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) [Repealed, § 6 ch 6 SLA 1996.]

(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) [Repealed, § 6 ch 6 SLA 1996.]

(4) if the offense is a first felony conviction, and the defendant violated AS 08.54.720(a)(15), one year.

(f) If a defendant is sentenced under (a) or (b) of this section,

(1) imprisonment for the prescribed minimum or mandatory term may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) imprisonment for the prescribed minimum or mandatory term may not be reduced, except as provided in (j) of this section.

(g) If a defendant is sentenced under (c), (d)(1), (d)(2), (e)(1), (e)(2), (e)(4), or (i) of this section, except to the extent permitted under AS 12.55.155 — 12.55.175,

(1) imprisonment may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) terms of imprisonment may not be otherwise reduced.

(h) Nothing in this section or AS 12.55.135 limits the discretion of the sentencing judge except as specifically provided. Nothing in (a) of this section limits the court's discretion to impose a sentence of 99 years imprisonment, or to limit parole eligibility, for a person convicted of murder in the first or second degree in circumstances other than those enumerated in (a).

(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 and the defendant is not subject to sentencing under (l) of this section, 25 years.

(j) A defendant sentenced to a (1) mandatory term of imprisonment of 99 years under (a) of this section may apply once for a modification or reduction of sentence under the Alaska Rules of Criminal Procedure after serving one-half of the mandatory term without consideration of good time earned under AS 33.20.010, or (2) definite term of imprisonment under (l) of this section may apply once for a modification or reduction of sentence under the Alaska Rules of Criminal Procedure after serving the greater of (A) one-half of the definite term or (B) 30 years. A defendant may not file and a court may not entertain more than one motion for modification or reduction of a sentence subject to this subsection, regardless of whether or not the court granted or denied a previous motion.

(k) A first felony offender convicted of an offense for which a presumptive term of imprisonment is not specified under this section

(1) may be sentenced to a term of unsuspended imprisonment that exceeds the presumptive term for a second or third felony offender convicted of the same crime if the offender is convicted of criminally negligent homicide and the victim is a child under the age of 16;

(2) except as provided in (1) of this subsection, may not be sentenced to a term of unsuspended imprisonment that exceeds the presumptive term for a second felony

(a) A defendant convicted of murder in the first degree when the defendant was engaged in the

11.15.010 or 11.15.020; AS 11.15.030; or the offense of which the defendant was engaged in the

defendant subjected the

caused the death of a

degree, solicitation to murder in the first degree, or solicitation in the first degree shall be sentenced to a definite term of imprisonment of not more than 99 years. A defendant sentenced to a definite term of imprisonment when the defendant is convicted of murder in the first degree by clear and convincing evidence, a stepparent, an adult, or a person in a position of authority in relation to the crime against a person in a position of authority and "position of

sentenced to a definite term of imprisonment of not more than 99 years. A defendant sentenced to a definite term of imprisonment when the defendant is convicted of murder in the first degree by clear and convincing evidence, a stepparent, an adult, or a person in a position of authority in relation to the crime against a person in a position of authority and "position of

used 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 and the defendant is not subject to sentencing under (l) of this section, 25 years.

defendant is not subject to

sentenced to a definite term of imprisonment of not more than 99 years. A defendant sentenced to a definite term of imprisonment when the defendant is convicted of murder in the first degree by clear and convincing evidence, a stepparent, an adult, or a person in a position of authority in relation to the crime against a person in a position of authority and "position of

offender convicted of the same crime unless the court finds by clear and convincing evidence that an aggravating factor under AS 12.55.155(c) is present, or that circumstances exist that would warrant a referral to the three-judge panel under AS 12.55.165.

(l) Notwithstanding any other provision of law, a defendant convicted of an unclassified or class A felony offense, and not subject to a mandatory 99-year sentence under (a) of this section, shall be sentenced to a definite term of imprisonment of at least 40 years but not more than 99 years when the defendant has been previously convicted of two or more most serious felonies and the prosecuting attorney has filed a notice of intent to seek a definite sentence under this subsection at the time the defendant was arraigned in superior court. If a defendant is sentenced to a definite term under this section,

(1) imprisonment for the prescribed definite term may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) imprisonment for the prescribed definite term may not be reduced, except as provided in (i) of this section.

(m) Notwithstanding (a)(4) and (f) of this section, if a court finds that imposition of a mandatory term of imprisonment of 99 years on a defendant subject to sentencing under (a)(4) of this section would be manifestly unjust, the court may sentence the defendant to a definite term of imprisonment otherwise permissible under (a) of this section. (§ 12 ch 166 SLA 1978; am § 18 ch 45 SLA 1982; am §§ 28 — 30 ch 143 SLA 1982; am § 8 ch 78 SLA 1983; am §§ 1 — 3 ch 92 SLA 1983; am § 5 ch 59 SLA 1988; am § 4 ch 37 SLA 1989; am §§ 23 — 25 ch 79 SLA 1992; am § 5 ch 3 SLA 1994; am §§ 1, 2, 6 ch 6 SLA 1996; am §§ 3 — 7 ch 7 SLA 1996; am § 8 ch 30 SLA 1996; am § 4 ch 33 SLA 1996; am §§ 9 — 11 ch 54 SLA 1999; am § 1 ch 65 SLA 1999; am §§ 1, 2 ch 49 SLA 2000)

Cross references. — For classification of felonies and misdemeanors, see AS 11.81.250; for authorized fines, see AS 12.55.035; for reduction of sentence for good behavior, see AS 33.20.010; for effect of the enactment of (j) of this section on Alaska Rule of Criminal Procedure 35, see § 34, ch. 79, SLA 1992 in the Temporary and Special Acts; for findings related to the addition of subsection (l), see § 1, ch. 7, SLA 1996 in the Temporary and Special Acts; for the effect of amendments to (j) of this section made by ch. 7, SLA 1996 on Alaska Rule of Criminal Procedure 35, see § 20, ch. 7, SLA 1996 in the Temporary and Special Acts.

For applicability provisions relating to the 1999 amendment of subsection (b) by § 9, ch. 54, SLA 1999, and relating to the 1999 amendment of subsections (c) and (k), see § 16, ch. 54, SLA 1999 in the 1999 Temporary & Special Acts. For applicability provisions relating to the 1999 amendment of subsection (b) by § 1, ch. 65, SLA 1999, see § 2, ch. 64, SLA 1999 in the 1999 Temporary & Special Acts.

For applicability provisions relating to the 2000 amendment of subsection (a) by sec. 1, ch. 49, SLA 2000, and the addition of subsection (m) by sec. 2, ch. 49, SLA 2000, see sec. 3, ch. 49, SLA 2000 in the 2000 Temporary & Special Acts.

Effect of amendments. — The 1992 amendment, effective September 14, 1992, in subsection (a), added the second sentence and paragraphs (1) to (3); added the second sentence in subsection (h); and added subsections (j) and (k).

The 1994 amendment, effective May 30, 1994, inserted "conspiracy to commit murder in the first degree," in subsection (b).

The first 1996 amendment, effective June 27, 1996, substituted "correctional employee" for "correctional officer" in paragraphs (a)(1) and (c)(2) and repealed

paragraphs (d)(3) and (e)(3).

The second 1996 amendment, effective June 27, 1996, in paragraphs (c)(4) and (i)(4), inserted "and the defendant is not subject to sentencing under (l) of this section"; in subsection (f), inserted "or mandatory" in paragraphs (1) and (2), and in paragraph (3), deleted "otherwise" preceding "reduced" and added ", except as provided in (j) of this section"; in (j), inserted "(1)," "once," and all of the language following "AS 33.20.010"; and added subsection (l).

The third 1996 amendment, effective May 16, 1996, inserted a section reference in subsection (g).

The fourth 1996 amendment, effective May 23, 1996, made a section reference substitution in paragraph (e)(4).

The first 1999 amendment, effective June 5, 1999, in subsection (b), inserted "solicitation to commit murder in the first degree" in the first sentence and added the third and fourth sentences; and added subparagraph (c)(2)(B), the subparagraph (c)(2)(A) designation, paragraph (k)(1), the paragraph (k)(2) designation, and "except as provided in (1) of this subsection" at the beginning of paragraph (k)(2).

The second 1999 amendment, effective September 20, 1999, in subsection (b) deleted "murder in the second degree," following "convicted of" in the first sentence and added the second sentence.

The 2000 amendment, effective August 9, 2000, added paragraph (a)(4) and made related stylistic changes, and added subsection (m).

Editor's notes. — Section 7, ch. 6, SLA 1996 provides that the repeal of (d)(3) and (e)(3) and the amendments to (a) and (c) of this section made by ch. 6, SLA 1996 apply "to all offenses committed on or after June 27, 1996." Section 19, ch. 7, SLA 1996 provides that references to prior or previous convictions in ch. 7, SLA 1996, which amended subsections

NOTES TO DECISIONS

For cases construing former second degree arson statute, see *Salinas v. United States*, 277 F.2d 914 (9th Cir. 1960); *Tarney v. State*, 512 P.2d 923 (Alaska 1973); *Jacinth v. State*, 593 P.2d 263 (Alaska 1979); *Mossberg v. State*, 733 P.2d 273 (Alaska Ct. App. 1987).

Cited in *Ridgely v. State*, 705 P.2d 924 (Alaska Ct. App. 1985); *Nashoalook v. State*, 744 P.2d 420 (Alaska Ct. App. 1987); *Hansen v. State*, 845 P.2d 449 (Alaska Ct. App. 1993).

Sec. 11.46.430. Criminally negligent burning. (a) A person commits the crime of criminally negligent burning if with criminal negligence the person damages property of another by fire or explosion.

(b) Criminally negligent burning is a class A misdemeanor. (§ 4 ch 166 SLA 1978)

Sec. 11.46.450. Failure to control or report a dangerous fire. (a) A person commits the crime of failure to control or report a dangerous fire if the person knows that a fire is endangering life or a substantial amount of property of another and fails to take reasonable measures to put out or control the fire, when the person can do so without substantial personal risk, or to give a prompt fire alarm if

(1) the person knows that the person is under an official, contractual, or other legal duty to prevent or combat the fire; or

(2) the fire was started by the person, with the person's consent, or on property in the person's custody or control.

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

Sec. 11.46.460. Disregard of a highway obstruction. (a) A person commits the crime of disregard of a highway obstruction if, without the right to do so or a reasonable ground to believe the person has the right, the person

(1) drives a vehicle through, over, or around an obstruction erected upon a highway under authority of AS 19.10.100; or

(2) opens an obstruction erected upon a highway under authority of AS 19.10.100.

(b) Violation of this section is a class B misdemeanor. (§ 1 ch 52 SLA 1988)

Sec. 11.46.462. Unlawful possession of official traffic control device. (a) A person commits the crime of unlawful possession of an official traffic control device if, without the right to do so or a reasonable ground to believe the person has the right, the person possesses an official traffic control device.

(b) Unlawful possession of an official traffic control device is a violation and is punishable by a fine of

(1) not less than \$100 for the first offense; or

(2) not less than \$300 for each subsequent offense. (§ 1 ch 52 SLA 1988)

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

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

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

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

(4) with intent to cause physical injury to another person, the person:

(A) tampers with an item that is a food, drug, or cosmetic or a container for the item;

or

05 P.2d 924 (Alaska Ct. App. 1984); 744 P.2d 420 (Alaska Ct. App. 1987); 845 P.2d 449 (Alaska Ct. App. 1992).

commits the crime of criminal mischief in the second degree if, having no right to do so or any reasonable ground to believe the person has such a right,

(a) 166 SLA 1978)

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

actual, or other legal

reason on property in the

neighborhood. (§ 4 ch 166

person commits the crime of criminal mischief in the second degree if, having no right to do so or any reasonable ground to believe the person has such a right,

located upon a highway

of AS 19.10.100. (166 SLA 1988)

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

a violation and is

(166 SLA 1988)

person commits the crime of criminal mischief in the second degree if, having no right to do so or any reasonable ground to believe the person has such a right,

of a service rendered in an emergency involving the safety of that utility or service to the public; or by dangerous means, or by means of a value of \$100,000 or more by the use of

supporting facility; or by a person who intentionally damages the property of another in a container for the item;

(B) delivers, dispenses, or distributes an item described in (A) of this paragraph knowing that a person has tampered with the item.

(b) Criminal mischief in the first degree is a class B felony.

(c) In (a)(4) of this section,

(1) "deliver" means the actual, constructive, or attempted transfer from one person to another of an item;

(2) "dispense" means to deliver a drug to an ultimate user or research subject by or under the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the drug for that delivery;

(3) "distribute" means to deliver an item, whether or not there is any money or other item of value exchanged; it includes sale, gift, or exchange;

(4) "drug" has the meaning given in AS 11.71.900(9);

(5) "tamper" means to interfere with something improperly, meddle with it, or make unwarranted alterations to its existing condition. (§ 4 ch 166 SLA 1978; am §§ 1, 2 ch 3 SLA 1984)

Revisor's notes. — Minor word changes were made in the section in 1984.

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

NOTES TO DECISIONS

Cost of repair. — Because damage can be determined by cost of repair and, in turn, cost of repair can be established without determining the value of the damaged property, AS 11.46.980(a), requiring use of market value, does not apply when the prosecution

relies on evidence of cost of repair to prove the amount of damage in a criminal mischief case. *Willett v. State*, 826 P.2d 1142 (Alaska Ct. App. 1992).

Stated in *Wertz v. State*, 611 P.2d 8 (Alaska 1980).

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

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

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

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

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

(4) [Repealed, § 11 ch 71 SLA 1996.]

(5) [Repealed, § 11 ch 71 SLA 1996.]

(b) Criminal mischief in the second degree is a class C felony. (§ 4 ch 166 SLA 1978; am § 13 ch 102 SLA 1980; am § 1 ch 2 SLA 1991; am § 11 ch 71 SLA 1996)

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

Effect of amendments. — The 1991 amendment, effective July 3, 1991, added former paragraph (a)(5) and made related stylistic changes.

The 1996 amendment, effective June 20, 1996, in

subsection (a), repealed paragraphs (4) and (5).

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

NOTES TO DECISIONS

For case construing former AS 11.20.520, making malicious destruction of property a crime, see *Hensel v. State*, 604 P.2d 222 (Alaska 1979).

Knowledge of value of damage not necessary. — A person who intentionally damages the property of another is strictly liable for the value of the property

damaged and is not required to know that the damage exceeds \$500 in value in order to be liable under this section.

Cost of repair. — Because damage can be determined by cost of repair and, in turn, cost of repair can be established without determining the value of the damaged property, AS 11.46.980(a), requiring use of market value, does not apply when the prosecution relies on evidence of cost of repair to prove the amount of damage in a criminal mischief case. *Willett v. State*, 826 P.2d 1142 (Alaska Ct. App. 1992).

For case construing former AS 11.20.525, making stealing, removing or damaging parts of an aircraft a crime, see *Catlett v. State*, 585 P.2d 553 (Alaska 1978).

Conviction and sentence upheld. — See

Andrejko v. State, 695 P.2d 246 (Alaska Ct. App. 1985).

Sentence upheld. — See *Austin v. State*, 627 P.2d 657 (Alaska Ct. App. 1981).

Applied in *Deal v. State*, 657 P.2d 404 (Alaska Ct. App. 1983).

Quoted in *Shewey v. State*, 739 P.2d 196 (Alaska Ct. App. 1987); *Young v. State*, 848 P.2d 267 (Alaska Ct. App. 1993).

Stated in *Wertz v. State*, 611 P.2d 8 (Alaska 1980).

Cited in *State v. Grogan*, 628 P.2d 570 (Alaska 1981); *Tritt v. State*, 625 P.2d 882 (Alaska Ct. App. 1981); *Deal v. State*, 659 P.2d 625 (Alaska Ct. App. 1983); *Crouse v. State*, 736 P.2d 783 (Alaska Ct. App. 1987); *Coleman v. State*, 846 P.2d 141 (Alaska Ct. App. 1993).

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

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

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

(2) [*Repealed, § 11 ch 71 SLA 1996.*]

(3) [*Repealed, § 11 ch 71 SLA 1996.*]

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

(5) the person knowingly accesses a computer, computer system, computer program, computer network, or part of a computer system or network;

(6) the person uses a device to descramble an electronic signal that has been scrambled to prevent unauthorized receipt or viewing of the signal unless the device is used only to descramble signals received directly from a satellite or unless the person owned the device before September 18, 1984; or

(7) the person knowingly removes, relocates, defaces, alters, obscures, shoots at, destroys, or otherwise tampers with an official traffic control device or damages the work upon a highway under construction.

(b) Criminal mischief in the third degree is a class A misdemeanor.

(c) [*Repealed, § 11 ch 71 SLA 1996.*] (§ 4 ch 166 SLA 1978; am § 1 ch 18 SLA 1979; am §§ 7, 8 ch 143 SLA 1982; am § 2 ch 79 SLA 1984; am § 2 ch 114 SLA 1984; am § 1 ch 15 SLA 1985; am § 2 ch 52 SLA 1988; am § 5 ch 30 SLA 1996; am §§ 2, 11 ch 71 SLA 1996)

Revisor's notes. — Paragraph (6) of subsection (a) of this section was enacted as paragraph (a)(5). Renumbered in 1984. Also, minor word changes were made in subsection (a) in 1984.

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

Effect of amendments. — The 1988 amendment, in subsection (a), substituted "or part of a computer system or network" for "or any part of a computer system or network; or" in paragraph (5), added paragraph (7), and made a related stylistic change.

The first 1996 amendment, effective from May 16, 1996 to June 19, 1996, added "or (5)" at the end of paragraph (c)(3).

The second 1996 amendment, effective June 20, 1996, in subsection (a), repealed paragraphs (2) and

(3); in subsection (b), deleted "Except as provided in (c) of this section," from the beginning and made a related stylistic change; and repealed subsection (c).

Editor's notes. — From May 16, 1996 through June 19, 1996, former subsection (c) read as follows: "(c) A person convicted under (a)(2) of this section is guilty of a class C felony if, within the preceding seven years, the person was convicted under

"(1) the provisions of (a)(2) of this section;

"(2) former AS 28.35.010;

"(3) the provisions of AS 11.46.482(a)(4) or (5);

"(4) an offense involving the theft of a propelled vehicle under AS 11.46.120 — 11.46.140; or

"(5) a law or ordinance of this or another jurisdiction with elements substantially similar to those of the offenses described in (1) — (4) of this subsection."

NOTES TO DECISIONS

Restitution in excess of \$500. — A person pleading guilty to criminal mischief in the third degree can be required, pursuant to AS 12.55.045 and AS 12.55.100(a), to pay an amount of restitution in excess of \$500 so long as the payment is made to an aggrieved party and the amount does not exceed the actual damages or loss caused by the crime for which conviction was had. *Fee v. State*, 656 P.2d 1202 (Alaska Ct. App. 1982).

Cost of repair. — Because damage can be determined by cost of repair and, in turn, cost of repair can be established without determining the value of the damaged property, AS 11.46.980(a), requiring use of market value, does not apply when the prosecution relies on evidence of cost of repair to prove the amount of damage in a criminal mischief case. *Willett v. State*, 826 P.2d 1142 (Alaska Ct. App. 1992).

Separate punishment where defendant fired at cabin and truck. — Separate punishment upon conviction of two counts of misconduct involving weapons in the second degree, and two counts of criminal mischief in the third degree, where the evidence established that defendant had fired a rifle at a cabin and a pickup truck did not violate the

double jeopardy provisions of this section since there were sufficient and significant differences between the intent in the two firings. *Leonard v. State*, 655 P.2d 766 (Alaska Ct. App. 1982).

For case construing former AS 11.20.525, making stealing, removing or damaging parts of an aircraft a crime, see *Catlett v. State*, 585 P.2d 553 (Alaska 1978).

For case construing former AS 28.35.010, see *State v. G.L.P.*, 590 P.2d 65 (Alaska 1979); *Bell v. State*, 593 P.2d 908 (Alaska 1979); *Sheakley v. State*, 644 P.2d 864 (Alaska Ct. App. 1982).

Applied in *Blackmon v. State*, 653 P.2d 669 (Alaska Ct. App. 1982).

Quoted in *Frankson v. State*, 645 P.2d 225 (Alaska Ct. App. 1982); *Shewey v. State*, 739 P.2d 196 (Alaska Ct. App. 1987).

Stated in *Shoemaker v. State*, 716 P.2d 391 (Alaska Ct. App. 1986).

Cited in *Plant v. State*, 724 P.2d 536 (Alaska Ct. App. 1986); *Ortberg v. State*, 751 P.2d 1368 (Alaska Ct. App. 1988); *Jerrel v. State*, 756 P.2d 301 (Alaska Ct. App. 1988); *In re J.H.*, 758 P.2d 1287 (Alaska Ct. App. 1988).

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

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

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

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

(3) the person rides in a propelled vehicle knowing it has been stolen or that it is being used in violation of AS 11.46.360 or 11.46.365(a)(1).

(b) Criminal mischief in the fourth degree is a class B misdemeanor. (§ 4 ch 166 SLA 1978; am § 6 ch 30 SLA 1996; am § 3 ch 71 SLA 1996)

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

Effect of amendments. — The first 1996 amendment, effective from May 16, 1996 to June 19, 1996, inserted "or (5)" near the end of paragraph (a)(3).

The second 1996 amendment, effective June 20, 1996, made section reference substitutions in paragraph (a)(3).

Editor's notes. — From May 16, 1996 through June 19, 1996, subsection (a) read as follows: "(a) A person commits the crime of criminal mischief in the fourth degree if, having no right to do so or any reasonable ground to believe the person has such a right,

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

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

"(3) the person rides in a propelled vehicle knowing it has been stolen or that it is being used in violation of AS 11.46.482(a)(4) or (5) or 11.46.484(a)(2)."

Under § 54, ch. 30, SLA 1996, references to prior convictions in subsection (a), as amended by § 6, ch. 30, SLA 1996 refer to convictions occurring before, on, or after May 16, 1996.

NOTES TO DECISIONS

Defense of necessity in prosecution for reckless destruction of personal property and joy-

riding. — See *Nelson v. State*, 597 P.2d 977 (Alaska 1979).

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Justin v. State, 627 P.2d

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4) of this subsection."

SENATE BILL 240
SECTIONAL ANALYSIS

Senate Bill 240 addresses threats and terroristic acts by increasing the level of offense for certain acts, and adding new provisions to the criminal code. The bill proposes raising the consequences of harming an oil or gas pipeline or supporting facility from the current levels. Intentionally damaging an oil or gas pipeline or supporting facility is currently a class B felony; the bill raises this conduct to a class A felony. There is a similar increase in recklessly tampering with an oil or gas pipeline or supporting facility from a class C to a class B felony.

The bill also adds new provisions to Title 11. Terroristic threatening in the first degree prohibits sending imitation substances that appear to be harmful to a person with intent to cause serious disruption or fear of physical injury. The bill also adds tampering with a person's water supply with the intent to cause physical injury to criminal mischief in the first degree. Current law prohibits tampering with food, drugs, or cosmetics with the intent to cause physical injury. Additionally, making a false threat to damage an oil or gas pipeline is added to the criminal code as a class C felony.

Section 1 is a conforming amendment that adds terroristic threatening in the first degree as a predicate offense, along with other crimes including terroristic threatening in current law, that would raise the offense of stalking in the second degree to stalking in the first degree.

Section 2, damaging an oil or gas pipeline or supporting facility, makes it a class A felony to intentionally damage an oil or gas pipeline or supporting facility. Under current law, this offense is a class B felony.

Section 3 amends criminal mischief in the first degree (a class B felony) in two ways: First, it adds the prohibition of tampering with an oil or gas pipeline or supporting facility or an airplane or helicopter with reckless disregard for the risk of harm or loss to property. Under current law, this conduct is a class C felony. Second, it prohibits tampering with water or a container for water, or delivering or distributing water, knowing that it has been tampered with, with the intent to cause physical injury to another person.

Sections 4 and 5 make conforming amendments to the definitions of "deliver" and "distribute" for criminal mischief in the first degree, to add the delivery or distribution of water to the definitions.

Section 6 makes a conforming amendment to making a false information or report in violation of AS 11.56.800(a) to exclude conduct that arises to terroristic threatening in the second degree.

Section 7 adopts the crime of terroristic threatening in the first degree, that prohibits sending or delivering, or attempting or soliciting the sending or delivery of an imitation biological or chemical substance with the intent to place another in fear of physical injury to any person, cause the evacuation of a building or other facility, or cause serious public inconvenience. This is a class B felony.

Section 8 changes the current terroristic threatening to the second degree offense, and adds the prohibition of making a false report with the intent to cause an evacuation of a public place, business premises, or means of public transportation. It also adds the prohibitions of making a false report that claims that a biological or chemical substance harmful to a person's health has been sent or is present in specified places, or that threatens damage to an oil or gas pipeline or supporting facility.

Section 9 adds the definition of "oil or gas pipeline or supporting facility" to terroristic threatening in the second degree.

Section 10 is a conforming amendment that adds terroristic threatening in the first degree to those crimes that allow for the victim's or witness's address and telephone number to be kept confidential from the defendant if the court finds that the defendant may be a continuing threat to the victim or witness.

Section 11 makes a conforming amendment that adds terroristic threatening in the first degree to those crimes that may potentially be a crime involving domestic violence.

Section 12 repeals the provision in criminal mischief in the second degree for conduct that was added to criminal mischief in the first degree (tampering with an oil or gas pipeline).

Sections 13 and 14 are applicability and effective date clauses.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 240
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
 Title "An Act relating to the crimes of dama BRU Administration and Operations
an oil or gas pipeline or supporting facility, Component All
 Sponsor Rules Committee
 Requester Senate State Affairs Component No. 694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	***	***	***	***	***	***

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	***	***	***	***	***	***

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill proposes to increase the criminal penalties for certain acts of terrorism, including intentional damage or unlawful tampering of an oil or gas pipeline, airplane or helicopter, or water, food and drug supplies. Additionally, it prohibits sending imitation biological or chemical substance with the intent to frighten people or cause other harm.

It is very difficult to predict the potential impact of the increased sanctions on the Department of Corrections. The specific and unusual nature of the crimes will hopefully result in an insignificant number of offenders that fit into these categories. Any increase in sanctions results in an impact on the DOC, thus we are submitting an indeterminate fiscal note.

Prepared by: Candace Brower Phone 564-4652
 Division: Commissioner's Office Date/Time 1/23/02 2:52 PM
 Approved by: Margaret Pugh Date 1/23/02
 Agency: Commissioner, Dept. of Corrections

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 240
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
 Title "An Act relating to the crimes of dama BRU Administration and Operations
an oil or gas pipeline or supporting facility, Component All
 Sponsor Rules Committee
 Requester Senate State Affairs Component No. 694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	***	***	***	***	***	***

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	***	***	***	***	***	***

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill proposes to increase the criminal penalties for certain acts of terrorism, including intentional damage or unlawful tampering of an oil or gas pipeline, airplane or helicopter, or water, food and drug supplies. Additionally, it prohibits sending imitation biological or chemical substance with the intent to frighten people or cause other harm.

It is very difficult to predict the potential impact of the increased sanctions on the Department of Corrections. The specific and unusual nature of the crimes will hopefully result in an insignificant number of offenders that fit into these categories. Any increase in sanctions results in an impact on the DOC, thus we are submitting an indeterminate fiscal note.

Prepared by: Candace Brower Phone 564-4652
 Division: Commissioner's Office Date/Time 1/23/02 2:52 PM
 Approved by: Margaret Pugh Date 1/23/02
 Agency: Commissioner, Dept. of Corrections

SB

258

22-LS1333U
Kurtz
2/7/02

CS FOR SENATE BILL NO. 258()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS LEMAN, Ellis, Wilken, Taylor, Lincoln, Davis, Elton, Stevens

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the use of electronic ballots, and to voting equipment allowing
2 disabled voters to cast secret, independent, and verifiable ballots."

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

4 * Section 1. The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 SHORT TITLE. This Act may be known as the Frank Haas Act.

7 * Sec. 2. AS 15.15.030(5) is amended to read:

8 (5) The [STATE GENERAL ELECTION BALLOT SHALL BE
9 PRINTED ON WHITE PAPER WITH THE] names of the candidates and their party
10 designations shall be placed in separate sections on the state general election ballot
11 under the office designation to which they were nominated. The party affiliation, if
12 any, shall be designated after the name of the candidate. The lieutenant governor and
13 the governor shall be included under the same section. Provision shall be made for
14 voting for write-in and no-party candidates within each section. Paper ballots for the

1 state general election shall be printed on white paper.

2 * Sec. 3. AS 15.15.030(13) is amended to read:

3 (13) Notwithstanding any other provision of this title, the director may
4 provide for voting by use of electronic ballots or optically scanned ballots where the
5 requisite [OPTICAL SCANNING] equipment is available. If the director provides
6 for voting by use of electronic ballots, the director shall lease or purchase voting
7 machines that would allow voters with disabilities, including those who are blind
8 or visually impaired, to cast secret, independent, and verifiable ballots.

9 * Sec. 4. AS 15.20.900 is amended to read:

10 Sec. 15.20.900. Optically scanned or electronic ballots [BALLOT
11 TABULATION]. (a) Notwithstanding any other provisions of this title, the director
12 may adopt regulations that provide procedures for the tabulation of electronic ballots
13 or optically scanned ballots, including procedures for

14 (1) tests of the counting programs developed for each precinct
15 tabulator to ensure that the system is functioning properly;

16 (2) security for the voting and tabulation of ballots;

17 (3) the transmission and accumulation of vote totals to assure the
18 integrity of the vote counting process;

19 (4) observation by the public of the counting process in the regional
20 offices; and

21 (5) the disposition of ballots.

22 (b) The state ballot counting review board established under AS 15.10.180
23 shall test the counting programs for the tabulation of electronic ballots or optically
24 scanned ballots and certify their accuracy in accordance with the regulations adopted
25 under (a) of this section.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 258
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: OOG
 Title An Act relating to the use of BRU Elections
electronic ballots Component Elections
 Sponsor Senator Leman
 Requester Senate State Affairs Committee Component No. 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual	0.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Gail Fenumiai, Election Administrative Supervisor Phone 465-3935
 Division Division of Elections Date/Time 2/6/02 4:36 PM
 Approved by: Lieutenant Governor Fran Ulmer Date 02/06/2002
 Agency Office of the Lieutenant Governor

SITE: JUNEAU LIO
 COMMITTEE: SSTA
 DATE: 2-7-02

SUBJECT OF MEETING:
 SB 258
 UPDATE #:



PLEASE SIGN IN

P R I N T YOUR NAME ADDRESS (MAILING & ZIP) REPRESENTING DO YOU WANT TO TESTIFY? Y or N

✓ Tony Sirveillo TX			
Email address:			
✓ Jim Dickson DC			
Email address:			
✓ June Haas			
Email address:			
✓ Sandy Sanderson			
Email address:			
✓ Daryl Nelson			
Email address:			
✓ GAIL		Div of Elections	
Email address:			
Email address:			

During Session, January - May:
State Capitol, Room 115
Juneau, Alaska 99801
(907) 465-2095
465-3810 FAX



During Interim, June - December:
716 W 4th Ave, Suite 520
Anchorage, Alaska 99501
(907) 269-0240
269-0242 FAX

Senator Loren Lemman

Sponsor Statement for CSSB 258 () Authorizing Electronic Ballots

CS Senate Bill 258 (), The Frank Haas Act, removes the requirement that ballots be printed on paper, and allows the Division of Elections to purchase electronic, paperless balloting equipment. The bill also requires that electronic balloting equipment purchased by the Division after the effective date allow voters with disabilities, including those who are blind or visually impaired, to cast a secret, independent, and verifiable ballot.

An important aspect of this change in statute is that it will make it possible for blind or visually impaired voters to cast their ballots independently. Currently, those voters must depend on a sighted person to accompany them in the voting booth, read the ballot out loud, and assist them in casting their vote.

The passage of CSSB 258 () begins the important process of phasing in new balloting equipment that will enable more Alaskans to vote privately.

Frank Haas was a long-time Alaskan advocate for the visually impaired. CSSB 258 () has been named in his honor, and is a continuation of his efforts to allow the visually impaired to cast their ballots privately.

Contact: Russ Kelly, Legislative Intern to Senator Loren Lemman, at (907) 465-3841
Updated: February 7, 2002

Witness List For
CSSB 258 (): An Act relating to the use of electronic ballots

In Juneau:

Senator Loren Leman, sponsor
Russ Kelly, Legislative Intern, assisting sponsor
Gail Fenumiai, Division of Elections
Lynne Koral, Alaska Independent Blind
Bill Craig

At Anchorage LIO:

Bonnie Nelson
Daryl Nelson

Offnet:

Jim Dickson, American Association of People with Disabilities - (202) 882-2569
Sandy Sanderson, Anchorage, AK - (907) 276-1926
June Haas, Haines, AK - (907) 766-2349

Potential witnesses:

Tony Sirvello, Harris County, Texas - Clerk's Office - (713) 755-3551

Witness List For
SB 258: An Act relating to the use of electronic ballots

In Juneau:

Senator Loren Leman, sponsor
Russ Kelly, Legislative Intern, assisting sponsor
Gail Fenumiai, Division of Elections
Lynne Koral, Alaska Independent Blind

At Anchorage LIO:

Bonnie Nelson
Daryl Nelson

Offnet:

Jim Dickson, American Association of People with Disabilities, (202) 882-2569

Potential witnesses:

Bill Craig

During Session, January - May:
State Capitol, Room 115
Juneau, Alaska 99801
(907) 465-2095
465-3810 FAX

During Interim, June - December:
716 W 4th Ave, Suite 520
Anchorage, Alaska 99501
(907) 269-0240
269-0242 FAX



Senator Loren Leman

Sponsor Statement for SB 258 Authorizing Electronic Ballots

Senate Bill 258, The Frank Haas Act, removes the requirement that ballots be printed on paper, and allows the Division of Elections to purchase electronic, paperless balloting equipment. The bill also requires that electronic balloting equipment purchased by the Division after the effective date be accessible to the visually impaired.

This change in statute will make it possible for visually impaired voters to cast their ballots privately and securely. Currently, those voters must depend on a sighted person to accompany them in the voting booth, read the ballot out loud, and assist them in casting their vote.

The passage of SB 258 begins the important process of phasing in new balloting equipment that will enable more Alaskans to vote privately.

Frank Haas was a long-time Alaskan advocate for the visually impaired. SB 258 has been named in his honor, and is a continuation of his efforts to allow the visually impaired to cast their ballots privately.

Contact: Russ Kelly, Legislative Intern to Senator Loren Leman, at (907) 465-3841
Released: January 28, 2002

Subject: voting access articles

Date: Mon, 4 Feb 2002 10:09:07 -0900

From: "Lynne Koral" <aiblink@ak.net>

To: "Lauri Allred" <Lauri_Allred@gov.state.ak.us>,
"Janet Kowalski" <janet_kowalski@gov.state.ak.us>,
"Gail Fenumiai" <Gail_Fenumiai@gov.state.ak.us>,
"Russell Kelly" <Russell_Kelly@Legis.state.ak.us>, <akblind@yahoogroups.com>,
"Patrick Reinhart" <patrick_reinhart@labor.state.ak.us>,
"Serena Dowling" <sdowling@accessalaska.org>,
"Ruth L'Hommedieu" <lhmm Dieu@ptialaska.net>,
"Duane M. French" <Duane_French@labor.state.ak.us>

Some of you might have seen these, and indeed, Serena, you might have sent these to your vast group, but the "moving backwards" article clearly states that no polling place had in the GAO report afforded access for blind and visually impaired folks to cast a secret ballot. Those on the Senate state Affairs committee are: Sen. Eugene Therriault, Chair, Fairbanks; Sen. Rick Halford, Eagle River; Sen. Randy Phillips, Eagle River; Sen. Ben Stevens and Sen. Bettye Davis, both from Anchorage and both co-sponsors.

**Fact Sheet on Voter Turnout, Voting Difficulties, and Disability in the 2000 Elections:
Laying a Challenge at Democracy's Door**

By Douglas Kruse and Lisa Schur, Rutgers University

Kay Schriener and Todd Shields, University of Arkansas

Sent to us by Serena Dowling

American democracy rests on the participation of the citizenry in the selection of elected officials. By choosing their representatives, citizens express their views about what matters to them and what should be done about it. Not every American citizen has an equal opportunity to cast a ballot, however. Many thousands of voters and potential voters are disenfranchised by barriers to electoral participation.

These barriers are a threat to the potential of our democracy to realize its promise of equality and justice for all. When some voters cannot participate in an equal footing, all Americans lose. When some citizens are left out, democracy suffers.

For many disabled citizens, elections represent another example of society's inaccessibility. This report is intended to clarify the experiences of people with disabilities in American electoral politics.

To investigate the relationship between voter turnout, voting difficulties, and disability, a national random-household telephone survey of 1,002 Americans citizens of voting age was conducted through the Rutgers Center for Public Interest Polling following the November,

2000 elections. A broad definition of disability was used, based on questions from the 2000 Census. For more meaningful comparisons the sample was stratified so that interviews were conducted with 432 people with disabilities and 570 people without disabilities. Survey respondents were asked standard questions about voting, voter registration, and factors that could help explain turnout and registration. They were also asked questions concerning actual or expected difficulties in voting at a polling place, and views of several voting methods often used by people with disabilities.

The General Accounting Office released a report on November 14, 2001 finding that only 16% of polling places in 2000 had no potential impediments to access by people with disabilities. This fact sheet complements the GAO study by providing individual-level information on the voting experiences of people with disabilities, with comparison of voter turnout, voting difficulties, and views of curbside voting between people with and without disabilities.

Voter Turnout

- People with disabilities were on average about 12 percentage points less likely than those without disabilities to vote, after adjusting for differences in demographic characteristics (age, sex, race, education, and marital status). This was an improvement over the 1998 elections, in which people with disabilities were about 20 percentage points less likely than people without disabilities to vote (based on a similar survey following the 1998 elections).

If people with disabilities voted at the same rate as those without disabilities, there would have been 3.2 million additional voters in 2000, raising the overall turnout rate by 1.7 percentage points.

Absentee Voting and Voting Difficulties

- People with disabilities were almost twice as likely as other citizens to vote by absentee ballot. Among those who voted, 20% used an absentee ballot, compared to 11% of people without disabilities.
- Citizens with disabilities are more likely than those without disabilities to have encountered, or expect, difficulties in voting at a polling place:

Encountered difficulties, if last voted at polling place since 1990:

Citizens with disabilities: 5.8%

Citizens without disabilities: 2.0%

Would expect difficulties, if haven't voted at polling place since 1990:

Citizens with disabilities: 32.6%

Citizens without disabilities: 2.4%

- Reported problems with voting among people with disabilities are split among getting to the polling place, being able to vote once at the polling place, and general mobility.

Problems encountered if voted in past 10 years:

Any difficulty in voting at polling place: 5.8%

Getting to polling place: 1.3%

At polling place (getting inside, using booth/machine, long lines, seeing/understanding ballot): 3.5%

General mobility (walking, standing): 0.9%

Problems expected if haven't voted in past 10 years:

Any difficulty in voting at polling place: 32.6%

Getting to polling place: 5.7%

At polling place (getting inside, using booth/machine, long lines, seeing/understanding ballot): 17.9%

General mobility (walking, standing): 6.3%

* Based on these results, an estimated 1.3 million citizens with disabilities encountered problems in voting since 1990 during the last time they voted at a polling place, while an additional 1.7 million citizens who have not voted at a polling place since 1990 would expect to encounter difficulties in voting at a polling place.

Views About Curbside Voting

Respondents were asked their view of whether "voting a ballot in an automobile at curbside" is "just as good as voting in person inside the polling station, or not as good?" Majorities of people with and without disabilities feel that it is not as good:

Curbside voting is just as good:

Citizens with disabilities: 36.1%

Citizens without disabilities: 36.8%

Curbside voting is not as good:

Citizens with disabilities: 54.9%

Citizens without disabilities: 57.8%

Implications of Findings

The research summarized here contain both good news and bad news. The good new is that "the disability gap" – the difference in participation rates between individuals with disabilities and nondisabled individuals – may be narrowing. In the 2000 presidential election, the gap was 12 percentage points (compared to 20 percentage points in the 1998 election). This should increase politicians' attention to the views of people with disabilities.

Unfortunately, Americans with disabilities continue to experience and anticipate difficulties in voting. Three million citizens with disabilities have encountered problems in voting, or would expect to encounter problems. If impediments were removed and people with disabilities began voting in the same proportion as other Americans, fully 3.2 million more people would be casting ballots. Policymakers must take immediate and effective steps to remove the barriers to participation for individuals with disabilities.

These findings lay a challenge at democracy's door. The stability and responsiveness of any democracy depends on its ability to fully represent its citizens. America must find the will to open democracy's door – to all.

Moving Backwards on Voting Access

American Association of People with Disabilities' Jim Dickson in conjunction with Clyde Terry

November 16, 2001

The house of Representatives is about to pass legislation that denies an accessible secret ballot to voters with visual and or manual disabilities and allows polling places to remain physically inaccessible. Yesterday, with Congressman Steny Hoyer's support, HR3295, The Help America Vote Act of 2001, cleared committee and is expected to be on the House floor right after Thanksgiving.

Contact your Congressman and insist that they vote against HR 3295 because it does not

have the following:

- National standards on polling place and voting systems access
- A specific date by which all polling places must be made physically accessible
- The Architectural and Transportation Barriers Compliance Board must be charged with defining accessibility standards
- No person with a disability will be denied the right to vote because of their disability
- The Department of Justice will enforce the federal standard
- Private right of action under the Voting Rights Act should be extended to people with disabilities

Background:

This week the House Administration Committee voted out HR 3295 "Help America Vote Act of 2001" a bill to reform our election system. The bill ignores the facts that people with disabilities have been denied access to polling places for years and that voters who are blind or visually impaired have been denied the right to a private secret vote forever. The bill does not require polling places to be accessible nor does it require that any standards be developed to define what accessibility means. It only asks that states find an "effective and practical" means for people with disabilities to vote privately. Such a standard of "effective and practical" is less than what is required in current law and will result in many local officials not making the basic accommodations as it is not practical. At this point in history we can demand better, the knowledge and technology exist to assure that all Americans including those with disabilities can get to vote and vote privately and independently.

This outrageous act occurred the day after the Government Accounting Office (GAO) released a special report conducted during the November 2000 election where they found at least 84% of the polling places in America had at least one barrier to persons using wheelchairs and no polling place offered persons who were blind or visually impaired the opportunity to cast a vote privately.

There has been substantial opposition by state and local election officials to making polling places and equipment accessible to persons with disabilities. Their reasons vary between too costly, they don't know how, or they don't want to be bothered. We need to show Congress that the disability community represents more votes than state officials. When it comes to costs, most of the bills in the Congress provide millions of dollars for states to purchase equipment so the cost is not on the local official. Secondly, if there were standards by the Access Board that would give the information on how to make places accessible for voting purposes and if they don't want to be bothered about Americans with disabilities then they will need to be educated that people with disabilities have the same rights as all other voters. This bill unfortunately perpetuates the discrimination and must be defeated.



Justice For All Alerts

Disabled Denied Voting Access, Says GAO

Posted: 18 Oct 2001 07:46:30 -0700

JUSTICE FOR ALL -- A Free Service of the
American Association of People with Disabilities
www.aapd-dc.org
www.jfanow.org

"Disabled Denied Voting Access, Says GAO"

AAPD's Disability Vote Project, headed by Jim Dickson, is working to increase voting among people with disabilities and make our voting systems more accessible. The following Disability Vote Project Press Release discusses a new independent Congressional report documenting voting inaccessibility.

Jonathan Young, JFA Moderator

=====

FOR IMMEDIATE RELEASE
October 16, 2001

FOR MORE INFORMATION:
Jim Dickson: (202) 262-8240 (cell)
Disability Vote Project for
the American Association of People with Disabilities

NEW GAO REPORT SHOWS DISABLED ARE DENIED VOTING ACCESS
57% of Voting Jurisdictions Report Problems for Voters with Disabilities

WASHINGTON - A report requested by top lawmakers in Congress and released yesterday from the U.S. General Accounting Office (GAO) has found that 57 percent of voting jurisdictions experienced problems conducting the 2000 federal elections. These problems included widespread inaccessibility for people in wheelchairs or with vision or hearing impairments. The GAO has been investigating the voting barriers since the beginning of this year.

"The GAO's report is hardly news to the millions of Americans with disabilities. We have been struggling for years to get local election officials to give us adequate access to polling places," said Jim Dickson of the Disability Vote Project for the American Association of People with Disabilities (AAPD).

"Over one half of all polling places in America are not fully accessible to people in wheelchairs," continued Dickson. "And for the 10 million blind and low vision Americans, exercising the right to vote does not currently include casting an independent secret ballot."

Prior to yesterday's GAO report release, a coalition of

groups including AAPD, the National Organization on Disability, the Eastern Paralyzed Veterans Association and the Blinded Veterans of America began class-action lawsuits against the cities of Washington, D.C. and Philadelphia, PA. Those lawsuits ask city officials to purchase and begin using accessible voting machines. The coalition of groups has found that jurisdictions such as Harris County, Texas, the nation's third largest county, have already put accessible voting systems in place.

"We cannot afford to have our voting apparatus randomly discriminate or to have our voting system appear to breakdown for some Americans," said Dickson.

"Every eligible American has the right to vote and to have that vote counted regardless of disability or the financial resources of the community in which they live. Americans with disabilities should not have to sue every jurisdiction just to exercise the right to vote," said Dickson.

"Disabled Americans are counting on Congress to make voting accessible to all eligible voters before the 2002 elections."

-30-

The American Association of People with Disabilities' (AAPD) mission is to advance the political and economic power of all people with disabilities. Visit the AAPD website at www.aapd-dc.org.

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Justice For All is Moderated by Frederick Allan Fay, Ph.D. ifa@jfanow.org

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STATE OF ALASKA

OFFICE OF THE LT. GOVERNOR

Division of Elections
P.O. Box 110017
Juneau, Alaska 99811-0017
PHONE (907) 465-4611

February 5, 2002

Senator Loren Leman
State Capitol Building 516
Room 403
Juneau, AK 99801

Dear Senator Leman:

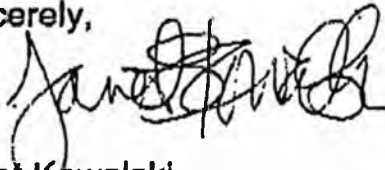
I have reviewed the legislation, SB 258, that you sent me regarding the use of electronic ballots and the purchase of voting equipment that is accessible to those who are blind or visually impaired.

As I testified in the House, this legislation takes a major step forward in meeting the need for private and secret balloting for visually impaired voters in Alaska. Your bill as introduced supports the Division's current project to expand secret ballot voting in the polling place to all Alaskans. The bill does not place an undue burden on the Division of Elections' processes or our budget. Without this enabling legislation, the Division cannot provide electronic secret ballot voting to any voter.

Although the goal of the Division is to provide unassisted, secret ballot voting for all voters, there is a great deal of work to be done before the Division can confidently say that we have addressed all of the issues, including funding, to make that happen. We therefore support the bill as written and its initial concept: creating unassisted, private, secret ballot voting for blind and sight impaired voters.

Since providing this service is a goal of the Division, I strongly support this bill as drafted. Please let me know if I can answer any questions that you might have.

Sincerely,



Janet Kowalski
Director
Division of Elections

cc: Lt. Governor Fran Ulmer

Div. of Elections Support



ALASKA INDEPENDENT BLIND

1102 W. International Airport Road • Anchorage, AK 99518 • Phone: 563-2525 • Fax: 562-5951



Frank Haas was an advocate for access issues for the visually impaired in Alaska. Voting access was especially important to Haas, and he advocated by writing and speaking with the Division of Elections and state legislators on this issue, focusing on the need for independence in his voting rights such as large print ballots or other technical means. Alaska Independent Blind is pleased that Rep. Joe Green recognized Haas' contribution to better voting access for the blind by naming House Bill 320 "The Frank Haas Act."

Originally from Wisconsin, Haas always wanted to see Alaska. As a young Army petroleum lab tech, Haas traded an assignment in Europe for an assignment at the Army tank farm in Lutak, near Haines. Following his stint in the Army, Haas returned to Haines where he lived for 44 years. Haas held a number of positions in his professional life. Immediately after his return to Haines he worked in a civilian position at the tank farm becoming operations supervisor.

In the 1970's, Haas earned a degree in education, but instead of teaching he was hired by the city of Haines, to be in charge of the water and waste water systems. He also earned a degree in travel and tourism and operated a ticket concession on Second Avenue in Haines.

In his private life Haas also wore a number of hats. He was active in his local church and chamber of commerce, as well as the American Legion, Elks, Haines Fire Department and Lynn Canal Community Players. That fire department still misses his cooking. Haas was also a public servant, holding seats on the Port Chilkoot city council and the Haines Borough Assembly. Haas joined the American Council of the Blind in 1984 and was a long-time member of Alaska Independent Blind, serving on the group's board of directors.

He thought it was important that blind people have easy access to the vehicles they travel in, especially in winter, and was instrumental in bringing about parking placards for those vehicles. He also worked to ensure that the city of Haines complied with the Americans with Disabilities Act.

Since his death in 1999, others have continued the work that Haas started to bring voting independence to the visually impaired. Passage of this bill would be a fitting legacy to this man who worked so hard on behalf of others.

AK Independent Blind Support

During Session, January - May:
State Capitol, Room 115
Juneau, Alaska 99801
(907) 465-2095
465-3810 FAX

During Interim, June - December:
716 W 4th Ave, Suite 520
Anchorage, Alaska 99501
(907) 269-0240
269-0242 FAX



Senator Loren Leman

MEMORANDUM

TO: Senator Gene Therriault, Chairman
Senate State Affairs Committee

FROM: Senator Loren Leman, Sponsor *Loren Leman*

DATE: January 29, 2002

RE: Scheduling a hearing for SB 258
Authorizing Electronic Ballots

Please schedule a hearing for SB 258: Authorizing Electronic Ballots at your earliest convenience.

SB 258, The Frank Haas Act, removes the requirement that ballots be printed on paper, and allows the Division of Elections to purchase electronic, paperless balloting equipment. The bill also requires that electronic balloting equipment purchased by the Division after the effective date be accessible to the visually impaired. This change in statute will make it possible for visually impaired voters to cast their ballots privately and securely.

Attached is a copy of the bill and sponsor statement Russ Kelly in my office will provide the packet information at your request. Please contact him at x3841 with any questions you have regarding this matter.

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Senator Loren Leman

Sponsor Statement for SB 258 Authorizing Electronic Ballots

Senate Bill 258, The Frank Haas Act, removes the requirement that ballots be printed on paper, and allows the Division of Elections to purchase electronic, paperless balloting equipment. The bill also requires that electronic balloting equipment purchased by the Division after the effective date be accessible to the visually impaired.

This change in statute will make it possible for visually impaired voters to cast their ballots privately and securely. Currently, those voters must depend on a sighted person to accompany them in the voting booth, read the ballot out loud, and assist them in casting their vote.

The passage of SB 258 begins the important process of phasing in new balloting equipment that will enable more Alaskans to vote privately.

Frank Haas was a long-time Alaskan advocate for the visually impaired. SB 258 has been named in his honor, and is a continuation of his efforts to allow the visually impaired to cast their ballots privately.

Contact: Russ Kelly, Legislative Intern to Senator Loren Leman, at (907) 465-3841
Released: January 28, 2002



ALASKA INDEPENDENT BLIND

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BILL ID: HB 320

HOUSE BILL NO. 320

01 "An Act relating to the use of electronic ballots."

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

03 * Section 1. The uncodified law of the State of Alaska is amended
by adding a new section

04 to read:

05 SHORT TITLE. This Act may be known as the Frank Haas Act.

06 * Sec. 2. AS 15.15.030(5) is amended to read:

07 (5) The [STATE GENERAL ELECTION BALLOT SHALL BE

08 PRINTED ON WHITE PAPER WITH THE] names of the candidates and
their party

09 designations shall be placed in separate sections on the state
general election ballot

10 under the office designation to which they were nominated. The
party affiliation, if

11 any, shall be designated after the name of the candidate. The
lieutenant governor and

12 the governor shall be included under the same section. Provision
shall be made for

13 voting for write-in and no-party candidates within each section.

Paper ballots for the

14 state general election shall be printed on white paper.

15 * Sec. 3. AS 15.15.030(13) is amended to read:

16 (3) the transmission and accumulation of vote totals
to assure the
17 integrity of the vote counting process;
18 (4) observation by the public of the counting process
in the regional
19 offices; and
20 (5) the disposition of ballots.
21 (b) The state ballot counting review board established
under AS 15.10.180
22 shall test the counting programs for the tabulation of
electronically generated ballots
23 or optically scanned ballots and certify their accuracy in
accordance with the
24 regulations adopted under (a) of this section.

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Central Microfilm Services
Department of Education & Early Development
State of Alaska

BILL ID: HB 320

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Paper ballots for the

14 state general election shall be printed on white paper.

15 * Sec. 3. AS 15.15.030(13) is amended to read:

01 (13) Notwithstanding any other provision of this
title, the director may
02 provide for voting by use of electronically generated ballots or
optically scanned
03 ballots where the requisite [OPTICAL SCANNING] equipment is
available. If the
04 director provides for voting by use of electronically generated
ballots, the
05 director shall provide equipment enabling the visually impaired
to vote without assistance.

07 * Sec. 4. AS 15.20.900 is amended to read:

08 Sec. 15.20.900. Optically scanned or electronically
generated ballots

09 [BALLOT TABULATION]. (a) Notwithstanding any other provisions
of this title,

10 the director may adopt regulations that provide procedures for
the tabulation of

11 electronically generated ballots or optically scanned ballots,
including procedures

12 for

13 (1) tests of the counting programs developed for each
precinct

14 tabulator to ensure that the system is functioning properly;

15 (2) security for the voting and tabulation of ballots;

16 (3) the transmission and accumulation of vote totals
to assure the
17 integrity of the vote counting process;
18 (4) observation by the public of the counting process
in the regional
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23 or optically scanned ballots and certify their accuracy in
accordance with the
24 regulations adopted under (a) of this section.