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SENATE

JUDICIARY

admissible evidence to support the indictment."³⁰ If there is insufficient admissible evidence remaining, the indictment must be dismissed.³¹ If, however, there is sufficient admissible evidence then it is necessary to evaluate the challenged evidence to determine whether it "appreciably affect[ed] the outcome of the grand jury's deliberations."³²

In the present case, the material facts upon which the grand jury's verdict rested were all improperly presented through hearsay testimony. Branchflower testified that when police arrived at M.E.'s residence they kicked in the door because the key provided by a friend of M.E.'s would not unlock the deadbolt. [Exc. 91; G.J. 12-13] This evidence supported the inference that whoever committed the crime was still in the house. Branchflower testified that Edwards, M.E., and M.C. appeared to have been shot with a gun that was found on the floor near where Edwards was shot. [Exc. 92-93; G.J. 14-18] Branchflower testified that one empty shell casing was found in the .22 caliber derringer, that two empty .22 caliber shell casings were found on the floor, and that nine .22 caliber rounds were found in Edward's pants pocket. [Exc. 94; G.J. 24] This evidence supported the inference that Edwards shot M.C. and M.E., then reloaded the gun and shot himself.

The opinions of the state's experts provided critical support for the link

³⁰ Newman v. State, 655 P.2d 1302, 1306 (Alaska App. 1982)

³¹ See Id.

³² Oxereok v. State, 611 P.2d 913, 916 (Alaska 1980).

between the evidence located at the scene and the grand jury's verdict.³³ Branchflower testified that Gifford concluded that "the subject shot the victim while she was in bed" and then the "suspect shot himself" and laid on the floor. [Exc. 92; G.J. 16] And Shem's report indicated that the ammunition at the scene was the same type of ammunition as the ammunition box found in Edward's residence. [Exc. 95; G.J. 28] Shem's report also indicated that the three expended shell casings had been fired from the derringer found at the scene. [Exc. 94; G.J. 25] This evidence endorsed the state's conclusion that Edward's perpetrated the homicide.

Without the improperly presented hearsay evidence, the state's presentation to the grand jury is insufficient to support the indictment. Alternatively, if this court concludes that the testimony concerning observations of the scene made by other police officers was properly admitted, the improper testimony concerning the expert opinions of Gifford and Shem appreciably affected the grand jury's deliberations.

The evidence based upon Gifford's and Shem's report provided the grand jury with information that must have overwhelmed the deliberations. The state's experts concluded that the gun and bullets found near Edwards were used by Edwards to commit the homicide and then to attempt suicide. Branchflower communicated these conclusions without explanation and without an opportunity for the grand jury to inquire into the basis for these conclusions. This testimony was sufficiently powerful that the jury likely abandoned its role of fact-finder in favor of the

³³ The trial court previously found that Lieutenant Gifford's report and

requirement of the Fourth Amendment."³⁸ Inventory searches may be considered reasonable and constitutional if they are conducted in accordance with the standard procedures of the agency conducting the search.³⁹ An inventory search of closed, locked or sealed luggage, containers or packages, however, is not within the scope of a reasonable warrantless inventory search.⁴⁰

As constitutionally protected zones, the prohibition on closed container inventory searches extends to clothing pockets.⁴¹ According to the California Court of Appeals:

Although the foregoing decisions have come to be known as "closed container" cases, it is of no help to us in our analysis to note that a vest pocket, unlike a lunch box, has no lid or, like a tote bag, cannot be locked. ... If a person were to be handed an article which he intended to keep safe from theft or secure from prying eyes, that person would almost certainly place the article in his pocket. No more reprehensible petty thief can be found than a pickpocket, not because he steals, but because he does so by intruding into an area where his victim most wishes to remain secure. We find that a vest pocket is a protected receptacle of personal effects and may not be searched

³⁸ D'Antonio v. State, 926 P.2d 1158, 1162 (Alaska 1996)(citing Colorado v. Bertine, 479 U.S. 367, 373, 107 S.Ct. 738, 741-42, 93 L.Ed.2d 739 (1987)).

³⁹ State v. Daniel, 589 P.2d 408, 417 (Alaska 1979); Florida v. Wells, 495 U.S. 1, 3-4, 110 S.Ct. 1632, 1634-35, 109 L.Ed.2d 1 (1990).

⁴⁰ D'Antonio, 926 P.2d 1158, 1162 n. 5 (Alaska 1996)(citing Daniel, 589 P.2d at 417-18).

⁴¹ See Sibron v. New York, 392 U.S. 40, 65, 88 S.Ct. 1889, 1904, 20 L.Ed.2d 917 (1968) (holding that an officer's decision to invade a pocket was not permissible under the circumstances); State v. Gray, 798 P.2d 346, 350 (Alaska App. 1990)(holding that the emptying a suspect's pocket must be constitutionally justified).

except as permitted by the Fourth Amendment.⁴²

The Ninth Circuit has also recognized that pockets are analagous to closed containers. In United States v. Ramos-Osequera,⁴³ the police inventoried the defendant's car after arresting the defendant. The police searched the pockets of a pair of jeans found in the vehicle and discovered heroin. Police department policy required that all visible property be booked and inventoried for safekeeping. Judge Boocheever, writing for the Ninth Circuit, noted that the applicable procedures did not specifically provide authority for looking inside containers to find valuable property.⁴⁴ The court accordingly held that the search violated the Fourth Amendment.⁴⁵

In the present case, Officer Soto received Edward's pants from a hospital employee who indicated that the pants were provided to Soto as part of hospital procedure. [Exc. 98; Tr. 20-21, 26] Soto took possession of the pants intending to place them in "property and evidence" as a piece of evidence in the case. [Exc. 98, 105; Tr. 26, 54] Soto stated that he was required to separate multiple items, tag them, and put them in lockers. [Exc. 98; Tr. 28-29] Soto also stated that he had to do an inventory of every item and "check of all the, basically, pockets or anything that I, you know, basically, find, basically separate every item

42 People v. George, 168 Cal.Rptr. 44 (Cal.App. 1980).

43 120 F.3d 1028 (9th Cir. 1997) (overruled on other grounds).

44 Id. at 1036.

45 Id.

that I can find." [Exc. 98; Tr. 29] Soto further stated that this was the department policy. [Exc. 98; Tr. 29] Soto testified that he "processed the evidence as I was trained." [Exc. 99; Tr. 30] Soto found bullets and a BIC lighter. [Exc. 99; Tr. 30]

On cross-examination, Soto was asked specifically whether he was instructed on the procedure for taking the pants into evidence or whether he made the decisions on his own. [Exc. 101; Tr. 39] Soto responded:

No, sir. Well, basically, it goes – you know, we learned this on training and also, basically, the procedures I learned also in training. And it's before this day and after this day, we basically, continue – basically, continue doing the same procedure. And we had done this prior to this day as well. [Exc. 101; Tr. 39]

Then when immediately asked whether that meant that he made the decisions on his own, Soto responded: "Based on that procedure because I know it's—it's basically policy and procedures, yes, I – I do it that way." [Exc. 101; Tr. 39]

The trial court recognized that the warrantless inventory search of closed containers is unreasonable and unconstitutional. [Exc. 64; R. 1655] The court also recognized that the routine emptying of a defendant's pockets upon arrival at a pretrial detention center has been held unconstitutional. [Exc. 64; R. 1655] The court, however, stated that a search of pants pockets is less intrusive than a search of a closed container. [Exc. 65; R. 1656] The court found that Soto testified he was "required to do an inventory of the evidence, that he was required to check the pockets, and separate every item found." [Exc. 66; R. 1657] According to the court, Soto had the right to "lift and move the evidence in order to book it into the evidence room." [Exc. 66; R. 1657]

The trial court's decision, however, was error. Soto did not testify that he was required to remove the items from pockets as a matter of established procedure. A closer reading of Soto's testimony reveals that Soto did not articulate any standard procedure. Soto merely stated that he needed to separate multiple items to tag them separately into evidence and had done it that way in the past. When asked specifically whether he was told to search pockets as part of the procedure of logging items into evidence or whether he made the decision on his own Soto did not specifically answer the question. Accordingly, the evidence does not support the trial court's conclusion that Soto was following an established inventory procedure.

Even if Soto was following established procedures, opening the pocket was an unreasonable procedure for logging inventory. In Daniel v. State,⁴⁶ police officers who were lawfully impounding a vehicle found a briefcase in the back seat that had open latches. The officers opened the briefcase and found contraband. The Alaska Supreme Court concluded that no principled distinction between locked and unlocked containers could be drawn.⁴⁷ The court held that "it is sufficient, for routine inventory purposes, that the officer merely list the item as a closed or locked footlocker, briefcase, package, or container and, if deemed necessary remove the same for safekeeping."⁴⁸ Soto had lawful possession of the pants and could have

⁴⁶ Daniel v. State, 589 P.2d 408 (Alaska 1979).

⁴⁷ Id. at 417.

⁴⁸ Id. at 418.

similarly taken them into evidence for safekeeping without violating the pockets.

Additionally, the search was impermissible because Soto was not conducting an inventory search, he was tagging evidence. In Newhall v. State,⁴⁹ a trooper obtained a search warrant to open a package that he suspected contained alcohol being shipped in violation of a local option law. The trooper opened the package and then opened a second package that he found inside the suspect package. The trooper, however, knew that the second package did not contain alcohol. This court held that the trooper was not permitted to search the second package without a warrant, even if he had abundant probable cause.⁵⁰ The court further held that with probable cause the police are permitted only to seize a closed container while they apply for a search warrant.⁵¹

Here, Soto had possession of pants and could have simply applied for a warrant if he wanted to inspect the interior of the pockets. Although Soto claimed that he had no reason to believe that there was evidence in the pockets, his stated purpose for inspecting the pocket was to take the pants into custody as evidence of a crime and separate items so that they would become "separate property evidence item[s]" [Exc. 98, 105; Tr. 28, 54] Soto's search can not be rendered permissible simply because he stated that he did not have an investigative purpose or by

⁴⁹ Newhall v. State, 843 P.2d 1254 (Alaska App. 1992).

⁵⁰ Id. at 1257.

⁵¹ Id. at 1258.

labeling the search an inventory search.⁵²

B. Introduction At Trial Of The Illegally Obtained Bullets
Was Not Harmless Beyond A Reasonable Doubt

The admission of evidence obtained in violation of a defendant's constitutional rights requires reversing the conviction unless introduction of the evidence was harmless beyond a reasonable doubt.⁵³

In the present case, the state pursued a conviction under the theory that Edwards shot M.E. and M.C. then shot himself. [Tr. 258-59] The state presented expert testimony attempting to establish that Edwards's injuries were self-inflicted. [Tr. 509-10] This evidence, however, was not conclusive on the issue. [Tr. 593-94] The strongest evidence indicating that Edwards committed the homicides and then shot himself was the bullets that were found in his pocket. [Tr. 857] Without this evidence, the state had no direct physical evidence tying Edwards to the bullets used in the homicide. This evidence substantially undermined the defense theory that Edwards was shot by an intruder who had shot M.C. and M.E. [Tr. 2022] Accordingly, it can not be said that introduction of this evidence was harmless beyond a reasonable doubt.

⁵² C.f. State v. Gray, 798 P.2d 346, 350 (Alaska App. 1990). (holding that the routine emptying of an arrestee's pockets cannot be justified merely by labeling the procedure a "patdown").

⁵³ Ingram v. State, 703 P.2d 415, 429 (Alaska App. 1985).

CONCLUSION

For the reasons stated above, this court must reverse Edwards's conviction and grant him a new trial.

DATED at Anchorage, Alaska on June _____, 2004.

PUBLIC DEFENDER AGENCY

By:

QUINLAN STEINER (98-11057)
ASSISTANT PUBLIC DEFENDER

Edwards was convicted at trial and received a sentence of ninety-six years to serve. [Exc. 83-87; R. 1977-1981] This appeal follows.

ARGUMENT

I. THE GRAND JURY'S VERDICT RESTS ENTIRELY UPON IMPROPERLY ADMITTED HEARSAY EVIDENCE

A. Introduction

No person shall be held to answer for a felony offense without the support of a grand jury indictment.¹ "[T]o obtain an indictment, the State must prove to the grand jury 'that the evidence ... establishe[s] a probability of [the defendant's] guilt.'² The Alaska Supreme Court has stated that this determination should be a reliable one.³ Hearsay evidence that is inadmissible at trial is, therefore, only admissible before the grand jury under certain limited circumstances.⁴

The rationale for limiting hearsay testimony is based upon the view that a reliable determination of probable guilt is required "before the accused suffers any of the grave inconveniences which are apt to ensue upon the return of a felony indictment."⁵ As the Alaska Supreme Court has stated, "[t]his can best be guaranteed when witnesses against the accused appear in person before the grand

¹ The Constitution of the State of Alaska, Article I, section 8.

² State v. Ladd, 951 P.2d 1220, 1222-23 (Alaska App. 1998) (citations omitted).

³ State v. Gieffels, 554 P.2d 460, 465 (Alaska 1976).

⁴ Alaska Rule of Criminal Procedure 6(r)(1), (2), (3), & (6).

⁵ Gieffels, 554 P.2d at 465.

jury so that the panel can view their demeanor and subject them to cross-examination."⁶ The Alaska Supreme Court has warned that "hearsay evidence, if unchecked, would erode the protective value of the grand jury so as to make it nothing more than an administrative arm of the district attorney's office."⁷

B. The State Improperly Introduced The Firearm And Toolmark Expert's Opinion Through Detective Branchflower

To strengthen the protective value of the grand jury, Alaska Rule of Criminal Procedure 6(r)(1) states that hearsay evidence is inadmissible before the grand jury absent a "compelling justification" that is stated on the record. The time and expense of presenting an expert to the grand jury may be a sufficiently compelling justification for presenting the expert's opinion through hearsay testimony if the opinion is based on "accepted scientific procedures that yield objective results."⁸ If an expert's opinion, however, is "subjectively based or depend[s] on procedures the reliability of which has not been established," the time and expense of presenting the expert to the grand jury will not be a sufficiently compelling justification.⁹

Appellate courts in Alaska have held that drug testing results are objectively based on accepted scientific procedures and that the technician who

⁶ Id.

⁷ Id.

⁸ Ingram v. State, 703 P.2d 415, 432 (Alaska App. 1985).

⁹ Id.

performs a drug test is not required to testify before the grand jury.¹⁰ In so holding, the Alaska Supreme Court has reasoned that the competence of the technician and the reliability of the test would not likely be tested by vigorous cross-examination and that "the technician could do no more than affirm that he did perform the test reported, and that those tests did indicate the presence of a narcotic substance."¹¹

Conversely, appellate courts in Alaska have held that the conclusions of handwriting experts and treating physicians are not excluded from the requirement that they testify.¹² In Metler v. State, for example, the state secured an indictment using hearsay testimony concerning the opinions of two handwriting experts. The state did not present a report from either expert or provide any information concerning their professional credibility. According to the Alaska Supreme Court, the method of proof employed by the state failed to provide a basis for showing the grand jury how the experts' reached their conclusions or for presuming that the comparisons were performed and reported accurately.¹³ The

¹⁰ McKinnon v. State, 526 P.2d 18, 27-28 (Alaska 1974) (Holding that the laboratory analysis of cocaine was properly admitted through the hearsay testimony of a police officer.); Ingram v. State, 703 P.2d 415, 432 (Alaska App. 1985) (Holding that the chemical analysis of LSD was properly admitted through the hearsay testimony of an investigating officer.).

¹¹ McKinnon, 526 P.2d at 27-28.

¹² Adams v. State, 598 P.2d 503, 508 (Alaska 1979) (hearsay evidence concerning treating physician's opinion of victim's medical condition inadmissible before the grand jury without a showing of compelling justification); Metler v. State, 581 P.2d 669, 673-74 (Alaska 1978) (hearsay testimony concerning the results of handwriting analysis inadmissible before the grand jury absent a showing of credibility and reliability).

¹³ Metler, 581 P.2d at 674.

court ultimately held that the state had failed to establish the reliability of the handwriting expert's opinion.¹⁴

Although the court's decision in Metler appears at first blush to turn on the state's failure to present a report to the grand jury, as this court's decision in Ingram v. State¹⁵ indicates, such a limited reading of Metler would fall to account for the continued applicability of the "compelling justification" requirement. In Ingram, the defendant argued that the Alaska Supreme Court's earlier decision in McKinnon v. State,¹⁶ which held that the state was not required to present a technician who performs a drug test to the grand jury, had been subsequently overruled by cases requiring the state to present handwriting experts and treating physicians to the grand jury. This court, however, held that McKinnon was still good law.¹⁷ In so holding, this court stated that later cases simply distinguished between two classes of expert opinions: subjectively based and objectively based.¹⁸ Thus, Ingram reiterates the necessity for a compelling justification when introducing an expert's subjective opinion through hearsay regardless of whether the hearsay method is in the form of a report, live testimony, or both.

In the present case, the trial court concluded that Robert Shem, the

¹⁴ Id.

¹⁵ 703 P.2d 415 (Alaska App. 1985).

¹⁶ Supra, n. 10.

¹⁷ Ingram, 703 P.2d at 432.

¹⁸ Id.

firearm and toolmark expert, issued a report that was "an expert opinion based on accepted scientific procedures that yield objective results" similar to drug testing results. [Exc. 75; R. 1666] The court reasoned that toolmark identification was based upon viewing tool marks that are objectively visible. [Exc. 75; R. 1666] The court further reasoned that because Shem's report was submitted to the grand jury, they were allowed to examine it for themselves. [Exc. 76; R. 1667] The court, therefore, concluded that Shem's testimony would not have added to the proceedings and his opinion, introduced through a written report and Branchflower's testimony, was not improperly presented to the grand jury. [Exc. 75-76; R. 1666-67]

The art of toolmark identification is, however, subjective and not objective. Toolmark identification typically involves microscopic examination of toolmarks to determine if the toolmarks have a sufficient number of microscopic features of sufficient clarity and definition for identification.¹⁹ Identification is possible when unique surface contours are compared and are found to be in "sufficient agreement."²⁰ Sufficient agreement means that "the agreement is of a quantity and quality that the likelihood another tool could have made the mark is so

¹⁹ Alfred A. Biasotti & John Murdock, The Scientific Basis Of Firearms And Toolmark Identification, § 29-2.2 at 502, in Modern Scientific Evidence: The Law And Science Of Expert Testimony (David L. Faigman, David H. Kaye, Michael J. Saks, & Joseph Sanders eds., 2002).

²⁰ Id. at 504-05 (citing Theory Of Identification, Range of Striae Comparison Reports, and Modified Glossary Definition—An AFTE Criteria for Identification Committee Report, 24 Ass'n Firearm & Toolmark Examiners J. 336 (1992)).

remote as to be considered a practical impossibility."²¹ The Association of Firearm and Toolmark Examiners recognizes that this process is "subjective in nature, founded on scientific principles and based on the examiner's training and experience."²² At least one published expert has noted that "it would be the 'art' of the experienced examiners that would be the basis" for a quantifiable model, not the science, even if this process could be objectively quantified.²³

In contrast to drug testing, firearm and toolmark identification does not involve a test result which once obtained could be confirmed by a technician or simply communicated by report. The analysis performed by a firearm and toolmark examiner is similar to comparing handwriting samples and involves the judgment of an expert who has sufficient training, experience, and skill. Artful decisions must be made at each step of the process, including what types of marks to look for, what marks are sufficiently definite and clear to form a basis for identification, and whether the compared surfaces are in "sufficient agreement" as to exclude other tools, rendering misidentification a practical impossibility.

Although Shem's report was presented to the grand jury, the subjective nature of firearm and toolmark identification renders this method of proof unreliable and insufficient. Shem's report consisted of a single page that merely listed the items submitted and Shem's opinion. [Exc. 88] Moreover, Shem's report is

²¹ Id.

²² Id.

²³ Id. at 508 (quoting John E. Davis (author of An Introduction To Tool Marks, Firearms and the Striagraph (1958)) in a letter to John Murdock).

misleading because it reports his subjective opinion under the heading "Results." [Exc. 88] Shem's opinion is, however, not the result of a test; it is an opinion based upon his subjective judgment. Moreover, the report does not provide the grand jury with any information from which it could evaluate how Shem formed his opinion, whether he performed his analysis according to established and reliable procedures, or whether he was a qualified or credible expert.²⁴

C. The State Improperly Relied on Detective Branchflower's Testimony Concerning The Investigation And The Scene Of The Crime.

As previously noted, Alaska Rule of Criminal Procedure 6(r)(1) states that hearsay evidence is inadmissible before the grand jury absent a "compelling justification." Rule 6(r) does permit otherwise inadmissible hearsay evidence to be presented to the grand jury if the evidence fits within an enumerated exception. One exception permits a police officer involved in an investigation to repeat the statements and observations of another officer if additional evidence is introduced to corroborate the statement.²⁵

No reported opinions from Alaska's appellate courts have grappled with the extent to which hearsay testimony may be used under this exception or the level of corroboration required to permit its use. A legislative statement of findings and purpose for the rule provides some guidance, however. The 1994 legislature stated that the rule permitting police officer hearsay was enacted "to allow the grand jury to be fully informed about the evidence available on a criminal case through testimony

²⁴ See Ingram, 703 P.2d at 432.

²⁵ Alaska Rule of Criminal Procedure 6(r)(3).

basis for those of Lieutenant Gifford, the crime scene reconstruction and blood

spatter expert [Exc. 82-93; G.L. 14-18]

Branchflower's testimony included a hearsay account of the location of

the Remington, bullets, and expended shells found at the scene [Exc. 82-93; G.L. 14-

18] Her testimony also included a statement from an unnamed source indicating

that nine bullets were found in Edwards's pocket [Exc. 82; G.L. 26] The state

introduced photographs of the scene through Branchflower, without any statement

indicating who took the photographs, when the photographs were taken, or whether

the photographs accurately represented the scene or the evidence [Exc. 93-94; G.L.

21-23] The only evidence provided to the grand jury that was not introduced

admitted was Branchflower's testimony that she searched Edwards's residence and

found an empty box of .22 caliber bullets and the shells to a knife several, and

photographs that she had taken at Edwards's residence [Exc. 95; G.L. 27-28]

Branchflower's non-hearsay testimony, however, did not corroborate

the hearsay testimony. The fact that Branchflower observed an empty box of .22

caliber ammunition does not corroborate the number of bullets found at the scene or

the existence of a gun with a discharged shell. It merely shows that Edwards had an

empty box of the most common type of ammunition sold in the United States in the

most common quantity available [Tr. 182, 187] Branchflower's observation of a

knife sheath at Edwards's residence, again, fails to corroborate any observation of

the scene upon which the grand jury's verdict rested. The fact that a knife was

found at the scene that could possibly fit a sheath found at Edwards's residence is

not surprising and does not establish that Edwards shot M.C. and M.E.

This court's unpublished opinion in Wilson appears to indicate that the existence of photographs would serve to corroborate Branchflower's testimony. Unlike Wilson, however, the photographs introduced through Branchflower were not properly identified and can not reliably corroborate her testimony. Photographs are inadmissible at trial unless they are properly authenticated.²⁹ Here, the state introduced photographs through Branchflower, but there is no basis for concluding that the photographs are a faithful representation of what they purport to depict. Branchflower does not indicate who took the pictures, when the pictures were taken, or whether they are an accurate representation of the scene and evidence.

The state's presentation of the evidence to the grand jury violated the plain language of Rule 6(r)(3) and the intent of the legislature. The state presented its entire case using the uncorroborated hearsay testimony of an officer who, though involved in the investigation, played only a minor role in the investigation. This reliance on hearsay evidence has eliminated any protection provided by the grand jury process and should not be countenanced here.

D. The Indictment Must Be Dismissed Because It Rests Entirely Upon Improperly Admitted Evidence

"In deciding whether the presentation of improper evidence requires dismissal of the indictment, it is first necessary to decide whether there is sufficient

²⁹ Sheakley v. State, 644 P.2d 864, 870 (Alaska App. 1982) (stating that "[t]his court has held that a photograph is admissible in evidence in the discretion of the trial judge, as an aid to the court or jury, after it has been shown to be a faithful representation of whatever it purports to depict.")

admissible evidence to support the indictment.³⁰ If there is insufficient admissible evidence remaining, the indictment must be dismissed.³¹ If, however, there is sufficient admissible evidence then it is necessary to evaluate the challenged evidence to determine whether it "appreciably affect[ed] the outcome of the grand jury's deliberations."³²

In the present case, the material facts upon which the grand jury's verdict rested were all improperly presented through hearsay testimony. Branchflower testified that when police arrived at M.E.'s residence they kicked in the door because the key provided by a friend of M.E.'s would not unlock the deadbolt. [Exc. 91; G.J. 12-13] This evidence supported the inference that whoever committed the crime was still in the house. Branchflower testified that Edwards, M.E., and M.C. appeared to have been shot with a gun that was found on the floor near where Edwards was shot. [Exc. 92-93; G.J. 14-18] Branchflower testified that one empty shell casing was found in the .22 caliber deminger, that two empty .22 caliber shell casings were found on the floor, and that nine .22 caliber rounds were found in Edward's pants pocket. [Exc. 94; G.J. 24] This evidence supported the inference that Edwards shot M.C. and M.E., then reloaded the gun and shot himself.

The opinions of the state's experts provided critical support for the link

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³¹ See Id.

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between the evidence located at the scene and the grand jury's verdict.³³ Branchflower testified that Gifford concluded that "the subject shot the victim while she was in bed" and then the "suspect shot himself" and laid on the floor. [Exc. 92; G.J. 16] And Shem's report indicated that the ammunition at the scene was the same type of ammunition as the ammunition box found in Edward's residence. [Exc. 95; G.J. 28] Shem's report also indicated that the three expended shell casings had been fired from the derringer found at the scene. [Exc. 94; G.J. 25] This evidence endorsed the state's conclusion that Edward's perpetrated the homicide.

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The evidence based upon Gifford's and Shem's report provided the grand jury with information that must have overwhelmed the deliberations. The state's experts concluded that the gun and bullets found near Edwards were used by Edwards to commit the homicide and then to attempt suicide. Branchflower communicated these conclusions without explanation and without an opportunity for the grand jury to inquire into the basis for these conclusions. This testimony was sufficiently powerful that the jury likely abandoned its role of fact-finder in favor of the

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state's experts who had endorsed a verdict of guilty.

II. DETECTIVE SOTO CONDUCTED AN ILLEGAL WARRANTLESS SEARCH OF A CLOSED CONTAINER WHEN HE REMOVED EVIDENCE FROM EDWARDS'S PANTS POCKET.

A. Soto's Warrantless Search Of Edwards's Pants Pocket Was Not Justified Under Any Exception To The Warrant Requirement

The right of the people to be secure in their persons, houses and other property, papers, and effects, against unreasonable searches and seizures, shall not be violated.³⁴ No warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.³⁵ A warrantless search is per se unreasonable unless it falls within one of the few specifically established and well-delineated exceptions to the warrant requirement.³⁶ "These exceptions have been 'jealously and carefully drawn,' and the burden falls upon the state to prove that 'the exigencies of the situation made the course imperative.'"³⁷

"Inventory searches are now a well-defined exception to the warrant

opinion were improperly presented to the grand jury. [Exc. 80-81; R. 1667-68]

³⁴ Alaska Constitution Art. 1§14; United States Constitution, Fourth Amendment.

³⁵ Id.

³⁶ Katz v. United States, 389 U.S. 347, 357, 88 S.Ct. 507, 514, 19 L.Ed.2d 576, 585 (1967). Schraff v. State, 544 P.2d 834, 838 (Alaska 1975).

³⁷ Schraff v. State, 544 P.2d 834, 838 (Alaska 1975) (citing Jones v. United States, 357 U.S. 493, 499 (1958); Coolidge v. New Hampshire, 403 U.S. 443, 455 (1971)).

requirement of the Fourth Amendment."³⁸ Inventory searches may be considered reasonable and constitutional if they are conducted in accordance with the standard procedures of the agency conducting the search.³⁹ An inventory search of closed, locked or sealed luggage, containers or packages, however, is not within the scope of a reasonable warrantless inventory search.⁴⁰

As constitutionally protected zones, the prohibition on closed container inventory searches extends to clothing pockets.⁴¹ According to the California Court of Appeals:

Although the foregoing decisions have come to be known as "closed container" cases, it is of no help to us in our analysis to note that a vest pocket, unlike a lunch box, has no lid or, like a tote bag, cannot be locked. ... If a person were to be handed an article which he intended to keep safe from theft or secure from prying eyes, that person would almost certainly place the article in his pocket. No more reprehensible party thief can be found than a pickpocket, not because he steals, but because he does so by intruding into an area where his victim most wishes to remain secure. We find that a vest pocket is a protected receptacle of personal effects and may not be searched

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³⁹ State v. Daniel, 589 P.2d 408, 417 (Alaska 1979); Florida v. Wells, 495 U.S. 1, 3-4, 110 S.Ct. 1632, 1634-35, 109 L.Ed.2d 1 (1990).

⁴⁰ D'Antonio, 926 P.2d 1158, 1162 n. 5 (Alaska 1996)(citing Daniel, 589 P.2d at 417-18).

⁴¹ See Sibron v. New York, 392 U.S. 40, 65, 88 S.Ct. 1889, 1904, 20 L.Ed.2d 917 (1968) (holding that an officer's decision to invade a pocket was not permissible under the circumstances); State v. Gray, 798 P.2d 346, 350 (Alaska App. 1990)(holding that the emptying a suspect's pocket must be constitutionally justified).

except as permitted by the Fourth Amendment.⁴²

The Ninth Circuit has also recognized that pockets are analagous to closed containers. In United States v. Ramos-Osequera,⁴³ the police inventoried the defendant's car after arresting the defendant. The police searched the pockets of a pair of jeans found in the vehicle and discovered heroin. Police department policy required that all visible property be booked and inventoried for safekeeping. Judge Boocheever, writing for the Ninth Circuit, noted that the applicable procedures did not specifically provide authority for looking inside containers to find valuable property.⁴⁴ The court accordingly held that the search violated the Fourth Amendment.⁴⁵

In the present case, Officer Soto received Edward's pants from a hospital employee who indicated that the pants were provided to Soto as part of hospital procedure. [Exc. 98; Tr. 20-21, 26] Soto took possession of the pants intending to place them in "property and evidence" as a piece of evidence in the case. [Exc. 98, 105; Tr. 26, 54] Soto stated that he was required to separate multiple items, tag them, and put them in lockers. [Exc. 98; Tr. 28-29] Soto also stated that he had to do an inventory of every item and "check of all the, basically, pockets or anything that I, you know, basically, find, basically separate every item

⁴² People v. George, 168 Cal.Rptr. 44 (Cal.App. 1980).

⁴³ 120 F.3d 1028 (9th Cir. 1997) (overruled on other grounds).

⁴⁴ Id. at 1036.

⁴⁵ Id.

that I can find." [Exc. 98; Tr. 29] Soto further stated that this was the department policy. [Exc. 98; Tr. 29] Soto testified that he "processed the evidence as I was trained." [Exc. 99; Tr. 30] Soto found bullets and a BIC lighter. [Exc. 99; Tr. 30]

On cross-examination, Soto was asked specifically whether he was instructed on the procedure for taking the pants into evidence or whether he made the decisions on his own. [Exc. 101; Tr. 39] Soto responded:

No, sir. Well, basically, it goes – you know, we learned this on training and also, basically, the procedures I learned also in training. And it's before this day and after this day, we basically, continue – basically, continue doing the same procedure. And we had done this prior to this day as well. [Exc. 101; Tr. 39]

Then when immediately asked whether that meant that he made the decisions on his own, Soto responded: "Based on that procedure because I know it's—it's basically policy and procedures, yes, I – I do it that way." [Exc. 101; Tr. 39]

The trial court recognized that the warrantless inventory search of closed containers is unreasonable and unconstitutional. [Exc. 64; R. 1655] The court also recognized that the routine emptying of a defendant's pockets upon arrival at a pretrial detention center has been held unconstitutional. [Exc. 64; R. 1655] The court, however, stated that a search of pants pockets is less intrusive than a search of a closed container. [Exc. 65; R. 1656] The court found that Soto testified he was "required to do an inventory of the evidence, that he was required to check the pockets, and separate every item found." [Exc. 66; R. 1657] According to the court, Soto had the right to "lift and move the evidence in order to book it into the evidence room." [Exc. 66; R. 1657]

The trial court's decision, however, was error. Soto did not testify that he was required to remove the items from pockets as a matter of established procedure. A closer reading of Soto's testimony reveals that Soto did not articulate any standard procedure. Soto merely stated that he needed to separate multiple items to tag them separately into evidence and had done it that way in the past. When asked specifically whether he was told to search pockets as part of the procedure of logging items into evidence or whether he made the decision on his own Soto did not specifically answer the question. Accordingly, the evidence does not support the trial court's conclusion that Soto was following an established inventory procedure.

Even if Soto was following established procedures, opening the pocket was an unreasonable procedure for logging inventory. In Daniel v. State,⁴⁶ police officers who were lawfully impounding a vehicle found a briefcase in the back seat that had open latches. The officers opened the briefcase and found contraband. The Alaska Supreme Court concluded that no principled distinction between locked and unlocked containers could be drawn.⁴⁷ The court held that "it is sufficient, for routine inventory purposes, that the officer merely list the item as a closed or locked footlocker, briefcase, package, or container and, if deemed necessary remove the same for safekeeping."⁴⁸ Soto had lawful possession of the pants and could have

⁴⁶ Daniel v. State, 589 P.2d 408 (Alaska 1979).

⁴⁷ Id. at 417.

⁴⁸ Id. at 418.

similarly taken them into evidence for safekeeping without violating the pockets.

Additionally, the search was impermissible because Soto was not conducting an inventory search, he was tagging evidence. In Newhall v. State,⁴⁹ a trooper obtained a search warrant to open a package that he suspected contained alcohol being shipped in violation of a local option law. The trooper opened the package and then opened a second package that he found inside the suspect package. The trooper, however, knew that the second package did not contain alcohol. This court held that the trooper was not permitted to search the second package without a warrant, even if he had abundant probable cause.⁵⁰ The court further held that with probable cause the police are permitted only to seize a closed container while they apply for a search warrant.⁵¹

Here, Soto had possession of pants and could have simply applied for a warrant if he wanted to inspect the interior of the pockets. Although Soto claimed that he had no reason to believe that there was evidence in the pockets, his stated purpose for inspecting the pocket was to take the pants into custody as evidence of a crime and separate items so that they would become "separate property evidence item[s]" [Exc. 98, 105; Tr. 28, 54] Soto's search can not be rendered permissible simply because he stated that he did not have an investigative purpose or by

⁴⁹ Newhall v. State, 843 P.2d 1254 (Alaska App. 1992).

⁵⁰ Id. at 1257.

⁵¹ Id. at 1258.

labeling the search an inventory search.⁵²

B. Introduction At Trial Of The Illegally Obtained Bullets
Was Not Harmless Beyond A Reasonable Doubt

The admission of evidence obtained in violation of a defendant's constitutional rights requires reversing the conviction unless introduction of the evidence was harmless beyond a reasonable doubt.⁵³

In the present case, the state pursued a conviction under the theory that Edwards shot M.E. and M.C. then shot himself. [Tr. 258-59] The state presented expert testimony attempting to establish that Edwards's injuries were self-inflicted. [Tr. 509-10] This evidence, however, was not conclusive on the issue. [Tr. 593-94] The strongest evidence indicating that Edwards committed the homicides and then shot himself was the bullets that were found in his pocket. [Tr. 857] Without this evidence, the state had no direct physical evidence tying Edwards to the bullets used in the homicide. This evidence substantially undermined the defense theory that Edwards was shot by an intruder who had shot M.C. and M.E. [Tr. 2022] Accordingly, it can not be said that introduction of this evidence was harmless beyond a reasonable doubt.

⁵² C.f. State v. Gray, 798 P.2d 346, 350 (Alaska App. 1990). (holding that the routine emptying of an arrestee's pockets cannot be justified merely by labeling the procedure a "patdown").

⁵³ Ingram v. State, 703 P.2d 415, 429 (Alaska App. 1985).

CONCLUSION

For the reasons stated above, this court must reverse Edwards's conviction and grant him a new trial.

DATED at Anchorage, Alaska on June _____, 2004.

PUBLIC DEFENDER AGENCY

By:

QUINLAN STEINER (98-11057)
ASSISTANT PUBLIC DEFENDER

SB

210

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 1/9/06

FURTHER: Finance

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered SENATE BILL NO. 210

SB 210 VIOL. OF ALCOHOLIC BEV. LAWS/FORFEITURE

"An Act relating to the manufacture and transportation of alcoholic beverages; relating to forfeitures of property for violations of alcoholic beverage laws; and relating to violations of alcoholic beverage laws."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:
<input type="checkbox"/> Same Title
<input type="checkbox"/> New Title
SCS House Bill:
<input type="checkbox"/> Same Title
<input type="checkbox"/> Technical Title Change
<input type="checkbox"/> New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>			X	
<i>[Signature]</i>	X			
<i>[Signature]</i>	X			
CHAIR: <i>[Signature]</i>	✓			

Alaska State Legislature

SENATOR
GENE THERRIAULT

Mailing Address:
119 N. Cushman, Suite 101
Fairbanks, Alaska 99701
(907) 488-0857
Fax: (907) 488-4271



Senate

While in session
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4797
Fax: (907) 465-3884
SENATE DISTRICT F

SPONSOR STATEMENT SB 210

"An Act relating to the manufacture and transportation of alcoholic beverages; relating to forfeiture of property for violations of alcoholic beverage laws; and relating to violations of alcoholic beverage laws."

In 2004, Congress established the Alaska Rural Justice and Law Enforcement Commission, recognizing that many rural communities and their residents: "... face the highest alcohol abuse and family violence rates in the country." The Commission released a Draft Interim Report in late 2005 that contained recommendations including amendments to several provisions in Alaska statutes.

Senate Bill 210 makes changes to current law to better assist law enforcement in protecting communities that have chosen to limit the sale, or possession of alcohol under local option laws. First, Senate Bill 210 strengthens current forfeiture provisions in statute by allowing for seizure of alcohol transported by common carrier in violation of local option laws. Secondly, it allows for the authority to seize property determined to have been purchased or obtained through the proceeds of illegal importation or sale of alcohol. Further, SB 210 proposes a streamlined procedure to give notice of forfeiture proceedings to a person who may claim an interest in property that has been seized.

SB 210 also proposes to make changes by adding a definition of "manufacture" of alcohol and provides consistency between statutes by amending the allowable quantities of alcohol. While current statute prohibits the manufacture of alcohol in a community that has adopted a local option, it does not include a definition. The legislation also clears up inconsistency in the statutes as it relates to the presumptive amount of possession for sale. By amending these provision we are providing clarity and assisting law enforcement and communities in their continued interdiction efforts in damp or dry areas of the state.

There are currently over 100 communities in Alaska that have chosen a local option to combat the problems associated with alcohol abuse and violence. SB 210 provides clarity, consistency, and strength to the state's alcohol and beverage control statutes in order to assist law enforcement and communities to fight the illegal importation of alcohol.

SENATE BILL NO. 210

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY SENATOR THERRIAULT

Introduced: 1/9/06

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "A" Act relating to the manufacture and transportation of alcoholic beverages; relating
2 to forfeitures of property for violations of alcoholic beverage laws; and relating to
3 violations of alcoholic beverage laws."

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

5 * Section 1. AS 04.11.010(c) is amended to read:

6 (c) Unless a municipality or ^{community} ~~established village~~ has adopted a more restrictive
7 local option under AS 04.11.491(g), in a criminal prosecution for possession of
8 alcoholic beverages for sale in violation of (a) of this section, the fact that a person

9 (1) possessed more than 10 1/2 [12] liters of distilled spirits, 24 liters
10 or more of wine, or 12 gallons or more of malt beverages in an area where the sale of
11 alcoholic beverages is restricted or prohibited under AS 04.11.491 creates a
12 presumption that the person possessed the alcoholic beverages for sale;

13 (2) sends, transports, or brings more than 10 1/2 [12] liters of distilled
14 spirits, 24 liters or more of wine, or 12 gallons or more of malt beverages to an area

1 where the sale of alcoholic beverages is restricted or prohibited under AS 04.11.491
 2 creates a presumption that the person sent, transported, or brought the alcoholic
 3 beverages for sale in the area.

4 * Sec. 2. AS 04.16.220(a) is amended to read:

5 (a) The following are subject to forfeiture:

6 (1) alcoholic beverages manufactured, sold, offered for sale, [OR]
 7 possessed for sale, or bartered or exchanged for goods and services in this state in
 8 violation of AS 04.11.010; alcoholic beverages possessed, stocked, warehoused, or
 9 otherwise stored in violation of AS 04.21.060; alcoholic beverages sold [,] or offered
 10 for sale in violation of a local option adopted under AS 04.11.491; alcoholic beverages
 11 transported into the state and sold to persons not licensed under this chapter in
 12 violation of AS 04.16.170(b); alcoholic beverages transported in violation of
 13 AS 04.16.125;

14 (2) materials and equipment used in the manufacture, sale, offering for
 15 sale, possession for sale, or barter or exchange of alcoholic beverages for goods and
 16 services in this state in violation of AS 04.11.010; materials and equipment used in the
 17 stocking, warehousing, or storage of alcoholic beverages in violation of AS 04.21.060;
 18 materials and equipment used in the sale or offering for sale of an alcoholic beverage
 19 in an area in violation of a local option adopted under AS 04.11.491;

20 (3) aircraft, vehicles, or vessels used to transport [,] or facilitate the
 21 transportation of

22 (A) alcoholic beverages manufactured, sold, offered for sale,
 23 [OR] possessed for sale, or bartered or exchanged for goods and services in
 24 this state in violation of AS 04.11.010;

25 (B) property stocked, warehoused, or otherwise stored in
 26 violation of AS 04.21.060;

27 (C) alcoholic beverages imported into a municipality or
 28 established village in violation of AS 04.11.499;

29 (4) alcoholic beverages found on licensed premises that do not bear
 30 federal excise stamps if excise stamps are required under federal law;

31 (5) alcoholic beverages, materials, or equipment used in violation of

1 AS 04.16.175;

2 (6) money, securities, negotiable instruments, or other things of value
3 used in financial transactions or items of value purchased from the proceeds
4 derived from activity prohibited under AS 04.11.010 or in violation of a local option
5 adopted under AS 04.11.491.

6 * Sec. 3. AS 04.16.220(c) is amended to read:

7 (c) Within 30 days after [OF] a seizure under this section, the Department of
8 Public Safety shall make reasonable efforts to ascertain the identity and whereabouts
9 of any person holding an interest or an assignee of a person holding an interest in the
10 property seized, including a right to possession, [A] lien, mortgage, or conditional
11 sales contract. The Department of Public Safety shall notify the person ascertained to
12 have an interest in property seized of the impending forfeiture, and, before forfeiture,
13 the Department of Law shall publish, once a week for four consecutive calendar
14 weeks, a notice of the impending forfeiture in a newspaper of general circulation in the
15 judicial district in which the seizure was made [,] or, if no newspaper is published in
16 that judicial district, in a newspaper published in the state and distributed in that
17 judicial district. Upon service or publication of notice of commencement of a
18 forfeiture action under this section, a person claiming an interest in the property
19 shall file, within 30 days after the service or publication, a notice of claim setting
20 out the nature of the interest, the date it was acquired, the consideration paid,
21 and an answer to the state's allegations. If a claim and answer is not filed within
22 the time specified, the property described in the state's allegation must be
23 ordered forfeited to the state without further proceedings or showings. Questions
24 of fact or law raised by a notice of forfeiture action and answer of a claimant in
25 an action commenced under this section must be determined by the court sitting
26 without a jury. This proceeding may be held in abeyance until conclusion of any
27 pending criminal charges against the claimant under this title.

28 * Sec. 4. AS 04.16.220(d) is amended to read:

29 (d) Property subject to forfeiture under (a) of this section may be forfeited

30 (1) upon conviction of a person for a violation of AS 04.11.010,
31 04.11.499, AS 04.16.125, AS 04.21.060, or AS 04.11.501 or an ordinance adopted

1 under AS 04.11.501; or

2 (2) upon judgment by the superior court in a proceeding in rem that the
3 property was used in a manner subjecting it to forfeiture under (a) of this section.

4 * Sec. 5. AS 04.21.080(b) is amended by adding a new paragraph to read:

5 (17) "manufacture" means the creation of alcoholic content by use of
6 fermentation with natural or artificial sugar or yeast or distillation.

**Draft Interim Report of the
Alaska Rural Justice and Law Enforcement
Commission**

Attached

Chapter 1: *Statement of Need*

Appendix G: *Attachments for the Alcohol Importation
Recommendations*

The Report can be found in full at the following url:
http://www.aitc.org/site_documents/Draft%20Interim%20Report-2.mht

Chapter I. Statement of Need

The Alaska Rural Justice and Law Enforcement Commission was created by Congress to respond to a number of needs related to justice and law enforcement in rural Alaska that are detailed in the congressional language (Public Law 108-199). This chapter of the Commission's Final Report reviews current conditions in rural Alaska, recounts the history of law enforcement in rural Alaska, recognizes some of the improvements in rural Alaska that have occurred in recent years, and presents excerpts of the testimony given to the Commission during the public hearings.

A. Current Conditions

1. Problems the Commission has been asked to address

Like all communities nationwide, residents of remote, rural Alaska grapple with family violence, child abuse and neglect, and alcohol addiction. Unlike other communities, however, many remote rural residents in Alaska lack a law enforcement presence in their communities and face the highest alcohol abuse and family violence rates in the country. Congress asked the Commission to consider various options that might address these issues, including creation of a unified law enforcement and judicial system, cross deputization, and restorative justice methods to address family violence, child protection and alcohol consumption. This charge reflects congressional concern about the profound challenges facing rural Alaska.

Alcohol abuse presents profound challenges in rural Alaska; its effects are insidious, affecting and influencing the health and welfare of all who live there. As the Alaska Natives Commission reported more than a decade ago:

Facts do not lie: alcohol abuse among Alaska Natives equals tragedy for family and village. It is proven that alcohol abuse equals violence, imprisonment, and death. It is proven that alcohol abuse in the Native family results in frightened, psychologically disordered children. Alcohol abuse leaves FAS, FAE, and a myriad other physical and psychological symptoms in its destructive wake.^{1[3]}

Last year the Institute of Social and Economic Research (ISER), University of Alaska Anchorage, in its *The Status of Alaska Natives Report 2004, Volume 1*, stated, "Analysts say that the most difficult social problems in the Native community – from high rates of suicide to domestic violence and child abuse – can be traced in large part to alcohol."^{2[4]} The costs to Alaska are not only social. Financially, it is estimated that alcohol abuse and alcoholism cost Alaska well over \$615,000,000 a year.^{3[5]}

The Commission emphasizes that alcohol abuse and alcoholism in rural Alaska are not *Native* problems, *per se*, but rather problems for Natives and non-Natives alike.

But the Commission also acknowledges that over 66% of the population in rural Alaska is Native^{4[6]} and that recommendations in this report that mention the importance of culturally appropriate approaches predominantly focus on Alaska Natives. However, that is not intended to imply that these approaches are inappropriate for non-Natives living in rural Alaska.

The impacts of substance abuse and the relevance of finding effective means to prevent alcohol and other drugs from reaching rural Alaska communities that have, through local option laws, decided to ban, partially or wholly, alcohol^{5[7]} are important threads in the fabric of society in rural Alaska, as they have been in the Commission's work over the last ten months. Numerous statistics point to the continuing – and in many cases growing – overrepresentation of Alaska Natives from rural Alaska among children in need of aid, victims and perpetrators of domestic violence and sexual assault, and other crimes. The percentage of Native children under the care of the Office of Children's Services hovers close to 50% and the numbers of Native youth and adults in Alaska's juvenile justice and correctional systems are similarly disproportionately large. The justice systems in rural Alaska struggle to find locally and culturally appropriate ways to manage offenders in a way that minimizes negative impacts to families and communities and strives to restore harmony quickly. There are frequent "disconnects" between tribal and state court systems, and disputes over jurisdiction continue throughout rural Alaska. In the mean time, rural residents criticize the inadequacies of current law enforcement and public safety in much of rural Alaska, but an affordable and acceptable resolution has yet to be found.

Domestic violence, child abuse, child neglect, and sexual assault are major problems in rural Alaska. The following quote highlights the experiences of one Alaskan researcher:

In Alaska, we often see abusive partners who have relocated their families to remote communities to isolate them from the support of their friends and family, and to more easily track and control their movements. Victims may be held hostage in their own homes with no winter clothing or means of escaping their extreme isolation. Deprivation and isolation become powerful tools to control victims.

One survivor, who shares her story to help others understand the dynamics of abuse in rural communities, described how her husband stranded her and their new baby at a remote fish camp for several weeks without enough food, medications and other essentials. Eventually, she was able to escape her abusive marriage and became a domestic violence outreach worker to remote villages in the Arctic. Although she struggles with debilitating, long-term health problems secondary to the abuse, she survived. Her former husband murdered his next wife.

When domestic violence services are available in rural regions, they face additional challenges in maintaining security and accommodating rural lifestyles. In Alaska, none of the shelter locations are secret – the communities are too small to hide a facility. Maniilaq Family Crisis Center, a victims' assistance program and shelter in northwestern Alaska, offers a safe haven to victims and the animals that they are often unwilling to leave behind. The center uses a snowmobile to pick up clients and has a fenced yard where clients can keep their dog teams and other animals. Susan Jones, the center's executive director, takes threats against victims' pets seriously. The murder or mutilation of a pet by an abusive partner is another indicator of escalating domestic violence.^{6[8]}

Statistics reported by the Alaska Council on Domestic Violence and Sexual Assault highlight the seriousness and widespread nature of the situation in Alaska:^{7[9]}

- In calendar year 2002 the Division of Family and Youth Services (now the Office of Children's Services) received 1,475 reports of suspected child sexual abuse.
(Division of Family and Youth Services, State of Alaska)
- On average, an Alaska woman is forcibly raped every 18 hours and 17 minutes.
(Alaska Uniform Crime Report, 2001)
- During FY 2002, 1,851 victims of sexual assault sought services from victim service programs in Alaska.
(Council on Domestic Violence and Sexual Assault, State of Alaska)
- 311 sexual assault cases and 241 sexual abuse of a minor cases were referred to Alaska District Attorney offices in 2001.
(Department of Law, State of Alaska)

Domestic violence, child abuse, child neglect, and sexual assault, especially in rural Alaska and in the Alaska Native population, represent major issues that need new, creative solutions to resolve.

Part of the solution may lie in enhanced or altered rural law enforcement. Accordingly, the Commission also has been asked to study issues related to law enforcement in rural Alaska. A brief history will help put the current systems in perspective.

APPENDIX G

ATTACHMENTS FOR RECOMMENDATIONS RELATED TO

THE DEFINITION OF ALCOHOL MANUFACTURE

FORFEITURE

QUANTITY CONSISTENCY

Attachment 1: Definition of Alcohol Manufacture

The suggested statutory changes are as follows.

Put in AS 04.21.080(b) alcohol definition section: **"manufacture" of alcoholic beverages means to use the fermentation process with natural or artificial sugar and yeast, or the distillation process, to create alcoholic content.**

The statutes currently do not have a definition for "manufacture" as it relates to alcohol, but below are the definitions of Title 4 "alcoholic beverage" and Title 11.71 drug cases "manufacture".

AS 04.21.080(b)(1) "alcoholic beverage" means a spirituous, vinous, malt, or other fermented or distilled liquid, whatever the origin, that is intended for human consumption as a beverage and that contains one-half of one percent or more of alcohol by volume, whether produced commercially or privately; however, in an area that has adopted a local option under AS 04.11.491, "alcoholic beverage" means a spirituous, vinous, malt, or other fermented or distilled liquid, whatever the origin, that is intended for human consumption as a beverage by the person who possesses or attempts to possess it and that contains alcohol in any amount if the liquid is produced privately, or that contains one-half of one percent or more of alcohol by volume, if the liquid is produced commercially;

AS 11.71.900(13) "manufacture"

A. means the production, preparation, propagation, compounding, conversion, growing, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis; however, the growing of marijuana for personal use is not manufacturing;

B. includes the preparation, compounding, packaging, repackaging, labeling, or relabeling of a controlled substance or its container unless done in conformity with applicable federal law

(i) by a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(ii) by a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale;

Attachment 2: Forfeiture

Below are the current provisions of the forfeiture statute as applies to alcohol offenses. Added in **bold** are the suggested statutory changes.

AS 04.16.220

(a) The following are subject to forfeiture:

(1) alcoholic beverages manufactured, sold, offered for sale or possessed for sale, bartered or exchanged for goods and services in this state in violation of AS 04.11.010; alcoholic beverages possessed, stocked, warehoused, or otherwise stored in violation of AS 04.21.060; alcoholic beverages sold, or offered for sale in violation of a local option adopted under AS 04.11.491; alcoholic beverages transported into the state and sold to persons not licensed under this chapter in violation of AS 04.16.170(b); **alcoholic beverages transported in violation of AS 04.16.125.**

(2) materials and equipment used in the manufacture, sale, offering for sale, possession for sale, barter or exchange of alcoholic beverages for goods and services in this state in violation of AS 04.11.010; materials and equipment used in the stocking, warehousing, or storage of alcoholic beverages in violation of AS 04.21.060; materials and equipment used in the sale or offering for sale of an alcoholic beverage in an area in violation of a local option adopted under AS 04.11.491;

(3) aircraft, vehicles, or vessels used to transport, or facilitate the transportation of

(A) alcoholic beverages manufactured, sold, offered for sale or possessed for sale, bartered or exchanged for goods and services in this state in violation of AS 04.11.010;

(B) property stocked, warehoused, or otherwise stored in violation of AS 04.21.060;

(C) alcoholic beverages imported into a municipality or established village in violation of AS 04.11.499;

(4) alcoholic beverages found on licensed premises that do not bear federal excise

(5) alcoholic beverages, materials or equipment used in violation of AS 04.16.175;

(6) money, securities, negotiable instruments, or other things of value used in financial transactions, **or items of value purchased from the proceeds** derived from activity prohibited under AS 04.11.010 or in violation of a local option adopted under AS 04.11.491; **and**

(7) **a firearm which is visible, carried during, or used in furtherance of a violation of Title 4.**

(b) Property subject to forfeiture under this section may be actually or constructively seized under an order issued by the superior court upon a showing of probable cause that the property is subject to forfeiture under this section. Constructive seizure is effected upon posting a signed notice of seizure on the item to be forfeited, stating the violation and the date and place of seizure. Seizure without a court order may be made if

(1) the seizure is incident to a valid arrest or search;

(2) the property subject to seizure is the subject of a prior judgment in favor of the state; or

(3) there is probable cause to believe that the property is subject to forfeiture under

(a) of this section; except for alcoholic beverages possessed on violation of AS 04.11.501 or an ordinance adopted under AS 04.11.501, property seized under this paragraph may not be held over 48 hours or until an order of forfeiture is issued by the court, whichever is earlier.

(c) Within 30 days of a seizure under this section the Department of Public Safety shall make reasonable efforts to ascertain the identity and whereabouts of any person holding an interest or

an assignee of a person holding an interest in the property seized, including a right to possession, a lien, mortgage, or conditional sales contract. The Department of Public Safety shall notify the person ascertained to have an interest in property seized of the impending forfeiture, and before forfeiture the Department of Law shall publish, once a week for four consecutive calendar weeks, a notice of the impending forfeiture in a newspaper of general circulation in the judicial district in which the seizure was made, or if no newspaper is published in that judicial district, in a newspaper published in the state and distributed in that judicial district.

(d) Property subject to forfeiture under (a) of this section may be forfeited

(1) upon conviction of a person for a violation of AS 04.11.010 , 04.11.499, AS 04.21.060 , or AS 04.1.501 or an ordinance adopted under AS 04.11.501, or AS 04.16.125 ; or

2) upon judgment by the superior court in a proceeding in rem that the property was used in a manner subjecting it to forfeiture under (a) of this section. Upon service or publication of notice of commencement of a forfeiture action under this section, a person claiming interest in the property shall file within 30 days after the service or publication, a notice of claim setting out the nature of the interest, the date it was acquired, the consideration paid, and an answer to the state's allegations. If a claim and answer is not filed within the time specified, the property described in the state's allegation must be ordered forfeited to the state without further proceedings or showings.

Questions of fact or law raised by a notice of forfeiture action and answer of a claimant in an action commenced under this section must be determined by the court sitting without a jury. This proceeding may be held in abeyance until conclusion of any pending criminal charges against the claimant.

(e) The owner of property subject to forfeiture under (a) or (i) of this section is entitled to relief from the forfeiture in the nature of remission of the forfeiture if, in an action under (d) of this section, the owner shows that the owner

(1) was not a party to the violation;

(2) had no actual knowledge or reasonable cause to believe that the property was used or was to be used in violation of the law; and

(3) had no actual knowledge or reasonable cause to believe that the person committing the violation had

(A) a criminal record for violating this title; or

(B) committed other violations of this title.

(f) A person other than the owner holding, or the assignee of, a lien, mortgage, conditional sales contract on, or the right to possession to property subject to forfeiture under (a) or (i) of this section is entitled to relief from the forfeiture in the nature of remission of the forfeiture if, in an action under (d) of this section, the person shows that the person

(1) was not a party to the violation subjecting the property to forfeiture; and

(2) had no actual knowledge or reasonable cause to believe that the property was to be used in violation of the law; and

(3) had no actual knowledge or reasonable cause to believe that the person committing the violation had

(A) a criminal record for violating this title; or

(B) committed other violations of this title.

(i) Upon conviction for a violation of AS 04.11.010 or 04.11.499, if an aircraft, vehicle, or watercraft is subject to forfeiture under (a) of this section, the court shall, subject to remission to innocent parties under this section,

- (1) order the forfeiture of an aircraft to the state;
- (2) order the forfeiture of a vehicle or watercraft if
 - (A) the defendant has a prior felony conviction for a violation of AS 11.41 or a similar law in another jurisdiction;
 - (B) the defendant is on felony probation or parole; the defendant has a prior conviction for violating AS 04.11.010 or 04.11.499; or
 - (C) the quantity of alcohol transported in violation of this title was twice the presumptive amounts in AS 04.11.010(c).

(j) Notwithstanding (i) of this section, a court is not required to order the forfeiture of a vehicle or watercraft if the court determines that

- (1) the vehicle or watercraft is the sole means of transportation for a family residing in a village;
- (2) the court may impose conditions that will prevent the defendant's use of the vehicle or watercraft; and
- (3) either
 - (A) a member of the family would be entitled to remission under this section if the family member were an owner of or held a security interest in the vehicle or watercraft; or
 - (B) if a member of the family would not be entitled to remission, the family member was unable as a practical matter to stop the violation making the vehicle or watercraft subject to forfeiture.

(k) When forfeiting property under (a), (d), or (i) of this section, a court may award to a municipal law enforcement agency that participated in the arrest or conviction of the defendant, the seizure of property, or the identification of property for seizure, (1) the property if the property is worth \$5,000 or less and is not money or some other thing that is divisible, or (2) up to 75 percent of the property or the value of the property if the property is worth more than \$5,000 or is money or some other thing that is divisible. In determining the percentage a municipal law enforcement agency may receive under this subsection, the court shall consider the municipal law enforcement agency's total involvement in the case relative to the involvement of the state.

- (l) In this section, "village" means a community of fewer than 1,000 persons located off the interconnected state road system.

Current forfeiture provisions relating to controlled substances below

AS 17.30.110. Items Subject to Forfeiture.

The following may be forfeited to the state:

- (1) a controlled substance which has been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or AS 11.71;
- (2) raw materials, products, and equipment which are used or intended for use in manufacturing, distributing, compounding, processing, delivering, importing, or exporting a controlled substance which is a felony under this chapter or AS 11.71;
- (3) property which is used or intended for use as a container for property described in (1) or (2) of this section;
- (4) a conveyance, including but not limited to aircraft, vehicles, or vessels, which has been used or is intended for use in transporting or in any manner in facilitating the

transportation, sale, receipt, possession, or concealment of property described in (1) or (2) of this section in violation of a felony offense under this chapter or AS 11.71; however,

(A) a conveyance may not be forfeited under this paragraph if the owner of the conveyance establishes, by a preponderance of the evidence, at a hearing before the court as the trier of fact, that use of the conveyance in violation of this chapter or AS 11.71 was committed by another person and that the owner was neither a consenting party nor privy to the violation;

(B) a forfeiture of a conveyance encumbered by a valid security interest at the time of seizure is subject to the interest of the secured party if the secured party establishes, by a preponderance of the evidence, at a hearing before the court as the trier of fact, that use of the conveyance in violation of this chapter or AS 11.71 was committed by another person and that the secured party was neither a consenting party nor privy to the violation;

(5) books, records, and research products and materials, including formulas, microfilm, tapes, and data, which are used in violation of this chapter or AS 11.71;

(6) money, securities, negotiable instruments, or other things of value used in financial transactions derived from activity prohibited by this chapter or AS 11.71; and

(7) a firearm which is visible, carried during, or used in furtherance of a violation of this chapter or AS 11.71.

AS 17.30.116. Procedure For Forfeiture Action.

(a) Within 20 days after a seizure under AS 17.30.110 - 17.30.126, the commissioner of public safety shall, by certified mail, notify any person known to have an interest in an item with an appraised value of \$500 or more, or who is ascertainable from official registration numbers, licenses, or other state, federal, or municipal numbers on the item, of the pending forfeiture action. Additionally, the commissioner of public safety shall publish notice of forfeiture action of an item valued at \$500 or more in a newspaper of general circulation in the judicial district in which the seizure was made, or if no newspaper is published in that judicial district, in a newspaper published in the state and distributed in that judicial district. The notice shall be published once each week during four consecutive calendar weeks. The requirements of this subsection do not apply to the forfeiture of controlled substances which have been manufactured, distributed, dispensed, or possessed in violation of this chapter or AS 11.71, regardless of their value.

(b) Upon service or publication of notice of commencement of a forfeiture action under this section, a person claiming interest in the property shall file within 30 days after the service or publication, a notice of claim setting out the nature of the interest, the date it was acquired, the consideration paid, and an answer to the state's allegations. If a claim and answer is not filed within the time specified, the property described in the state's allegation must be ordered forfeited to the state without further proceedings or showings.

(c) Questions of fact or law raised by a notice of forfeiture action and answer of a claimant in an action commenced under this section must be determined by the court sitting without a jury. This proceeding may be held in abeyance until conclusion of any pending criminal charges against the claimant under this chapter or AS 11.71.

The most common item bootlegged is R&R whiskey (distilled spirits). The quantity of 14 bottles (750 ml size) equals 10 and one half liters. (16 -750 ml bottles equals 12 liters.) As seen below, the quantity amounts for malt beverages and wine are essentially equivalent for presumptive sale, felony importation and allowable shipping to a sale-restricted location.

The suggested statutory change would make the quantity in AS 04.11.010 consistent if stated "10 and one half liters or more of distilled spirits".

Currently, the statutes provide:

AS 04.11.010 presumptive amount for sale is possession more than 12 liters of distilled spirits, 24 liters or more of wine, or 12 gallons or more of malt beverages.

AS 04.16.200(e)(2) amount that makes importation into a dry location a felony is 10 and one half liters or more of distilled spirits, 24 liters or more of wine, or 12 gallons or more of malt beverages.

AS 04.11.140(g) package store license permits shipping monthly to a damp (restriction of sale) location 10 and one half liters of distilled spirits, less than 24 liters of wine, or less than 12 gallons of malt beverages.

Alcoholic Beverage Control Board
 5848 East Tudor Road
 Anchorage AK 99507
 Douglas B. Griffin
 (907) 269-0350 Fax (907) 272-9412

SCHEDULE OF LOCAL OPTION COMMUNITIES
 Updated July 29, 2005

City	Ban sale	Community license only	Ban sale and importation	Ban possession	Package store license only	Vote Tally	Election date	Certification date	Effective date
Akiak			1			38-15	07-17-91	08-21-91	09-01-91
Akiachak			1			40-13	08-07-01	08-23-01	09-01-01
Akiachak				1		40-13	08-07-01	08-23-01	10-22-01
Alakanuk			1			94-24	07-20-81	07-27-81	08-01-81
Alakanuk				1		47-7	02-06-90	02-12-90	03-01-90
Allakaket			1			49-30	05-12-89	05-19-89	06-01-89
Allakaket				1		45-34	05-12-89	05-19-89	08-17-89
Ambler			1				12-15-81	12-15-81	01-01-82
Anvik	1					23-6	1/16/2002	1/21/2002	2/1/2002
Anaktuvuk Pass			1			78-11		1982	01-01-83
Anaktuvuk Pass				1		59-45	11-04-86	12-16-86	01-01-87
Angoon				1		92-40	07-26-88	08-01-88	11-01-88
Atmautluak			1			60-12	10-06-81	04-29-82	05-01-82
Atkasuk			1			59-43	04-15-03	04-21-03	05-01-03
Atkasuk				1		59-43	04-15-03	04-21-03	06-30-03
Barrow	1					911-789	10-07-97	10-09-97	11-01-97
Beaver*			1			17-11	06-15-04	07-09-04	08-01-04
Beaver*				1		17-11	06-15-04	07-09-04	08-01-04
Bethel	1					611-207	10-04-77	10-06-77	11-01-77
Birch Creek*				1		13-2	10-06-87	10-22-87	11-01-87
Brevig Mission			1	1		34-32	03-03-99		05-03-99
Buckland			1			52-6	05-10-82	05-11-82	06-01-82
Chalkyitsik*			1			21-2	07-20-82	07-28-82	08-01-82
Chefornak			1			48-29	10-14-82	10-15-82	11-01-82
Chevak			1			88-63	10-02-90	10-02-90	11-01-90
Deering			1			32-24	05-26-82	06-01-82	07-01-82
Diamond			1			27-11	09-10-81	09-29-81	10-01-81
Eek			1			90-15	11-27-82	11-27-82	12-01-82
Elim			1			49-17	08-24-81	08-27-81	09-01-81
Emmonak			1			54-12	10-12-81	10-12-81	11-01-81
Emmonak				1		104-89	10-01-91	10-07-91	07-14-92
False Pass					1	34-6	10/2/2001	10/5/2001	11/1/2001
Fort Yukon		1							
Gulkana			1			17-3	01-14-97	01-28-97	02-01-97
Gulkana				1		17-3	01-14-97	01-28-97	03-30-97
Gambell			1			79-10	08-22-81	08-25-81	09-01-81
Gambell				1		72-13	12-23-86	12-29-86	01-01-87
Golovin			1			31-22	01-16-84	01-17-84	02-01-84

*Unincorporated

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SCHEDULE OF LOCAL OPTION COMMUNITIES
 Updated July 29, 2005

City	Ban sale	Community license only	Ban sale and importation	Ban possession	Package store license only	Vote Tally	Election date	Certification date	Effective date
Goodnews Bay			1			36-25	11-08-83	11-08-83	12-01-83
Goodnews Bay				1		37-11	01-14-91	01-18-91	02-01-91
Grayling	1					36-27	11-05-96	11-12-96	12-01-96
Holy Cross	1					42-31	10-03-00	10-06-00	11-01-00
Hooper Bay			1			103-44	03-01-83	03-01-83	04-01-83
Hughes	1					17-4	03-02-93	03-29-93	04-01-93
Huslia	1					37-13	03-14-89	03-23-89	04-01-89
Iliamna*	1					35-24	10-05-82	10-25-82	01-23-83
Kake		1							
Kaktovik				1		56-39	08-01-89	08-07-89	11-05-89
Kasigluk			1			74-3	10-04-83	10-17-83	11-01-83
Kiana			1			81-38	12-08-87	12-17-87	01-01-88
Kipnuk*			1			82-7	10-05-82	10-25-82	11-01-82
Kivalina			1			79-33	01-08-85	01-09-85	02-01-85
Klawock		1				111-70	10-05-93	10-11-93	10-11-93
Kobuk			1			15-12	03-29-89	04-03-89	05-01-89
Kokhanok*	1					31-18	6/28/2005	7/14/2005	8/1/2005
Kongiganak*			1	1		41-10	04-23-96	05-27-84	06-01-96
Kotlik			1			67-15	09-08-81	09-30-81	10-01-81
Kotlik				1		51-22	03-24-87	03-25-87	04-01-87
Kotzebue	1					643-438	12-06-88	12-07-88	01-01-89
Koyuk			1			57-8	08-25-81	08-26-81	09-01-81
Kwethluk			1			82-30	01-01-82	02-24-82	03-01-82
Kwigillingok*			1			63-5	08-09-83	09-01-83	10-01-83
Lower Kalskag			1			46-31	11-05-91	11-07-91	12-01-91
Manokotak			1			79-9	01-29-86	02-01-88	03-01-88
Manokotak				1		80-8	01-29-88	02-01-88	03-01-88
Marshall (Fortuna)			1			42-16	07-25-81	07-26-81	08-01-81
Marshall				1		37-34	10-07-86	10-08-86	11-01-86
Mekoryuk			1			48-10	09-01-81	09-02-81	10-01-81
Mekoryuk				1		42-29	10-07-86	10-08-86	11-01-86
Minto*			1			59-34	07-12-83	07-21-83	08-01-83
Mountain Village			1			72-52	03-13-84	03-19-84	04-01-84
Nanwalek/ English Bay	1					47-29	01-13-98	01-26-98	02-01-98
Napakiak			1			54-14	03-31-82	03-31-82	04-01-82
Napakiak				1		62-14	05-05-87	05-19-87	06-01-87

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 Updated July 29, 2005

City	Ban sale	Community license only	Ban sale and importation	Ban possession	Package store license only	Vote Tally	Election date	Certification date	Effective date
Napaskiak			1			55-4	11-01-82	11-08-82	12-01-82
Naukati					1	31-13	03-26-96	04-08-96	05-01-96
Newtok			1			37-9	10-30-84	11-02-84	12-01-84
Nightmute			1			32-3	02-02-96	02-06-96	03-01-96
Nightmute				1		32-4	02-02-96	02-06-96	04-09-96
Nikolai	1		1			28-16	5/20/1997		8/5/1997
Noatak*			1			69-53	12-07-82	12-22-82	01-01-83
Nondalton	1					46-30	11-10-86	12-30-86	01-28-87
Noorvik			1			103-58	04-28-87	04-28-87	05-01-87
Nuiqsut			1			57-39	11-21-83	11-22-83	12-01-83
Nuiqsut				1		60-56	11-04-86	11-12-86	12-01-86
Nunapitchuk			1			106-35	09-15-81	10-02-81	11-01-81
Nunapitchuk				1		75-23	10-07-86	10-13-86	11-01-86
Pilot Station			1			93-76	03-04-03	03-04-03	04-01-03
Platinum			1			12-9	01-14-82	01-25-82	02-01-82
Point Hope			1			62-39	06-29-82	07-02-82	08-01-82
Point Hope				1			10-03-89	10-09-89	11-01-89
Poin' Lay*			1			30-15	07-01-86	07-11-86	08-01-86
Port Alexander	1					31-16	01-05-82	01-11-82	02-01-82
Port Protection*					1	23-9	03-27-88	04-05-88	05-01-88
Quinhagak			1			77-26	10-30-81	10-31-81	11-01-81
Quinhagak				1		71-27	10-06-87	10-12-87	11-01-87
Red Devil*	1					17-8	02-20-90	04-27-90	07-26-90
Russian Mission			1			46-22	10-06-87	10-27-87	11-01-87
Saint Mary's	1					90-86	08-23-94	09-02-94	10-01-94
Saint Mary's			1			63-48	09-22-81	09-28-81	10-01-81
Saint Michael			1			39-21	08-04-86	08-07-86	09-01-86
Savoonga			1	1		117-56	10-07-87	10-10-97	12-09-97
Scammon Bay			1			57-10	12-07-81	12-08-81	01-01-82
Scammon Bay				1		71-25	10-06-87	10-12-87	11-01-87
Selawik			1			89-69	12-17-86	12-22-86	01-01-87
Shageluk	1					29-25	2/20/2001	3/19/2001	4/1/2001
Shaktolik			1			34-28	03-13-84	03-15-84	04-01-84
Sheldon Point (Nunam Iqua)			1			26-7	08-26-86	08-27-86	09-01-86
Shishmaref			1			82-47	01-04-83	01-04-83	02-01-83
Shungnak			1			46-44	10-06-87	10-10-87	11-01-87
Stebbins			1			88-19	08-25-87	10-08-87	11-01-87
Stevens Village*			1			31-11	06-05-84	06-15-84	07-01-84

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SCHEDULE OF LOCAL OPTION COMMUNITIES
 Updated July 29, 2005

City	Ban sale	Community license only	Ban sale and importation	Ban possession	Package store license only	Vote Tally	Election date	Certification date	Effective date
Tanacross*				1		32-5	05-17-88	05-31-88	06-01-88
Tanana		1				90-15	01-12-82	01-13-82	02-01-82
Takotna	1					22-8	08-24-99	09-09-99	12-08-99
Tatitlek*			1			28-15	08-23-83	09-13-83	12-09-99
Teller	1					55-41	11-13-97	11-14-97	01-14-98
Tetlin*			1			54-7	12-07-82	12-22-82	01-01-83
Togiak			1			96-23	05-03-82	05-04-82	06-01-82
Togiak				1		80-38	10-07-86	10-31-86	11-01-86
Toksook Bay			1			78-32	11-23-81	11-23-81	12-01-81
Tuluksak			1			61-16	10-05-82	10-05-82	11-01-82
Tuluksak				1		55-12	04-12-94	04-25-94	05-01-94
Tuntutuliak			1			47-20	07-20-82	08-02-82	09-01-82
Tuntutuliak				1		41-22	10-06-87	10-28-87	11-01-87
Tununak			1			90-11	08-12-81	08-13-81	09-01-81
Twin Hills			1			13-5	03-14-00	03-30-00	04-01-00
Twin Hills				1		13-5	03-14-00	03-30-00	05-30-00
Unalakleet	1					121-40	04-14-92	04-16-92	05-01-92
Upper Kalskag			1			38-30	01-20-93	02-22-93	03-01-93
Wainwright			1			61-42	07-08-82	07-14-82	08-01-82
Wales			1			29-21	08-14-81	08-17-81	09-01-81
TOTALS	20	4	77	32	3				

CHANGES THIS UPDATE:

Kokhranok voted to ban sale **effective August 1, 2005**.
 This is a change relaxing the previous restrictions against sale & importation.

This schedule is continuously updated as dictated by ongoing elections. If you have any questions, please do not hesitate to call the ABC Board office at 907-269-0350.

SB

216

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 1/9/06

FURTHER: Finance

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered

SENATE BILL NO. 216

SB 216 BAIL RESTRICTIONS

"An Act relating to bail."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
SCS House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

NEW FISCAL NOTE(S):

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	NO REC	AMEND
<i>[Signature]</i>	X			
<i>[Signature]</i>	X			
<i>[Signature]</i>	X			
<i>[Signature]</i>	X			
CHAIR: <i>[Signature]</i>	✓			

ALASKA STATE SENATE



Session:
State Capitol
Juneau, Alaska 99801-1182
(907) 465-2327
(907) 465-5241 Fax

Interim:
119 N. Cushman, Suite 201
Fairbanks, Alaska 99701
(907) 456-8161
Senator_Ralph_Seekins@legis.state.ak.us

SENATE JUDICIARY COMMITTEE

Senator Ralph Seekins, Chairman

To: Kirsten Waid, Senate Secretary

From: Brian E. Hove, Judiciary Committee Aide

Date: March 2, 2006

Re: SB 216 Replacement

A handwritten signature in black ink, appearing to be "B. Hove".

On March 1, 2006, the Senate Judiciary Committee passed out an amended version of Senate Bill 216. It has come to my attention that the "I" version of this bill submitted to the Senate Secretary for further referral is incorrect. The correct version has been received from our Legal department and carries the "L" identifier. I apologize for any inconvenience this has created. Thank you for your assistance with this matter.

AMENDMENT

#2

OFFERED IN THE SENATE

TO: CSSB 216(), Draft Version "F"

Adopted

BY SENATOR FRENCH

1 Page 1, lines 3 - 4:

2 Delete all material and insert:

3 **** Section 1.** AS 11.56.310(a) is amended to read:

4 (a) One commits the crime of escape in the second degree if, without lawful
5 authority, one

6 (1) removes oneself from

7 (A) a correctional facility while under official detention;

8 (B) official detention for a felony or for extradition; or

9 (C) official detention and, during the escape or at any time
10 before being restored to official detention, one possesses on or about oneself a
11 firearm;

12 (2) violates AS 11.56.335 or 11.56.340 [AS 11.56.340] and, during the
13 time of the unlawful evasion or at any time before being restored to official detention,
14 one possesses on or about oneself a firearm; or

15 (3) removes, tampers with, or disables the electronic monitoring
16 equipment, or leaves one's residence or other place designated by the commissioner of
17 corrections for the service by electronic monitoring of official detention for a felony.

18 *** Sec. 2.** AS 11.56.320(a) is amended to read:

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

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

23 (2) violates AS 11.56.335 or 11.56.340 [AS 11.56.340] and leaves or

1 attempts to leave the state.

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

3 **Sec. 11.56.335. Unlawful evasion in the first degree.** (a) A person commits
4 the crime of unlawful evasion in the first degree if, while charged with or convicted of
5 a felony,

6 (1) the person fails to return to official detention within the time
7 authorized following temporary leave granted for a specific purpose or limited period,
8 including leave granted under AS 33.30.181; or

9 (2) while on furlough under AS 33.30.101 - 33.30.131, the person fails
10 to return to the place of confinement or residence within the time authorized by those
11 having direct supervision.

12 (b) Unlawful evasion is a class C felony.

13 * **Sec. 4.** AS 11.56.340(a) is amended to read:

14 (a) A person commits the crime of unlawful evasion in the second degree if,
15 while charged with or convicted of a [FELONY OR A] misdemeanor,

16 (1) the person fails to return to official detention within the time
17 authorized following temporary leave granted for a specific purpose or limited period,
18 including leave granted under AS 33.30.181; or

19 (2) while on furlough under AS 33.30.101 - 33.30.131, the person fails
20 to return to the place of confinement or residence within the time authorized by those
21 having direct supervision."

22

23 Renumber the following bill sections accordingly.

24

25 Page 1, following line 12:

26 Insert a new bill section to read:

27 ** **Sec. 6.** AS 33.30.141(b) is amended to read:

28 (b) The failure of a prisoner on a furlough to return to the place of
29 confinement or residence within the time specified by those having direct supervision
30 over the prisoner is an unlawful evasion under AS 11.56.335 or 11.56.340
31 [AS 11.56.340]."

1 Renumber the following bill section accordingly.

ALASKA STATE LEGISLATURE

Senate District H
600 E. Railroad Avenue
Wasilla AK 99654
907-376-4866
907-373-4724 – Fax
Senator_Charlie_Huggins@legis.state.ak.us



State Capitol, Room 417
Juneau AK 99801-1182
907-465-3878
Fax: 907-465-3265
800-862-3878
www.akrepublicans.org/huggins/

Charlie Huggins
Senator

Senate Bill No. 216

Sponsor Statement

"An Act Relating to bail, temporary release, and unlawful evasion."

Currently, there are loopholes in our judicial system that have unfortunately been taken advantage of by harmful individuals. A prime example of this exploitation occurred on Oct. 13, 2005, when a Mat-Su Valley judge released a man with five felony charges pending against him, including burglary, kidnapping and assault. The accused individual had already been denied affordable bail, had escaped from a temporary release as a minor and was, without a doubt, a flight risk on October 13, 2005. On October 14, 2005, the accused escaped from his mother's custody while attending his father's funeral. When he was captured several weeks later, he was baby-sitting a child while in possession of two stolen handguns. Senate Bill 216 will fix the loopholes in our judicial system that make escapes possible, such as the one described.

Senate Bill 216 amends AS 11.56.340 by classifying an unlawful evasion as a felony. Currently, unlawful evasion is only classified as a misdemeanor.

Senate Bill 216 also amends AS 12.30.010 to disallow temporary and periodic releases. Temporary and periodic releases are neither necessary, nor are they favored in the Correction system. These releases simply provide the means to potentially put our families and neighbors at risk by these individuals who have already been denied affordable bail because of flight risk assessment.

The previously described case is not the only example of an escape from temporary release. In fact, during the same month October 2005, three other people also escaped while on temporary release. This is a very costly burden for the State of Alaska, but more importantly, it can lead to serious and potentially harmful risks for the residents of Alaska.

This bill will help ensure the safety of our property, our neighbors, and our children.

Contact: Josh Tempel
Staff to Senator Charlie Huggins
465-3878

Version 24-LS1300\F
Work Draft

24-LS1300F
Luckhaupt
2/13/06



CS FOR SENATE BILL NO. 216()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

[Handwritten signature]
Adopted

BY

Offered:
Referred:

Sponsor(s): SENATORS HUGGINS AND GREEN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to bail and unlawful evasion."

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

3 * Section 1. AS 11.56.340(b) is amended to read:

4 (b) Unlawful evasion is a class C felony [A MISDEMEANOR].

5 * Sec. 2. AS 12.30.010 is amended to read:

6 Sec. 12.30.010. Bail before or after conviction. The defendant in a criminal
7 proceeding is entitled to be admitted to bail before conviction as a matter of right if the
8 alleged victim can be reasonably protected through the imposition of bail and
9 conditions of release. The defendant in a criminal case may be admitted to bail
10 after conviction only as permitted under AS 12.30.040. However, nothing in this
11 chapter allows a court to order a defendant to be released temporarily or
12 periodically, either before trial or after conviction.

13 * Sec. 3. AS 12.30.020(b)(3) is repealed.

SENATE BILL NO. 216

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY SENATORS HUGGINS AND GREEN

Introduced: 1/9/06

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to bail."

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

3 * Section 1. AS 12.30.010 is amended to read:

4 Sec. 12.30.010. Bail before or after conviction. The defendant in a criminal
5 proceeding is entitled to be admitted to bail before conviction as a matter of right if the
6 alleged victim can be reasonably protected through the imposition of bail and
7 conditions of release. The defendant in a criminal case may be admitted to bail
8 after conviction only as permitted under AS 12.30.040. However, nothing in this
9 chapter allows a court to order a defendant to be released temporarily or
10 periodically, either before trial or after conviction.

11 * Sec. 2. AS 12.30.020(b)(3) is repealed.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB216
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
 Title "An act relating to bail restrictions." RDU Institutional Facilities
 Component Institution Director's Office
 Sponsor Senator Huggine & Green
 Requester Judiciary, Finance Component No. 524

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

The Department of Corrections does not anticipate a significant fiscal impact due to the passage of this legislation.

Prepared by: Sharleen Griffin, Acting Director Phone 465-3339
 Division Administrative Services Date/Time 2/27/06 4:26 PM
 Approved by: Portia C.K. Parker, Deputy Commissioner Date 2/27/2006
 Agency Department of Corrections

Karen Sawyer

From: jaime chew [j4chew@mtaonline.net]
Sent: Friday, October 21, 2005 7:39 AM
To: Sen. Charlie Huggins; Rep. Mark Neuman
Subject: Palmer District court
Follow Up Flag: Follow up
Flag Status: Red

Mr. Huggins & Mr. Neuman-

I am writing as an appalled citizen of the Big Lake community. After discovering Sunday that there was a violent criminal "on the loose" after cutting his ankle bracelet while allowed out of custody to attend his father's memorial service, I am stunned, shocked, and scared. I moved to the "valley" 5 years ago and since I have seen repeated failures by the Palmer District Court and the prosecutors' office. However until recently I have not been angered enough to take action. This inaction must stop!

The true "story" is not that John Pearl Smith escaped, he was allowed to leave. Judge Beverly Cutler allowed a dangerous criminal, accused of many offenses involving a gun, out of custody of the department of corrections. Despite Smith's history of attempted escape, and apparently he was successful at escaping as a juvenile where he remained "at large" for 3 days after beating up a guard, Cutler allowed him to attend the memorial without any guards, shackles, or search of his person, all typical requirements by the Department of Corrections as stated in their policies. The policies in place are for just this situation, why were the policies not enforced?

The prosecutors' office said *"the court did a very fine job in narrowing what he could do, and showing a level of mercy that I think the average citizen wants our court system to show."* Richard Payne, assistant D.A, didn't know why the court didn't have a corrections officer, rather than a family member, escort Smith. Isn't it his job to know why, or to at least request that guards accompany this dangerous man? Where was the representation for the people of the State of Alaska in that courtroom? The prosecutors' office didn't represent the people of the state of Alaska because they are so far out of touch with what the "average citizen" expects from their judges and prosecutors' that they believe they did the right thing despite the results of an online poll by the frontiersman where only 3% agreed with the decision.

Continually the courts and prosecutors within the Palmer District Court system, fail to make the safe and responsible decisions. We have yet to hear any comment from Beverly Cutler, who was appointed in the early 80's, as to why she did not follow the policies in place. How do we hold her accountable? As "the average citizen" I feel that the justice system seems so large, too large to battle alone, I am asking your help to bring attention to this matter. I have discussed this issue with a prosecutor and senior officers with the State Troopers and they have all agreed it is their opinion that this would not have been allowed to happen in Anchorage. Anchorage judges continually hold their defendants to a higher standard. Why? Are the people living in Anchorage more deserving of protection? Are the people of "valley" just more.... "Valley trash"?

I am a mother of 2 small children, a wife, a business owner, a volunteer and a scared citizen of the Mat-Su valley. Our area has grown over the last 5 years that I have lived here, can our justice system grow with it? The people of our community deserve the same standard that Anchorage citizens are entitled to, in fact the people of our community are the same people that were living in Anchorage 5 years ago. Again, the area is growing, let our ideas and our judicial system's outlook evolve with it. Would you please let me know how you feel in regards to this issue, where can we take this matter for attention, as only the Anchorage daily news has covered this part of the story? I look forward to your response.

Jaime Chew

TMCALASKA, INC.
(907)892-3500

Shalese M. Primrose

6029 Debarr Road, Apt. 202, Anchorage, AK 99504
(907) 440-0314 cell or (907) 258-7555 work

District Attorney's Office
Attn: Suzanne Powell
11921 Palmer Wasilla Highway
Suite 100
Palmer, AK 99645

RECEIVED

OCT 31 2005

RE: CASE NO. 3PA-05-02346CR & 3AN-04-04465CR

Department of Corrections
Commissioner's Office

October 24, 2005

To Whom It May Concern:

I have contacted the following agencies in connection to a person who is out on third party and out of compliance with the Dept. of Corrections for more than two weeks. I believe he was released on Friday, October 14, 2005 or Friday, October 7, 2005 from the Mat-Su Pretrial Facility in Palmer.

Anchorage Police Department (referred by APD to Alaska Court System)

Magistrate's Office at the Alaska Court System (left Mike's whereabouts on the answering machine since no one answers that line - upon calling back a few days later I was told that I had to contact the Prosecutor's office)

Municipal Prosecutor's Office in Anchorage (MPA's office referred me to Palmer DA's office)

District Attorney's Office in Palmer, Alaska (DA's office told me I have to wait a week to speak with a paralegal that is out on leave - week of 10/17/05)

MADD in Anchorage (MADD told me the Alaska State Troopers would probably be very responsive 10/24/05)

Alaska State Troopers (told me they wouldn't do anything if there isn't a warrant which means there apparently isn't one since they told me they didn't need any information from me as of 10/24/05)

Mike was out of jail on a third-party pass to get a drug rehabilitation evaluation when he ran from his third-party custodian (his sister, who *did* report that he took off on her). He is now staying with his girlfriend, Donna Susook at 1731 Beaver Street in Anchorage, AK. Donna works for Joann Fabrics in the Northway Mall at night. Her home phone number is: 332-1781.

I drove past the place where Mike is staying to write down the license plate numbers of the vehicles that belong to him. I have personally witnessed him driving a burgundy minivan with wood paneling (he passed me driving this vehicle three times in one day), although I was unable to get the license plate number since he is always driving it. I will attempt to obtain that license number without bringing attention to myself in the process. The blue and white Chevy Blazer that is in the driveway at that location has a license plate number of: DXZ-997. These vehicles are probably registered still under the previous owner or his sister's name: Christina Osness. He also has other cars on his property in Big Lake, including a Chevelle.

Nobody seems concerned that Mike is out driving or that he ran from the law. I personally don't want him anywhere near me or our child. My three-year-old is afraid of him and I also understand that he has physically threatened his 15-year-old son who consequently ran away from home. Since I personally know him and many mutual friends, I know that Mike is doing

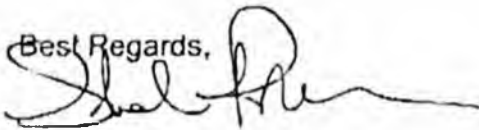
drugs and drinking and it will be no time at all (if it isn't happening already) until he is on the road drinking again. Michael J. Osness (born 7/16/70) was incarcerated for his third DWI and other offenses that he was out of compliance with including driving while license suspended. When he was last arrested he was already under an agreement to turn himself in November 1st to take care of time he had left to serve on a previous conviction.

I do not wish to have my name mentioned in relation to his arrest when the warrant is issued for him, because I fear retaliation on his part. He threatened me many times when I filed for child support and it is obvious that he doesn't care about anyone but himself; and never will. I reopened my child support case while he was incarcerated, hoping that the state can eventually seize his assets since it is not his intention to provide financial or emotional parenting. I live in a security building and do not wish to have any trouble. I supported Mike's rehabilitation and his goals for almost 4 years, but when drugs and alcohol became too oppressive in our relationship, and his behavior became more violent, I broke things off.

I previously wrote positive letters into the Department of Corrections on his behalf since he had me convinced at the time that he was trying to change. Since then he threatened us, he hurt our two-year-old son, he put holes in the walls in my home, he broke every item of mine that he could get his hands on and now he drives by us while we're walking our puppy like it's all in fun. I don't have a restraining order since I don't believe they are much help. I have a small sense of security living in a security building and there are 24-hour security patrols as well. All I can do is hope that Mike is picked up and during the time he is in jail can sober up enough to realize what deep-seeded problems he has. If not, it may be 3-5 years I do not have to worry about a run-in with him.

I am only hoping that I don't have to go any farther than this to get the State of Alaska to issue a warrant for Mike's arrest and swiftly resolve this matter.

Best Regards,



Shalese M. Primrose

CC: Anchorage Police Department, Attn: Warrants Department
MADD, Anchorage Office
Municipal Prosecutor's Office, Anchorage
Alaska State Troopers, Attn: Warrants Department
Dept. of Corrections, Office of the Commissioner (Juneau & Anchorage)

adn.com

Anchorage Daily News

Print Page

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Escapee found in home east of Wasilla

BABY-SITTING: Police believe friends may have helped fugitive during flight.

By KYLE HOPKINS
Anchorage Daily News

(Published: October 23, 2005)

WASILLA -- Valley fugitive John Pearl Smith, who fled custody while attending a memorial service for his father, was caught Friday night while in possession of two stolen guns and baby-sitting a young boy at a house off Fairview Loop.

Investigators said they suspect Smith, a 19-year-old who cut the ankle monitor used to track him while he attended the Butte service on Oct. 14, eluded capture for a week with the help of friends and acquaintances. Smith, staring down at his cuffed hands, was arraigned Saturday in Palmer on charges of violating the conditions of his release and criminal mischief.

On the day of the service, he had been released by a judge into the custody of his mother for a few hours. He was then supposed to return to custody in the Mat-Su Pre-Trial Facility.

Instead, his mother says Smith ran while she was in the bathroom. Authorities said Saturday they aren't sure exactly what he's been up to, but he seemed well taken care of said trooper Vic Aye, a member of the Alaska Fugitive Task Force that captured Smith Friday.

"He got his food. He got showered," Aye said. "He was obviously staying with people."

Smith's mother, Christine Ace, said Saturday she's relieved to see her son back in custody. His escape upset the family, and Ace thinks police suspected her of aiding and abetting her son, which she denied.

"I'm just pissed off at him," she said.

Headed by the U.S. marshals, the fugitive task force is charged with hunting down criminals on the run. Members spent much of the last week interviewing more than 30 people in the Mat-Su, from the core area of Palmer and Wasilla to Trapper Creek, in search of Smith.

Aye said investigators suspected Smith was in the Butte or Pittman Road areas, but as part of their routine interviews Friday, they headed to the house of one of Smith's acquaintances at Michelle Lane, off Fairview Loop.

Near the house, about 8:30 p.m. Friday, they saw a small black pickup -- a vehicle they'd heard Smith might be using.



John Pearl Smith is arraigned Saturday in Palmer. Smith escaped a week ago after attending his father's memorial service. (Photo by EVAN R. STEINHAUSER / Anchorage Daily News)

Waiting in two unmarked cars, the task force called for backup, Aye said. Alaska state troopers and Wasilla police officers showed up, and about 9:30 p.m. one of the U.S. marshals talked to Smith over a loudspeaker: He was surrounded.

Aye said Smith surrendered peacefully after about 10 minutes.

"He claims he was going to turn himself in," Aye said. "But they all do. Every single one of them."

Troopers Sgt. Kathy Peterson, who took Smith's case when he first fled from custody, said the teenager when caught wore a black, hooded sweatshirt and blue jeans, his blond hair dyed black.

Inside the house, authorities found two stolen, semi-automatic handguns -- a 10 mm and .45-caliber. Also inside the home was an 8-year-old boy whom Smith was baby-sitting, Peterson said.

Investigators believe the boy lived in the home where Smith was found and may be the son of one of Smith's acquaintances.

Troopers continued sorting out details of the case Saturday afternoon, asking questions such as who actually owned the house, where exactly Smith got the handguns and who may have helped him.

Smith claimed he'd only been at the house a few hours, Aye said.

Peterson said anyone who aided Smith could face charges of hindering a prosecution, while Smith himself could be on the hook for gun theft.

This wouldn't be the first time Smith was accused of stealing weapons, or even the first time he's eluded his captors for days at a time.

Before he escaped last week, Smith was in the Mat-Su Pre-Trial Facility facing five separate felony cases, including burglary, robbery, vehicle theft, weapons misconduct and felony assault.

He escaped custody once before, at age 14. Accused of breaking into homes and snatching guns, Smith ran from authorities for three days after a court hearing in Palmer, troopers said in 2000.

He's now being charged with failure to meet the conditions of his release, rather than escape, because he was technically out on bond and not in custody for those few hours he attended his father's memorial service, Peterson said.

Though Department of Corrections policy sometimes requires escorts for inmates allowed on temporary leave, a Palmer Superior Court judge did not make that a requirement for Smith's release.

Aye, the task force investigator, said people asked him why that was all week, as Aye interviewed those who knew Smith and his criminal history.

"All of his friends say he was a powder keg waiting to go off," he said.

At noon Saturday, Ace stood outside her Palmer home wearing a blue sweater and blonde highlights in her short hair. Her keys hung from a ring peeking above the pocket of her jeans.

An hour later, her son was due to be arraigned in the nearby Palmer courthouse. Ace wasn't sure if she would go -- she'd been through this many times before, she said.

"He's deserving everything he gets," Ace said. She paused. "Doesn't mean I don't love him."

She grabbed cigarettes from the cab of a pickup and lit one in the driveway. Ace doesn't smoke in the house, she said. She talked about all the questions police asked over the past few days, and all the friends who called to say they'd been interviewed about John by investigators.

She took a quick drag from her cigarette. "Yup. Long week."

Contact reporter Kyle Hopkins at khopkins@adn.com or call 352-6710.

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SB

218

SENATE COMMITTEE REPORT First Committee of Referral

DATE: 1/9/06

FURTHER: Finance

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered

SENATE BILL NO. 218

SB 218 CRIMINAL SENTENCING AND POLYGRAPHS

"An Act relating to periodic polygraph examinations for sex offenders released on probation or parole and to sentencing for sex offenders and habitual criminals."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:
 Same Title
 New Title

SCS House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____


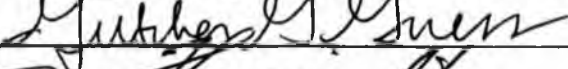
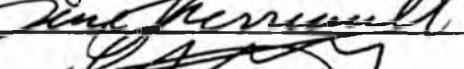

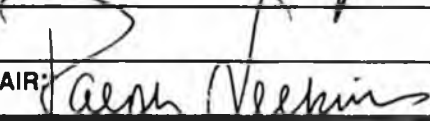
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
			X	
	✓			
				✓
				✓
CHAIR: 			X	

AMENDMENT #1

OFFERED IN THE SENATE

BY SENATOR GUESS

TO: CSSB 218(), Draft Version "I"

- 1 Page 7, line 18:
2 Delete "Act"
3 Insert "section"
4
5 Page 7, line 19:
6 Delete the second occurrence of "Act"
7 Insert "section"
8
9 Page 7, line 20:
10 Delete all material and insert:
11 **** Sec. 9.** Sections 2 and 7 of this Act take effect July 1, 2007.
12 *** Sec. 10.** Except as provided in sec. 9 of this Act, this Act takes effect immediately under
13 AS 01.10.070(c)."

AMENDMENT #2

OFFERED IN THE SENATE

BY SENATOR GUESS

TO: CSSB 218(), Draft Version "I"

1 Page 1, line 3:

2 Delete the first occurrence of "and"

3 Insert "; relating to sexual abuse of a minor; relating"

4

5 Page 1, following line 5:

6 Insert a new bill section to read:

7 **** Section 1.** AS 11.41.436(a) is amended to read:

8 (a) An offender commits the crime of sexual abuse of a minor in the second
9 degree if,

10 (1) being 16 years of age or older, the offender engages in sexual
11 penetration with a person who is 13, 14, or 15 years of age and at least three years
12 younger than the offender, or aids, induces, causes, or encourages a person who is 13,
13 14, or 15 years of age and at least three years younger than the offender to engage in
14 sexual penetration with another person;

15 (2) being 16 years of age or older, the offender engages in sexual
16 contact with a person who is under 13 years of age or aids, induces, causes, or
17 encourages a person under 13 years of age to engage in sexual contact with another
18 person;

19 (3) being 18 years of age or older, the offender engages in sexual
20 contact with a person who is under 18 years of age, and the offender is the victim's
21 natural parent, stepparent, adopted parent, or legal guardian;

22 (4) being 16 years of age or older, the offender aids, induces, causes,
23 or encourages a person who is under 16 years of age to engage in conduct described in

1 AS 11.41.455(a),(2) - (6); [OR]

2 (5) being 18 years of age or older, the offender engages in sexual
3 contact with a person who is under 16 years of age, and

4 (A) the victim at the time of the offense is residing in the same
5 household as the offender and the offender has authority over the victim; or

6 (B) the offender occupies a position of authority in relation to
7 the victim;

8 (6) being 18 years of age or older, the offender engages in sexual
9 penetration with a person who is 16 or 17 years of age and at least three years
10 younger than the offender, and the offender occupies a position of authority in
11 relation to the victim; or

12 (7) being under 16 years of age, the offender engages in sexual
13 penetration with a person who is under 13 years of age and at least three years
14 younger than the offender."

15

16 Page 1, line 6:

17 Delete "Section 1"

18 Insert "Sec. 2"

19

20 Renumber the following bill sections accordingly.

21

22 Page 7, following line 14:

23 Insert a new bill section to read:

24 "* Sec. 9. AS 11.41.438(a)(2) and 11.41.438(a)(3) are repealed."

25

26 Renumber the following bill sections accordingly.

27

28 Page 7, line 17:

29 Delete "Sections 3 - 6"

30 Insert "Sections 1, 2, 4 - 7, and 9"

31

- 1 Page 7, line 18:
- 2 Delete "secs. 3 and 5"
- 3 Insert "secs. 4 and 6"



Alaska State Legislature
Senator Con Bunde
Senate District P

Vice Chair: Senate Finance Committee
Chair: Senate Labor & Commerce Committee

Sponsor Statement for SB 218

"An Act relating to periodic polygraph examinations for sex offenders released on probation or parole and to sentencing for sex offenders and habitual criminals."

Senate Bill 218 increases sentencing times for the most egregious Unclassified and Class A sexual felonies to a minimum sentence of 25 years. It also restructures and increases the sentencing for Class B and Class C sexual offences. SB 218 requires periodic polygraph testing for sex offenders on probation and implements needed changes in sex offender registering and reporting. This bill is necessary not only to ensure Alaska is part of the national effort to curb sexual abuse and violence against children, but also to combat our ever-increasing sexual assault rates in this state.

According to the Federal Bureau of Investigation (FBI) Uniform Crime Report (UCR), *Alaska has the highest per capita rate of reported rapes* ("rapes" in this case refer to child sexual abuse as well as adult assaults). Alaska's per capita rape rate is nearly 71% greater than that of the next highest state.

To date, we have 4300 registered sex offenders in our Alaskan communities. However, sexual abuse reporting rates are low (16% of victims report the assault, *Kilpatrick Rape in America Report*, 1992) and arrest rates are also low (27% of reported sex crimes result in an arrest, Snyder, 2000). Thus, the number of sex offenders in Alaska is most likely significantly higher than 4300 individuals.

While there is no record of any sex offender treatment or therapy having significant effects on recidivism rates (SOTEP Report, 1995), there are steps we can take in this state to reduce sexual abuse and assault. Longer sentences work. By ensuring that the most dangerous offenders are kept away from our children, sexual assault numbers will eventually go down. Regular polygraph testing for all sexual offenders has also been proven to have an effect on sexual behavior. Supervision of sex offenders with polygraph tests led to a 69% compliance with probation requirements, while supervision without polygraph tests led to a 26% compliance rate (Abrams and Ogard, 1986). Requiring a probation period as part of a sentence, along with mandating regular polygraph tests will make our State safer.

This legislation is imperative to changing our position as the number one state in the nation for sexual assault and sexual abuse and providing a safer place for our residents. I urge your support.

AMENDMENT

OFFERED IN THE SENATE

BY

TO: SB 218

1 Page 1, line 2:

2 Delete the first occurrence of "and"

3 Insert "; relating to sexual abuse of a minor; and relating"

4

5 Page 1, following line 3:

6 Insert a new bill section to read:

7 **** Section 1.** AS 11.41.436(a) is amended to read:

8 (a) An offender commits the crime of sexual abuse of a minor in the second
9 degree if,

10 (1) being 16 years of age or older, the offender engages in sexual
11 penetration with a person who is 13, 14, or 15 years of age and at least three years
12 younger than the offender, or aids, induces, causes, or encourages a person who is 13,
13 14, or 15 years of age and at least three years younger than the offender to engage in
14 sexual penetration with another person;

15 (2) being 16 years of age or older, the offender engages in sexual
16 contact with a person who is under 13 years of age or aids, induces, causes, or
17 encourages a person under 13 years of age to engage in sexual contact with another
18 person;

19 (3) being 18 years of age or older, the offender engages in sexual
20 contact with a person who is under 18 years of age, and the offender is the victim's
21 natural parent, stepparent, adopted parent, or legal guardian;

22 (4) being 16 years of age or older, the offender aids, induces, causes,
23 or encourages a person who is under 16 years of age to engage in conduct described in

1 AS 11.41.455(a)(2) - (6): [OR]

2 (5) being 18 years of age or older, the offender engages in sexual
3 contact with a person who is under 16 years of age, and

4 (A) the victim at the time of the offense is residing in the same
5 household as the offender and the offender has authority over the victim; or

6 (B) the offender occupies a position of authority in relation to
7 the victim;

8 (6) being 18 years of age or older, the offender engages in sexual
9 penetration with a person who is 16 or 17 years of age and at least three years
10 younger than the offender, and the offender occupies a position of authority in
11 relation to the victim; or

12 (7) being under 16 years of age, the offender engages in sexual
13 penetration with a person who is under 13 years of age and at least three years
14 younger than the offender."

15

16 Page 1, line 4:

17 Delete "Section 1"

18 Insert "Sec. 2"

19

20 Renumber the following bill sections accordingly

21

22 Page 6, following line 21:

23 Insert a new bill section to read:

24 "* Sec. 7. AS 11.41.438(a)(2) and 11.41.438(a)(3) are repealed."

25

26 Renumber the following bill section accordingly

27

28 Page 6, line 24:

29 Delete "Section 2 of this Act applies"

30 Insert "Sections 1 and 3 of this Act apply"

31

- 1 Page 6, line 25:
- 2 Delete "sec. 2"
- 3 Insert "sec. 3"

24-LS1307V
Luckhaupt
1/17/06

CS FOR SENATE BILL NO. 218()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS BUNDE, Guess, Dyson, Elton, Kookesh, Green, Olson, Hoffman

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to sex offenders; relating to reporting of sex offenders and child**
2 **kidnappers; relating to periodic polygraph examinations for sex offenders released on**
3 **probation or parole and to sentencing for sex offenders and habitual criminals; and**
4 **providing for an effective date."**

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

6 *** Section 1. AS 11.56 is amended by adding a new section to read:**

7 **Sec. 11.56.767. Failure to report sex offender or child kidnapper. (a) A**
8 **person commits the crime of failure to report a sex offender or child kidnapper if the**
9 **person**

10 **(1) recklessly disregards the fact that a sex offender or child kidnapper**
11 **has not complied with the requirements of AS 11.56.840; and**

12 **(2) knowingly fails to report the location of that sex offender or child**
13 **kidnapper to the Department of Public Safety.**

14 **(b) Failure to report a sex offender or child kidnapper is a class C felony.**