

FELONY DEFINITION

A White Paper

Prepared  
for  
Records and Identification Section  
Division of Administrative Services  
Alaska Department of Public Safety  
State of Alaska

By  
Lisa Rieger

Justice Center  
University of Alaska Anchorage

February 1, 1991

JC # 9115

The central repository for criminal history records in the state of Alaska, the Alaska Public Safety Information Network (APSIN), currently does not show whether a conviction is for a felony or misdemeanor. APSIN is an online criminal justice information system which supports over 2000 users statewide, including all state and many federal criminal justice agencies. The APSIN interfaces with NCIC (National Crime Information Center) and NLETS (National Law Enforcement Telecommunications System) enable Alaska to routinely exchange criminal history information with criminal justice agencies in other states for law enforcement purposes.

The Alaska Department of Public Safety (DPS) recognizes a need to improve the quality and timeliness of criminal history records. As part of a larger project to achieve these improvements, the Records and Information Section intends to upgrade APSIN by creating a program which will provide a felony indicator for conviction offenses. The felony indicator will contribute to accurate and complete criminal history record information by automatically distinguishing categories of offenders. This change will establish APSIN's capacity to provide a list of felons to federal, state and local criminal justice users. In the near term, felony indicators will increase the information content and usability of Alaska's Interstate Identification Index (I.I.I.) responses, support and streamline authorized employment applicant checks, and provide better intelligence to field officers making routine citizen stops. In the longer term, felony indicators will support Alaska's participation in any congressionally mandated system for the immediate and accurate identification of felons who attempt to purchase firearms.

## I. DEFINING FELONY

The threshold problem involved in developing a felony indicator capability for APSIN is the need to establish an operational definition of a felony compatible with both the Alaska statutes and current APSIN data fields. APSIN does not include information which conclusively determines whether or not a particular conviction was for a felony offense because: 1) APSIN does not include reference to the statute violated, which would facilitate a felony designation in most cases; 2) APSIN uses the NCIC codes (see discussion below), which do not always correspond to Alaska statute descriptions for conviction charge codes; 3) no system exists for the translation of Alaska Statutes into NCIC codes; and 4) the court system does not provide felony/misdemeanor distinctions on the judgment form sent to the Department of Public Safety for entry into APSIN. Despite these problems, a working definition of felony must accommodate the idiosyncrasies of the APSIN mechanized data system.

A workable definition of "felony" can be based on the historical definition of the term. At common law there were seven felonies: treason, murder, mayhem, rape, burglary, arson, and robbery. (Some lists also include manslaughter and larceny.) While these felonies became the basis for defining modern felonies, the list and description of felonious crimes has lengthened with the passage of time and the increased complexity of modern society.

*Black's Law Dictionary* defines felony:

A crime of a graver or more serious nature than those designated as misdemeanors; e.g. aggravated assault (felony) as contrasted with simple assault (misdemeanor). Under federal law, and many state statutes, any offense punishable by death or imprisonment for a term exceeding one year. 18 U.S.C.A. 1....

At common law, an offense occasioning total forfeiture of either land or goods to which capital or other punishment might be superadded according to degree of guilt. At early common law the term was applied to describe the more serious offenses cognizable in the royal courts, conviction for which entailed forfeiture of life, limb and chattels and escheat of lands to

the felon's lord after a year and a day in the king's hands. Subsequently, however, the classification was so greatly enlarged that many offenses not involving moral turpitude were included therein....This term meant originally the state of having forfeited lands and goods to the crown upon the conviction for certain offenses, and then, by transition, any offense upon conviction for which such forfeiture followed, in addition to capital or any other punishment prescribed by law; as distinguished from a "misdemeanor," upon conviction for which no forfeiture followed. In feudal law, the term meant an act or offense on the part of the vassal, which cost him his fee, or in consequence of which his fee fell into the hands of his lord....

As can be seen from the *Black's* definition, the nature of the punishment historically has distinguished felonies from misdemeanors as much as the nature of the offense itself. The Alaska Statutes reflect this distinction, specifically providing that "*felony* means a crime for which a sentence of imprisonment for a term of more than one year is authorized." (AS 11.81.900 (b)(19))

The Alaska definition corresponds to the U.S. Attorney General's recommendations to Congress in November 1989 following the federal Task Force on Felon Identification in Firearms Sales. As a result of recommendations by the Task Force, the FBI promulgated standards for the voluntary reporting of convicted felons. These federal guidelines issued by the FBI suggest that where an offense is not specifically defined as a felony by statute, it may be "classified as a felony by reference to either a place of imprisonment, the duration of imprisonment, or both." The guidelines further recommend that where the term felony is neither used nor defined by state statute, the state "should identify those offenses which are punishable by imprisonment in any state penal institution or those for which a sentence of imprisonment in excess of one year is authorized." *Standards for Voluntary Reporting of Felons, FBI*. Most of Alaska's statutes define the offense as a felony or misdemeanor. Because nearly all correctional facilities in Alaska are state institutions, and the place of imprisonment does not appear on APSIN, the place of imprisonment cannot be used to identify felonies.

## II. AVAILABLE OPTIONS

Since it is deemed impractical to expand the data entry requirements of other justice agencies, the operational definition of felony must be derived from the criminal history information routinely entered into APSIN. The APSIN CHRI update fields include the following components (see Appendix 1):

- name
- AST (Alaska State Trooper) number
- FP (fingerprints) on File
- FBI number
- arrest agency
- arrest date
- original charge
- conviction court
- conviction charge
- conviction date
- court docket
- positive identification
- disposition
- conditions
- sentence:
  - years
  - days
  - amount (of fine)
  - completed (SIS)
  - date

For the purposes of this project, any definition of felony must use only those elements in the update field. The Alaska statutes and their subsections, which provide the most exact reference for felony definition purposes, are a noteworthy absence in the above. Since the purpose of the felony indicator is to identify “convicted” felons, the felony definition applies to conviction information only, and must therefore rely on the conviction court, conviction charge, or the sentence in order to distinguish felonies from misdemeanors. Because the conviction court,

conviction charge, and sentence appear in the APSIN information, these categories are the most salient for felony definition purposes.

### **Conviction court**

The conviction court appears as the letter “S” (Superior) or “D” (District) or “M” (Magistrate) in front of the city code. Thus, all cases arising in superior court can be distinguished from those arising in district court. Most convictions in superior court are felonies, and most in district court are misdemeanors. The magistrate courts have limited jurisdiction in some district court matters. However, a substantial amount of overlap occurs, and the correspondence between the court and the level of conviction varies from region to region within the state.

### **Conviction charge**

APSIN uses NCIC offense codes to indicate the arrest and conviction offense. The NCIC codes are used in reporting crime nationally, and include federal offenses in addition to general descriptive codes for state offenses. The use of NCIC codes is a problem because many states’ statutes, including Alaska’s, describe behavior that does not fit neatly into the established NCIC codes or can be classified by more than one NCIC code. However, the majority of offenses can be easily identified as felonies or misdemeanors. This is especially true for offenses differentiated by degree, because each individual degree of offense has a separate NCIC code in APSIN (e.g., 1399A, for assault first degree; 1399B, for assault second degree). For purposes of this project, it is sufficient to isolate felonies, leaving misdemeanors and infractions unmarked. Some Alaska offenses do not correspond on a one-to-one basis with a felony or misdemeanor designation in connection with the NCIC codes (i.e., some property offenses, alcohol offenses, fraud, failure to appear, and attempted offenses), thus requiring further analysis of APSIN data to determine felony status.

## Sentence

The sentence field on APSIN contains the greatest amount of detail (as indicated above). Suspended Imposition of Sentence, probation, jail terms in years and/or days, amount of fine, completion of SIS and date of completion all appear. APSIN will clearly indicate those instances where an offender receives a jail sentence of a year or more.

### III. SUGGESTED DEFINITION

The preceding discussion demonstrates that it is not possible to fashion a simple definition of a felony for the purposes of establishing an indicator on APSIN. Therefore a multi-faceted definition is proposed. This definition will use the conviction charge by simply listing the majority of offenses, felonies which are clearly defined in APSIN by an NCIC code (see Appendix 2). These convictions will automatically be classified as felonies for felony indicator purposes. For offense codes which remain ambiguous, the length of sentence will be used to distinguish felonies from misdemeanors. This use of the one-year-plus incarceration rule as a flag in ambiguous cases follows the common law tradition, federal standards, and finds authorization in the Alaska Statutes themselves. In ambiguous cases where a Suspended Imposition of Sentence (SIS) occurs, and there may be no jail sentence, the convicting court information should be used as the last resort as a basis for assigning felony status.

#### IV. DISCUSSION

In general, APSIN entries for the category "conviction charge" correspond to the NCIC code for similar offenses. The Department of Public Safety also uses the 9000 series (a "free" series designated by NCIC for specific state offenses as defined by the user state) to more closely identify with Alaska statute titles. Although there is not a one-to-one correspondence between the codes and statute violations, the field can be narrowed by entering as felonies the vast majority of NCIC codes used to translate felony judgments from the court into APSIN. As mentioned above, the problem areas lie in some property offenses, fraud, alcohol offenses, and attempted offenses which depend upon a primary offense which can be either an A, B or C felony (e.g., an attempted first degree burglary is a C felony, whereas an attempted second degree burglary is a misdemeanor). For the designated offenses that remain ambiguous, the definition of felony should include cases for which the defendant is sentenced to more than one year of incarceration. This reference base provides the least chance of error in either direction and the greatest inclusion of felony convictions.

Consultation with Department of Public Safety data processing personnel reveals that the NCIC codes which appear as conviction offense in APSIN are generated from the word description contained on judgments sent from the court, not the statutory violations. In fact, the judgment form itself often does not include the statutory violations. For ambiguous cases, the felony designation often appears in the "Conditions" column on the update entry, as does the degree of the underlying offense in attempted offenses. NCIC provides a series of code numbers for categories of offenses (e.g., 2299 for burglary; 2202 for burglary of residence, forced). In these situations, the code entered in APSIN tends to be the most specific code available (often the 9000 series number given to the offense by DPS).

The greatest difficulty with the NCIC coding is that it is not systematized in any way, nor satisfactorily cross-referenced with the Alaska Statutes.

### Definite Felonies

By identifying the offense codes that correspond to felonies, the Department of Public Safety will guarantee that all serious felonies are caught by the felony indicator, while at the same time ensuring that misdemeanants who should not be "tagged" will not be. As discussed above, this is important not only to better regulate the federal issuance of gun permits, but also to provide a more refined database for delivery of all services by the Department of Public Safety.

Thus, the felony definition begins with the list of unambiguous NCIC entries for Alaska felony offenses:

- murder
- manslaughter
- sexual assault in the first, second and third degree
- sexual abuse of a minor in the first, second and third degree
- kidnapping
- robbery
- burglary
- assault in the first, second and third degree
- extortion
- coercion
- incest
- unlawful exploitation of a minor
- theft in the first and second degree
- arson
- criminal mischief in the first and second degree
- forgery in the first and second degree
- scheme to defraud
- falsifying business records
- commercial bribe receiving
- bribery
- perjury and perjury by inconsistent statements
- endangering the welfare of a minor
- escape in the first, second and third degrees
- promoting contraband in the first degree
- interference with official proceedings
- receiving a bribe by a witness or juror
- tampering with a witness in the first degree

- jury tampering
- misconduct by a juror
- tampering with physical evidence
- harming a police dog in the first degree
- hindering prosecution in the first degree
- terroristic threatening
- tampering with public records in the first degree
- riot
- distribution of child pornography
- misconduct involving weapons in the first degree
- promoting prostitution in the first and second degree
- promoting gambling in the first degree
- possession of gambling records in the first degree
- misconduct involving a controlled substance in the first, second, third, and fourth degrees
- manufacture or delivery of an imitation controlled substance
- possession of substance with intent to manufacture imitation controlled substance
- delivery of an imitation controlled substance to a minor
- advertisement to promote delivery of an imitation controlled substance
- felonies in relation to title, registration, identification number, and removal and representation of vehicles

As can be determined by assessing this list of offenses, the felonies about which an officer answering a call or a salesperson about to sell a gun would be most concerned clearly fall under this rubric. (See Appendix 2 for DPS listing of NCIC offense codes used for definite felony convictions.)

### **Ambiguous Offenses**

For the next group of offenses, those for which a violation can be either a felony or a misdemeanor, the analysis requires looking to the sentence portion of the APSIN update. Where a period of incarceration of 366 days or more is ordered, the offense is surely a felony rather than a misdemeanor. As discussed above, the one-year-or-more-incarceration rule provides a better definitional device than the sentencing court (i.e. district or superior court) because misdemeanor convictions may arise in both superior and district court. It may be possible to search the “conditions” field of the APSIN update to locate the notation of “felony” in some cases as well

(particularly in cases where a failure to appear or leaving the scene of an accident is the offense); however, the “conditions” field is unreliable as a search component because it is a “free text” field.

For example, failure to appear on a felony case is a felony, whereas failure to appear on a misdemeanor is only a misdemeanor. Concealment of merchandise, misapplication of property and defrauding creditors depend upon the amount concealed, misapplied or defrauded as to whether the offense is a felony or misdemeanor (over \$500 is a felony). In these instances, as well as those attempted offenses indicated below, an offender who receives a sentence of one year or more will be flagged as a felon for purposes of this project.

Problem areas in NCIC codes:

2605	Illegal use of credit card
2606	Insufficient funds—check
2607	Fraud, false statement
2901c	Malicious mischief, third degree
2902c	Malicious mischief, third degree
2903c	Malicious mischief, third degree
2904c	Malicious mischief, third degree
2905c	Malicious mischief, third degree
2906c	Malicious mischief, third degree
2999c	Malicious mischief, third degree
4101–4104	Alcohol offenses
4199	Alcohol offenses
4902	Flight to avoid
5015	Failure to Appear
5099	Obstructing
5210	Weapons license regulation violation
5214	Selling weapon
5401	Leaving the scene of an accident
9741	Concealment of merchandise
9745	Failure to return rental equipment
9786	Misapplication of property
9790	Defrauding creditors
9802	Removing identification marks

Attempted and solicited offenses: These offenses straddle A,B, and C felonies, and therefore can be felonies or misdemeanors, depending on the degree of the supporting offense (an attempted C felony is a misdemeanor):

	0999x	Homicide (criminally negligent)
	1199x	Sexual assault
1301x-1315x		Assault
	1399x	Assault
	2204x	Burglary
	2205x	Burglary
	2299x	Burglary
	2399x	Larceny
	2404x	Vehicle theft
	2501x	Forgery of checks
	2502x	Forgery misc
	2504x	Passing forged misc
	2508x	Possession of forgery or counterfeit tools
	2589x	Forgery
	2607x	Fraud/false statement
	2699x	Fraud
	2704x	Embezzlement
	2803x	Receiving stolen property
	2804x	Possessing stolen property
	2805x	Concealing stolen property
	2901x	Malicious mischief
	2902x	Malicious mischief
	2903x	Malicious mischief
	2904x	Damage to property
	2906x	Damage to property
	2999x	Damage to property
	3599x	Dangerous drugs
	3601x	Sexual assault/child/fondling
	4001x	Maintaining a house of prostitution
	4002x	Procuring for prostitution
	4099x	Commercial sex
	4901x	Escape
	5003x	Perjury/false statement
	5103x	Bribe receiving
	5401x	Leaving scene of accident
	9717x	Assault on police officer
	9700x	Manslaughter, other negligence
	9717x	Assault on a police officer
9737x-9740x		Theft offenses
9742x-9744x		Larceny
	9790x	Defrauding creditors

The following codes, while not clearly felony or misdemeanor, are not currently used in Alaska:

2301	Pickpocket
2302	Purse snatch no force
2303	Shoplifting
2312	Larceny interstate shipping (felony offense)
2503	Counterfeiting (felony offense)
2599	Counterfeiting (felony offense)
3916	Lottery running
3919	Sports tampering
3920	Transmitting wager information
4003	Homosexual prostitution

Attempts:

2599x	Counterfeiting
2705x	Embezzlement/postal
3901x	Bookmaking
3902x	Card game
3904x	Card game
3915x	Lottery operating
3999x	Gambling

### **Problem of the Suspended Imposition of Sentence**

The suspended imposition of sentence (SIS) in conjunction with probation poses another problem area. The successful completion of a suspended imposition of sentence results in the setting aside of the conviction. (AS 12.55.085 (d) and (e)) The APSIN update field contains a specific column for the notation of such a successful completion. If the suspended imposition of sentence is revoked because of a failure to satisfy the terms of the suspended imposition, then the subsequent sentence is entered accordingly. Someone who successfully completes an SIS should not be designated as a felon for purposes of this project, because the conviction is valid only to prevent a subsequent granting of an SIS. Furthermore, the Gun Control Act provides that a conviction which has been set aside does not apply for purposes of the Act (18 U.S.C. 921(a)(20)).

The SIS presents a problem in two ways. First, for the clearly categorized felonies, the conviction will be flagged regardless of whether the offender successfully completes the SIS and has his or her conviction set aside. For the unambiguous category, the trigger of the completion date of the SIS will suffice to remove the offense from the felony flag list. Second, for the ambiguous category of offenses, the one year incarceration factor will not differentiate the felony from the misdemeanor if no sentence is imposed. The statute does not permit SIS sentences for sexual offenses (including some misdemeanors), nor for any offense in which a gun is used (AS 12.55.085 (f)), thus alleviating some of the ambiguous areas (attempted assaults with use of a gun and attempted sexual assaults). For this ambiguous category, resort to the conviction court (superior or district) as an indicator of felony or misdemeanor when an SIS exists will resolve the problem. Thus, someone with an SIS for a designated or ambiguous felony will appropriately appear as a felon for the duration of the probationary period, but will be taken off the list as soon as he or she is discharged and the conviction is set aside.

## V. CONCLUSION

In spite of the inherent difficulties in creating a felony indicator on APSIN, a workable definition of felony for the purpose of this project has been developed. This definition accommodates the limitations of the APSIN mechanized data system by referring to the data fields currently available. The NCIC felony offense codes, used by DPS for the conviction offense category on APSIN, provide the first tier of the definition and capture most of the felonies appearing on APSIN. For the ambiguous NCIC offense codes, those which can be felonies or misdemeanors, the second tier of the definition relies upon the sentence category of APSIN to flag convictions for

which a sentence of a year or more is imposed by the court. In ambiguous cases involving SIS convictions, the conviction court will be used in the third tier of the definition; hence cases with SIS arising out of superior court will appear as felonies on the felony indicator even if no sentence is imposed.

## VI. FURTHER RECOMMENDATIONS

The options discussed in this paper apply to data already included in the APSIN system. For data acquired in the future, the simplest means of creating a felony flag in APSIN would be to add a “felony” category to the APSIN update field. The court judgment form would need to be modified to include a notation of “felony” or “misdemeanor” next to the conviction offense in appropriate cases. In this manner, the best source of the felony/misdemeanor distinction, the court, would determine the category of the conviction, which DPS data processing personnel could then enter into APSIN. This small adjustment in the forms sent by the court would alleviate any ambiguity as to whether or not a conviction is a felony or misdemeanor for those few convictions which can be both.

The lack of a systematized NCIC coding cross-referenced with Alaska statutes could be remedied by reducing the NCIC list to only those used in Alaska, excluding federal statutes (such as counterfeiting) and levels of specificity in offenses (such as burglary, non-residence, without force) that no longer apply to Alaska convictions, and further refining the list so that only one code section applies to any one offense. In order to do a sweep of all the past APSIN data, however, the definition must include all descriptions under which convictions will appear that antedate the Criminal Code Revision (effective in 1980).



**Appendix 2. Available from Alaska Department of Public Safety.**