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The Honorable Bob Lynn, Vice-Chair
House Judiciary Committee
Alaska State House of Representatives
State Capitol
Juneau, AK 99801
via email: Rep.Wes.Keller@akleg.gov
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**Re: House Bill 105 - Relating to the Increase of Value in the
Property Offense Grading System
ACLU Letter of Support**

Chair Keller, Vice-Chair Lynn:

Thank you for the opportunity to submit this Letter of Support for House Bill 105, relating to the increase in value requirement for grades of theft and other property offenses.

The American Civil Liberties Union of Alaska represents thousands of members and activists throughout the State of Alaska who seek to preserve and expand individual freedoms and civil liberties guaranteed under the United States and Alaska Constitutions. In that regard, we appreciate the opportunity to provide the Committee with information highlighting the importance of the proposed legislation. Further, we appreciate the Committee's consideration of this Bill and hope for its passage; and thank the Sponsor for its introduction.

We would be happy to work with you or the Committee to answer any questions you might have.

Background

Crucial to the Alaska criminal justice system – as with virtually any comparable criminal justice system – are an important set of laws that defend

public safety. Different offenses are graded differently, to recognize that some crimes are comparatively worse than others. Murder is recognized as inflicting greater harm than theft, thus the range of penalties – in terms of years of incarceration or supervision, or of fines – is greater than for a theft offense.

Within certain types of offenses, legislatures identify different grades of severity. Theft of very valuable items is categorized more seriously than items of low value. Stealing items of high value, such as a car or jewelry, is punished more severely than shoplifting a magazine or a pack of gum. Assaults that result in or risk very serious injuries (like stabbings) are punished more seriously than minor assaults (like punching someone once).

This system is both intuitive and widely accepted. Moreover, the grading scheme serves a very important purpose by helping to ensure relative uniformity and proportionality in sentencing. Grading offenses properly also helps deter people from committing more serious offenses. ***But, if a grading system stops tracking the relative moral seriousness of crimes, it detracts from the function of the justice system.*** Maintaining the integrity of the grading system is a basic public safety function.

Revision of the Property Offense Grading Statutes is Long-Overdue – 35 Years in the Making

HB 105 proposes to increase the values associated with various grades of property offenses. The most common standard used for differentiating between more and less serious thefts looks at the value of the items stolen. Generally, using value of the items stolen as the basis for grading makes sense; a person presented with the opportunity to steal something of great value may need a stronger penalty to deter him from taking it, than someone presented with the opportunity to steal something worth a few dollars. Further, the grading of theft offenses along the lines of value deters someone who has stolen something from stealing more money or more goods.

However, a hazard of using monetary value as the basis of grading is that – over time – inflation can negatively impact the utility of this grading system. The cost of goods in Alaska has changed dramatically over the last several decades. **Legislatures should frequently amend theft statutes to ensure that the grading of theft offenses continues to track the seriousness of the crime.**

Upon review of the theft statutes, it appears that the dollar values associated with the grading of most theft offenses has not changed *since 1978, when the current theft statutes were originally drafted.* For instance, the second-degree theft statute, AS 11.46.130, treats as a C felony the theft of anything valued at more than \$500 – which HB 105 would increase to \$1500. Legal records show that that AS 11.46.130 has been amended multiple times since its original passage in 1978: in 1988, 1989, 1992, 2001, 2005, and 2006. However, none of those amendments addressed inflation over those decades. A 1982 case refers to the \$500 minimum

standard for the grading of second-degree theft. *Williams v. State*, 648 P.2d 603, 605 n.1 (Alaska App. 1982).

Similarly, the third-degree theft statute currently makes theft of items worth more than fifty dollars a class A misdemeanor, a standard that the bill would increase to \$250. That grading provision has also not been adjusted for inflation since its passage in 1978. *See Lee v. State*, 673 P.2d 892, 894 n. 1 (Alaska App. 1983).

This change is long overdue. Five hundred dollars in 1978 is worth \$1760.69 in 2012 dollars, while fifty dollars in 1978 is worth \$176.07 in 2012 dollars.¹ In 1978, a gallon of unleaded gasoline cost about 67 cents. A stamp cost 15 cents. The ordinary American household took home about \$15,000 a year.

Someone charged with felony theft in 2012 for stealing something worth \$500 (such as a nice bicycle) would have only been stealing an item worth about \$150 in 1978, and an item worthy only of misdemeanor charges by that Legislature's reckoning.

Another example of a provision now badly out of date is that amended by section 10 of HB 105, which makes causing damage of more than \$500 to someone else's car a class C felony. AS 11.46.482. HB 105 would raise that amount to \$1500. Anyone who has recently taken a car to an auto body shop can say that even very minor damage to a car can run upwards of \$500. From 1978 to 2006, the average cost of a car rose from \$6,500 to \$20,000.² Over the passage of time, the criminal mischief provision has changed from one that makes destroying 8% of a new car's value a felony, to one that makes destroying 2.5% of that car's value a felony. The legislature must make periodic adjustments to the grading of criminal offenses within reasonable time periods.

This inflation-related discrepancy is very important, because the relative seriousness of felony theft has declined while the seriousness of other offenses not graded in monetary terms has stayed the same. While stealing a bicycle has effectively become a felony over the passage of time, theft of a firearm has retained the same grading. One would likely not argue that theft of a bicycle and theft of a firearm are equivalently serious offenses. As another example, a second-degree burglary is a Class C offense. Again, we likely would not contend that stealing a bicycle from an open place is comparable to breaking into a store after hours with the intent to commit a crime inside.

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¹ See Bureau of Labor Statistics, CPI Inflation Calculator, at <http://data.bls.gov/cgi-bin/cpicalc.pl>.

² Vehicles Technologies Office, U.S. Dep't of Energy, Average Price of a New Car, 1970-2006, at http://www1.eere.energy.gov/vehiclesandfuels/facts/2008_fotw520.html.

Standards in Other Pacific Region States

Other states have property offense laws which reflect much more lenient standards on monetary valuation.

California has two theft offenses:³ grand theft and petty theft. Grand theft includes any theft of property worth \$950 or more and is generally punishable by up to a year in jail. Cal. Penal Code §§ 487, 489. Petty theft is any theft under \$950 and is punishable by up to six months in jail. Cal. Penal Code §§ 488, 490.

In Oregon, theft of property worth more than \$1000 is a felony, subject to a maximum of five years of incarceration. Or. Rev. Stat. Ann. §§ 164.055, 161.625. Theft of more than \$100 is a class A misdemeanor, subject to a maximum of one year in jail. Or. Rev. Stat. Ann. §§ 164.045, 161.615. Theft of less than \$100 is a class C misdemeanor, subject to a maximum of 30 days incarceration. Or. Rev. Stat. Ann. §§ 164.043, 161.615.

In Washington State, thefts of property valued at more than \$5,000 are class B felonies, punishable by up to ten years of incarceration. Wash. Rev. Code Ann. §§ 9A.56.030, 9A.20.021. Theft of more than \$750 is a class C felony, punishable by up to five years in custody. Wash. Rev. Code Ann. §§ 9A.56.040, 9A.20.021. Theft of anything worth less than \$750 is a gross misdemeanor, punishable by a year in jail. Wash. Rev. Code Ann. §§ 9A.56.050, 9A.20.021.

Under current Alaska law, anyone stealing property worth more than \$25,000 is guilty of a class B felony and would be eligible for 10 years of incarceration. AS 11.46.120; AS 12.55.125. Anyone stealing property worth more than \$500 is guilty of a Class C felony and eligible for up to five years of incarceration. AS 11.46.130; AS 12.55.125. Anyone stealing property worth more than \$50 is guilty of a Class A misdemeanor and eligible for up to a year of incarceration. AS 11.46.140; AS 12.55.135. Anyone stealing property of any value is guilty of a Class B misdemeanor and eligible for up to a year of incarceration. AS 11.46.150; AS 12.55.135

This means that, under current Alaska law, someone stealing property worth \$500 is eligible for a longer sentence – five years – than he would be eligible for in any of the three states above: one year in Oregon and Washington, and six months in California. Theft of property worth \$50 in Alaska would make an offender eligible for a year in prison, the same as in Washington, while Oregon would set a 30-day maximum and California would allow only six months of incarceration.

³ All discussion of theft offense relates to their most general theft provision. Each state has its own unique grading policies and statutes, singling out special types of thefts (e.g., thefts of aircraft, animals etc.) or special offenders (e.g., offenders with multiple theft convictions) for special sentences. Exhaustively describing every single possible theft scenario in four different states would not be helpful to this body and require a longer memorandum.

The proposed changes in HB 105 will tend not only to account for inflation, but to bring Alaska law generally into line with other states in the region in terms of their punishment of property offenses.

A Suggested Further Provision to Ensure Prompt Future Inflation Adjustments

As the periodic adjustment of grading provisions for inflation is a necessary part of monetary based grading systems, the ACLU would suggest that the Legislature consider creation of a fixed mechanism for their review. The Legislature could designate some state employee, such as the Revisor of Statutes, to conduct a review every ten years (or some other reasonable period of time). Based on that review, a draft bill would adjust any provisions that rely on definite values expressed in dollars, for the index of inflation in the preceding decade. Our statutes would certainly benefit from a commitment by the Legislature to take steps to ensure that future inflation adjustments take place more frequently than every 35 years.

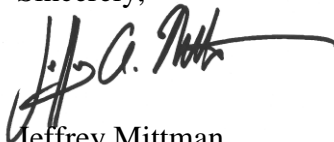
Conclusion

Again, we are pleased to support HB 105, and hope that the House Judiciary Committee will note the importance of reforming the grading of theft offenses as described therein. These changes are essential to maintaining a credible, rational justice system.

Please feel free to contact the undersigned should you require any additional information. Again, we are happy to reply to any questions that may arise either through written or verbal testimony, or to answer informally any questions which Members of the Committee may have.

Thank you again for the opportunity to express our support for HB 105.

Sincerely,



Jeffrey Mittman
Executive Director
ACLU of Alaska

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