

# Alaska Legislature

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### District 25

## ACJC-JRI RECOMMENDATION 7: UTILIZE INFLATION-ADJUSTED THRESHOLDS FOR PROPERTY OFFENSES

*The Alaska Criminal Justice Commission was asked by the Legislature to find safe ways of reducing the prison population. The Commission reviewed the state's laws, including those sanctioning nonviolent property crimes, looked at changes in sentences over time, other states' experience, and the relevant research, and developed the following in response.*

Most incarcerated property offenders have been charged with theft. For theft and for a few other types of property offenses such as criminal mischief, the offense classification and related penalties depends upon the value of the item taken or damaged, or the amount of the loss experienced by a victim. A "felony threshold" is the dollar amount that is used to determine whether a person is chargeable with a felony or misdemeanor classification. Alaska's felony property offense threshold is \$750.<sup>1</sup>

Thirty-one states have felony thresholds greater than Alaska. Twenty-nine states have thresholds at \$1,000 or more. Six states – all with lower costs-of-living than Alaska's – have felony thresholds at \$2000 or more. Texas now has a felony threshold of \$2,500.

After reviewing the research, the Commission recommends *increasing* the Alaska felony threshold amount to \$2,000. The reasons for the Commission's recommendation are:

- Alaska's felony property offense threshold has not kept pace with inflation. Originally set at \$500 in 1978, the equivalent value in today's dollars would be over \$1800. Thus, over time, Alaska's felony-theft laws have become more punitive, allowing the state to felonize more conduct than it did in the past. Less-serious thefts which were misdemeanors at the time the law was written would now be felonies.
- A logical consequence of the failure to adjust for inflation would be an upwards creep over time in the incarceration rate as less-serious thefts become felonies. This is wholly consistent with the data. Over the last decade, the number of property offenders admitted to prison has increased by 16%, driven in large part by a 56% growth in admissions for theft in the second degree (C Felony) offenders.

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<sup>1</sup> If the amount of the loss is \$750 up to \$25,000, the conduct is a class C felony which is punishable by a five-year maximum sentence.

- Thirty other States have raised felony theft thresholds since 2001 as a way to take inflation into account. Three states (Alabama, Colorado and Mississippi) have raised the threshold twice. Yet notably, there has been no impact on crime rates when states have acted to increase their felony thresholds. Long-term trends in property crime and larceny rates shows year-over-year fluctuations within many of the 23 states that raised their felony theft thresholds between 2001 and 2011. For all but four of the 23 states—Nevada, New Mexico, South Dakota, and Washington—property crime and larceny rates were lower in 2014 than in the year in which each state raised its threshold.
- The value of states’ felony theft thresholds is not correlated with property crime and larceny rates, whether the threshold is set at \$500, \$1,000, or \$2,000. Florida, for example, treats theft as a felony if the value of stolen money or goods exceeds \$300, but its property crime and larceny rates are considerably higher than those in Pennsylvania, where the threshold is \$2,000.
- Changes in state felony theft thresholds have not interrupted the long nationwide decline in property crime and larceny rates that began in the early 1990s. The U.S. property crime rate fell 36 percent from 1998 to 2014, the most recent year for which data are available.<sup>2</sup>
- The research also indicates that longer sentences - such as those resulting from felony penalties - have no effect on individual recidivism. It has also been reported that, among first-offenders, incarceration of any length may have only a negative criminogenic effect.

Recommendation 7 – urging that the felony threshold be increased from \$750 to \$2,000 – is appropriate because it is the dollar value that determines the applicable punishment, the conduct is in all instances nonviolent, the research does not suggest any adverse effects from making this adjustment, and the projected bed impacts are significant for reducing the incarcerated population.

This Recommendation is also consistent with the direction provided in SB 64 to consider “proportionality” in sentencing. Because the current statutory range of loss is so broad for class C felonies (\$750-25,000), the classification prescribes equivalent penalties for a theft of a cart of groceries – especially in a rural location - and that more sophisticated offense which involves a \$20,000 asset or item.

### **Which Property Offenses Would Not Be Effected**

This Recommendation to change the felony threshold does not reach robbery, nor burglary and felony trespass offenses. Nor does it alter the felony classifications for forgery, nor for first-degree criminal impersonation. Criminal impersonation in the first degree, a class B felony, punishes the use of another’s access device (including credit, debit or ATM cards) to either obtain a false ID or property no matter the value, if the result is to recklessly damage the financial reputation of the other person.

Also unaffected by this Recommendation are felony recidivist offenses in these categories. Those charged with vehicle theft who have a prior conviction are subject to class C felony charges, instead of class A misdemeanor charges. Those charged with a theft or concealment of merchandise at the class A misdemeanor level who have two priors will be instead facing class C felony penalties.

### **Why Indexing the Threshold is Consistent with Fiscal Austerity**

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<sup>2</sup> Experts attribute the nation’s sustained drop in crime rates to a host of factors, which include: better policing; better technology in surveillance and detection; the incarceration of certain repeat offenders; and more private security personnel.

The Commission also recommends that the thresholds for property offenses be indexed to the Consumer Price Index, allowing the level to be adjusted automatically. Given the limitations of a ninety-day legislative session, an automatic adjustment would help conserve the expensive resource of incarceration for the more serious crimes.