

1 IN THE SENATE

BY HUBER

2 SENATE BILL NO. 6

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act revising AS 11, Criminal Law; and providing
7 for an effective date."

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

9 * Section 1. AS 11 is amended by adding new chapters to read:

10 CHAPTER 7. GENERAL PROVISIONS.

11 Sec. 11.07.010. GENERAL PURPOSES. The provisions of this title
12 shall be construed in accordance with the following general purposes:

- 13 (1) proscribe and prevent the commission of criminal offenses
14 (2) define adequately the act and mental state which con-
15 stitute each offense, and limit the condemnation of conduct as criminal
16 when it is without fault;
17 (3) prescribe sentences which are proportionate to the
18 seriousness of offenses and which permit recognition of differences
19 in rehabilitation possibilities among individual offenders.

20 Sec. 11.07.015. PRINCIPLES OF CONSTRUCTION. The provisions of
21 this title shall be construed according to the fair import of their
22 terms but when the language is susceptible of differing constructions
23 it shall be interpreted to further the general purposes provided for in
24 sec. 10 of this chapter as well as the special purposes of the
25 particular provision involved.

26 Sec. 11.07.020. APPLICABILITY OF COMMON LAW. No conduct con-
27 stitutes an offense unless it is specified as an offense in this title
28 or in another statute of the state. However, this provision does not
29 affect the power of a court to punish for contempt or to employ any

1 sanction authorized by law for the enforcement of an order, civil
2 judgment, or decree.

3 Sec. 11.07.030. CIVIL REMEDIES PRESERVED. No provision of this
4 title bars, suspends, or otherwise affects any right or liability to
5 damages, penalty, forfeiture, or other remedy authorized by law to be
6 recovered or enforced in a civil action, for any conduct which a
7 provision of this title makes punishable; and the civil injury is not
8 merged in the offense.

9 Sec. 11.07.040. TERRITORIAL APPLICABILITY. (a) A person is
10 subject to prosecution in this state for an offense committed by his
11 own conduct or the conduct of another for which he is legally
12 accountable if

13 (1) either the conduct which is an element of the offense
14 or the result which is an element of the offense occurs within this
15 state; or

16 (2) conduct occurring outside this state intended to cause a
17 result within this state is sufficient to constitute an attempt to
18 commit an offense in this state; or

19 (3) conduct occurring outside this state is sufficient
20 to constitute a conspiracy to commit an offense within this
21 state and an overt act in furtherance of the conspiracy occurs within
22 this state; or

23 (4) conduct occurring within this state establishes
24 complicity in the commission of, or an attempt, solicitation or
25 conspiracy to commit, an offense in another jurisdiction which also
26 is an offense under this title; or

27 (5) the offense consists of the omission to perform a legal
28 duty imposed by the law of this state with respect to domicile,
29 residence or a relationship to a person, thing or transaction in this

1 state; or

2 (6) the offense is based on a statute of this state which
3 expressly prohibits conduct outside this state, when the conduct bears
4 a reasonable relation to a legitimate interest of this state and the
5 actor knows or should know that his conduct is likely to affect that
6 interest.

7 (b) Paragraph (a)(1) of this section does not apply when (1)
8 causing a specified result or (2) a purpose to cause or (3) danger of
9 causing the result is an element of an offense and the result occurs or
10 is designed or likely to occur only in another jurisdiction where the
11 conduct charged would not constitute an offense, unless a legislative
12 purpose plainly appears to declare the conduct criminal regardless of
13 the place of the result.

14 (c) Paragraph (a)(1) of this section does not apply when conduct
15 causing a particular result is an element of an offense and the result
16 is caused by conduct occurring outside this state which would not
17 constitute an offense if the result had occurred there, unless the actor
18 purposely or knowingly caused the result to occur within this state.

19 (d) When the offense is homicide, either the death of the victim
20 or the bodily impact causing death constitutes a "result", within the
21 meaning of (a)(1) of this section and if the body of a homicide victim
22 is found within this state, it is presumed that the result occurred
23 within this state.

24 Sec. 11.07.050. COMPUTATION OF TERM OF IMPRISONMENT AND STAY.

25 (a) When a person is sentenced to imprisonment, his term of confine-
26 ment begins from the day of his sentence. A person who is sentenced
27 shall receive credit toward service of his sentence for time spent in
28 custody pending trial or sentencing, or appeal, if that detention was
29 in connection with the offense for which sentence was imposed. The

1 time during which the person is voluntarily absent, other than for
2 authorized labor, from the penitentiary, reformatory, jail, or from
3 the custody of an officer after his sentence, shall not be estimated
4 or counted as a part of the term for which he was sentenced.

5 (b) A sentence of imprisonment shall be stayed if an appeal is
6 taken and the defendant is admitted to bail. If the defendant is not
7 admitted to bail, the court may authorize the commissioner of health
8 and social services or his designee to designate the facility in which
9 the defendant shall be detained pending appeal or admission to bail.

10 Sec. 11.07.060. DUTY OF COURT TO DETERMINE AND IMPOSE SENTENCE.

11 The court authorized to pass sentence shall determine and impose
12 the sentence prescribed. When a sentence is left undetermined be-
13 tween certain limits or kinds of sentences, the court shall determine
14 the sentence to be imposed.

15 Sec. 11.07.070. JUDGMENT OF IMPRISONMENT. A judgment of im-
16 prisonment need only specify the duration of confinement. The manner
17 of the confinement and the treatment and employment of the person
18 sentenced shall be regulated and governed by the law in force pre-
19 scribing the discipline of the place in which he is confined and the
20 treatment and employment of persons sentenced to confinement in it.

21 Sec. 11.07.080. CONSECUTIVE SENTENCES. If the defendant
22 is convicted of two or more crimes, before judgment on either,
23 the judgment may be that the imprisonment upon one conviction be-
24 gins at the expiration of the imprisonment of any other of the
25 crimes. If the defendant is imprisoned upon a previous judgment on
26 a conviction for a crime, the judgment may be that the imprisonment
27 commences at the expiration of the term limited by the previous
28 judgment.

29 Sec. 11.07.090. BASIS OF LOSS AND RESTORATION OF RIGHTS

1 INCIDENT TO IMPRISONMENT. (a) Except during the period of
2 actual imprisonment, no person suffers a legal disqualification or
3 disability because of his conviction of a crime unless it is
4 provided for in this title or in a statute other than in this
5 title, or the disqualification or disability involves the depriva-
6 tion of a right or privilege which is

7 (1) necessarily incident to execution of the sentence of
8 the court;

9 (2) provided by the State Constitution;

10 (3) provided by the judgment, order or regulation
11 of a court, agency or official exercising a jurisdiction
12 conferred by law, or by the statute defining the jurisdiction,
13 when the commission of a crime or the conviction or the
14 sentence is reasonably related to the competency
15 of the individual to exercise the right or privilege of which he
16 is deprived.

17 (b) Proof of a conviction as relevant evidence upon
18 the trial or determination of any issue, or for the purpose of
19 impeaching the convicted person as a witness is not a disqualification
20 or disability within the meaning of secs. 90 - 102 of this
21 chapter.

22 (c) Release from imprisonment constitutes a restoration of civil
23 rights under AS 15.05.030.

24 Sec. 11.07.093. FORFEITURE OF PUBLIC OFFICE. Notwithstanding
25 any other provision of law, a person holding a public office who is
26 convicted of a felony forfeits the office.

27 Sec. 11.07.096. JURY SERVICE. Notwithstanding any other
28 provision of law, a person who is convicted of a crime is, during the
29 period of actual imprisonment, disqualified from serving as a

juror.

1
2 Sec. 11.07.099. TESTIMONIAL CAPACITY. Notwithstanding any other
3 provision of law, the fact that a person has been convicted of a
4 crime or that he is under sentence for conviction of a crime, whether
5 of imprisonment or otherwise, does not render him incompetent to
6 testify in a legal proceeding.

7 Sec. 11.07.102. APPOINTMENT OF AGENT, ATTORNEY-IN-FACT OR
8 TRUSTEE FOR PRISONER. A person confined under a sentence of imprison-
9 ment has the same right to appoint an agent, attorney-in-fact or
10 trustee to act in his behalf with respect to his property or economic
11 interests as if he were not confined.

12 Sec. 11.07.110. FORFEITURE OF PROPERTY UPON CONVICTION AND LIEN
13 FOR FINE. A conviction of a person for an offense under
14 this title does not work a forfeiture of property, except in cases
15 where a forfeiture is expressly provided by law. However, in all cases
16 of the commission or attempt to commit a felony the state has a lien,
17 from the time of the commission or attempt, upon all the property of
18 the defendant for the purpose of satisfying a judgment which may be
19 given against him for a fine in the proceedings against him for the
20 crime.

21 Sec. 11.07.120. IMPOSING LESS THAN PRESCRIBED SENTENCE. Except
22 in a case of murder or rape, the court may, upon conviction, when in
23 its opinion the facts and circumstances make the minimum sentence
24 provided in this title manifestly too severe, impose a lesser
25 sentence, either of a fine or imprisonment or both. When less than
26 the minimum sentence is imposed, the court shall set out the reasons
27 for its action on the record in the case.

28 Sec. 11.07.130. PROOF BEYOND A REASONABLE DOUBT. (a) No person may
29 be convicted of an offense unless each material element of the offense is

1 proved beyond a reasonable doubt. In the absence of proof beyond a
2 reasonable doubt, the innocence of the defendant is assumed. (a) of
3 this section does not

4 (1) require the disproof of an affirmative defense unless
5 there is evidence supporting the defense; or

6 (2) apply to a defense which this title or another statute
7 plainly requires the defendant to prove by a preponderance of evidence.

8 (b) A defense is affirmative, within the meaning of
9 (a) of this section if

10 (1) it arises under this title;

11 (2) it relates to an offense defined by a statute other than
12 in this title and the statute provides for it; or

13 (3) it involves a matter of excuse or justification peculiarly
14 within the knowledge of the defendant on which he can fairly be required
15 to adduce supporting evidence.

16 Sec. 11.07.140. BURDEN OF PROVING FACT WHEN NOT AN ELEMENT OF AN
17 OFFENSE. When the application of this title depends upon the finding
18 of a fact which is not an element of an offense, unless otherwise
19 specified.

20 (1) the burden of proving the fact is on the prosecution or
21 defendant, depending on whose interest or contention will be furthered
22 if the finding is made; and

23 (2) the fact must be proved to the satisfaction of the court
24 or jury, as the case may be.

25 Sec. 11.07.150. PRESUMPTIONS. When a presumption exists
26 under this title, with respect to a fact which is an element of an
27 offense, it has the following consequences:

28 (1) when there is evidence of the facts which give rise to
29 the presumption, the issue of the existence of the presumed fact must

1 be submitted to the jury, unless the court is satisfied that the
2 evidence as a whole clearly negatives the presumed fact; and

3 (2) when the issue of the existence of the presumed fact is
4 submitted to the jury, the court shall charge that while the presumed
5 fact must, on all the evidence, be proved beyond a reasonable doubt,
6 the law declares that the jury may regard the facts giving rise to the
7 presumption as sufficient evidence of the presumed fact;

8 (1) "act" or "action" means a bodily movement whether
9 voluntary or involuntary;

10 (2) "acted" includes, where relevant, "omitted to act";

11 (3) "actor" includes, where relevant, a person guilty of an
12 omission;

13 (4) "conduct" means an action or omission and its
14 accompanying state of mind, or, where relevant, a series of acts and
15 omissions;

16 (5) "element of an offense" means

17 (A) the conduct

18 (B) the attendant circumstances or

19 (C) a result of the conduct which

20 (i) is included in the description of the pro-
21 hibited conduct in the definition of the offense;

22 (ii) establishes the required kind of culpa-
23 bility;

24 (iii) negatives an excuse or justification for
25 the conduct;

26 (iv) negatives a defense under the statute of
27 limitations; or

28 (v) establishes jurisdiction or venue;

29 (6) "intentionally" or "with intent" means purposely;

1 (7) "knowingly" has the meaning specified in AS 11.11.040--
2 (a)(2) and equivalent terms such as "knowing" or "with knowledge" have
3 the same meaning;

4 (8) "material element of an offense" means an element that
5 does not relate exclusively to the statute of limitations, jurisdiction,
6 venue or to any other matter similarly unconnected with

7 (A) the harm or evil, incident to conduct, sought to be
8 prevented by the law defining the offense, or

9 (B) the existence of a justification or excuse for the
10 conduct;

11 (9) "negligently" has the meaning specified in AS 11.11.040--
12 (a)(4) and equivalent terms such as "negligence" or "with negligence"
13 have the same meaning;

14 (10) "omission" means a failure to act;

15 (11) "person", "he" and "actor" includes corporations as well
16 as natural persons, and officers and agents of corporations, firms and
17 associations; and where the word "person" is used to designate the
18 party whose property is the subject of a crime, it includes this state,
19 or another state, government, or country which may lawfully own property
20 in this state, and all municipal or public corporations and private
21 corporations, as well as individuals;

22 (12) "purposely" has the meaning specified in AS 11.11.040--
23 (a)(1) and equivalent terms such as "with purpose", "designed" or
24 "with design" have the same meaning;

25 (13) "reasonably believes" or "reasonable belief" designates
26 a belief which the actor is not reckless or negligent in holding;

27 (14) "recklessly" has the meaning specified in AS 11.11.040--
28 (a)(3) and equivalent terms such as "recklessness" or "with reckless-
29 ness" have the same meaning;

1 (15) "state" includes the land and water within its ter-
2 ritorial limits and the air space above it;

3 (16) "statute" includes the constitution and a local law or
4 ordinance of a political subdivision of the state;

5 (17) "voluntary" has the meaning specified in AS 11.11.010.

6 CHAPTER 9. CLASSES OF CRIMES AND
7 DISPOSITION OF OFFENDERS.

8 Sec. 11.09.010. CRIMES. An offense defined in this title or by
9 any other statute of this state, for which a sentence of imprisonment
10 is authorized, constitutes a crime. Crimes are classified as felonies,
11 misdemeanors or petty misdemeanors.

12 Sec. 11.09.020. FELONY. A crime is a felony if it is designated
13 in this title as a felony or if designated as a felony in a statute
14 other than in this title. A person upon conviction of a felony, is
15 punishable by imprisonment for a term as provided in secs. 100 - 120
16 of this chapter or by a fine as specified in sec. 80 of this chapter,
17 or by both. When an act is declared to be a felony and no minimum
18 term is prescribed, the minimum term is one year.

19 Sec. 11.09.030. MISDEMEANOR. A crime is a misdemeanor if it is
20 designated as a misdemeanor in this title or if designated as a
21 misdemeanor in a statute other than in this title. A person, upon
22 conviction of a misdemeanor, is punishable by imprisonment in a jail
23 as provided in secs. 130-150 of this chapter or by a fine as specified
24 in sec. 80 of this chapter, or by both.

25 Sec. 11.09.040. PETTY MISDEMEANOR. A crime is a petty misdemeanor
26 if it is designated in this title as a petty misdemeanor or if desig-
27 nated as a petty misdemeanor in a statute other than in this title. A
28 person, upon conviction of a petty misdemeanor, is punishable by im-
29 prisonment in a jail as specified in secs. 130 - 150 of this chapter or

1 as specified in sec. 80 of this chapter, or by both.

2 Sec. 11.09.050. VIOLATION. An offense is a violation if it is
3 designated in this title as a violation or as a violation in a statute
4 other than this title, and a person, upon conviction of a violation, is
5 punishable by a fine as specified in sec. 80 of this chapter, or a fine
6 as specified in sec. 80 of this chapter and forfeiture or other civil
7 penalty. A violation does not constitute a crime and conviction of a
8 violation does not give rise to a disability or legal disadvantage
9 based on conviction of a criminal offense.

10 Sec. 11.09.060. CRIME WITHOUT SPECIFICATION OF GRADE OR SENTENCE.
11 An offense declared by law to constitute a crime without specification
12 of the grade of it or of the sentence authorized upon conviction, is a
13 petty misdemeanor.

14 Sec. 11.09.070. OFFENSES DESIGNATED IN OTHER TITLES (a) A
15 penalty designated in a statute of the state other than in this title
16 shall remain in effect on the effective date of this Act.

17 (b) When an act in a statute of the state other than in this
18 title is declared to be a misdemeanor, and no punishment is prescribed,
19 the person, upon conviction, is punishable by imprisonment in a jail for
20 not more than one year, or by a fine of not more than \$1,000. When an
21 act in a statute of the state other than in this title is declared to
22 be a felony, and no minimum term of imprisonment is prescribed, the
23 minimum term is one year.

24 Sec. 11.09.080. FINES. A person who has been convicted of an
25 offense may be sentenced to pay a fine not exceeding

26 (1) \$10,000, when the conviction is of a felony of the first
27 or second degree;

28 (2) \$5,000, when the conviction is of a felony of the third
29 degree;

1 (3) \$1,000, when the conviction is of a misdemeanor;

2 (4) \$500, when the conviction is of a petty misdemeanor or
3 a violation;

4 (5) any higher amount equal to double the pecuniary gain
5 derived from the offense by the offender;

6 (6) any higher amount specifically authorized by statute.

7 Sec. 11.09.090. DEGREES OF FELONIES. (a) Felonies defined by
8 this title are classified, for the purpose of sentence, into three
9 degrees, as follows:

10 (1) felonies of the first degree;

11 (2) felonies of the second degree;

12 (3) felonies of the third degree.

13 (b) A felony is of the first or second degree when it is desig-
14 nated by this title as a felony of the first or second degree. A crime
15 designated as a felony, without specification of degree, is a felony of
16 the third degree.

17 Sec. 11.09.100. SENTENCE OF IMPRISONMENT FOR FELONY; ORDINARY
18 TERM. (a) A person who has been convicted of a felony may be
19 sentenced to imprisonment, as follows:

20 (1) in the case of a felony of the first degree, for a term
21 the minimum of which shall be fixed by the court at not less than one
22 year nor more than 10 years, and the maximum of which shall be life
23 imprisonment;

24 (2) in the case of a felony of the second degree, for a term
25 the minimum of which shall be fixed by the court at not less than one
26 year nor more than three years, and the maximum of which shall be 10
27 years;

28 (3) in the case of a felony of the third degree, for a term
29 the minimum of which shall be fixed by the court at not less than one

1 year nor more than two years, and the maximum of which shall be five
2 years.

3 (b) No sentence may be imposed under this section in which the
4 minimum is longer than one-half the maximum, or, when the maximum is
5 life imprisonment, longer than 10 years.

6 Sec. 11.09.110. SENTENCE OF IMPRISONMENT FOR FELONY; EXTENDED
7 TERMS. In a case designated in sec. 120 of this chapter, a person
8 who has been convicted of a felony may be sentenced to an extended
9 term of imprisonment, as follows:

10 (1) in the case of a felony of the first degree, for a
11 term the minimum of which shall be fixed by the court at not less than
12 five years nor more than 10 years, and the maximum of which shall be
13 life imprisonment;

14 (2) in the case of a felony of the second degree, for a term
15 the minimum of which shall be fixed by the court at not less than one
16 year nor more than five years, and the maximum of which shall be fixed
17 by the court at not less than 10 nor more than 20 years;

18 (3) in the case of a felony of the third degree, for a term
19 the minimum of which shall be fixed by the court at not less than one
20 year nor more than three years, and the maximum of which shall be fixed
21 by the court at not less than five nor more than 10 years.

22 Sec. 11.09.120. CRITERIA FOR SENTENCE OF EXTENDED TERM OF
23 IMPRISONMENT; FELONIES. The court may sentence a person who has been
24 convicted of a felony to an extended term of imprisonment if it finds
25 one or more of the grounds specified in this section. The finding of
26 the court shall be reduced to writing and incorporated in the record.

27 (1) The defendant is a persistent offender whose commitment
28 for an extended term is necessary for protection of the public. The
29 court may not make this finding unless the defendant is over 21

1 years of age and has previously been convicted of two felonies or of one
2 felony and two misdemeanors, committed at different times.

3 (2) The defendant is a professional criminal whose
4 commitment for an extended term is necessary for protection of the
5 public. The court may not make this finding unless the defendant
6 is over 21 years of age.

7 (3) The defendant is a dangerous, mentally abnormal person
8 whose commitment for an extended term is necessary for protection of
9 the public. The court may not make this a finding unless the
10 defendant has been subjected to a psychiatric examination
11 showing that his mental condition is gravely abnormal; that
12 his criminal conduct has been characterized by a pattern of repetitive
13 or compulsive behavior or by persistent aggressive behavior with
14 heedless indifference to consequences; and that these conditions make
15 him a serious danger to others.

16 (4) The defendant is a multiple offender whose criminality
17 was so extensive that a sentence of imprisonment for an extended term
18 is warranted. The court may not make this finding unless

19 (A) the defendant is being sentenced for two or more
20 felonies, or is already under sentence of imprisonment for felony,
21 and the sentences of imprisonment involved will run concurrently;
22 or

23 (B) the longest sentences of imprisonment authorized for
24 each of the defendant's crimes, if made to run consecutively would
25 exceed in length the minimum and maximum of the extended term im-
26 posed.

27 Sec. 11.09.130. SENTENCE OF IMPRISONMENT FOR MISDEMEANORS AND
28 PETTY MISDEMEANORS; ORDINARY TERMS. A person who has been convicted
29 of a misdemeanor or a petty misdemeanor may be sentenced to imprison-

1 ment for a definite term which shall be fixed by the court and shall not
2 exceed one year in the case of a misdemeanor or 30 days in the case of
3 a petty misdemeanor.

4 Sec. 11.09.140. SENTENCE OF IMPRISONMENT FOR MISDEMEANORS AND
5 PETTY MISDEMEANORS: EXTENDED TERMS. (a) In a case designated in
6 sec. 150 of this chapter, a person who has been convicted of a
7 misdemeanor or a petty misdemeanor may be sentenced to an extended
8 term of imprisonment, as follows:

9 (1) in the case of a misdemeanor, for a term the minimum
10 of which shall be fixed by the court at not more than one year and
11 the maximum of which shall be three years;

12 (2) in the case of a petty misdemeanor for a term the
13 minimum of which shall be fixed by the court at not more than six
14 months and the maximum of which shall be two years.

15 (b) No sentence for an extended term shall be imposed unless
16 the commissioner of health and social services has certified that there
17 is a detention facility in the state which is appropriate for the
18 detention and correctional treatment of the misdemeanors or petty
19 misdemeanants, and that the institution is available to receive the
20 commitments.

21 Sec. 11.09.150. CRITERIA FOR SENTENCE OF EXTENDED TERM OF
22 IMPRISONMENT; MISDEMEANORS AND PETTY MISDEMEANORS. The court may
23 sentence a person who has been convicted of a misdemeanor or petty
24 misdemeanor to an extended term of imprisonment if it finds one or
25 more of the grounds specified in this section. The finding of the
26 court shall be reduced to writing and incorporated in the record.

27 (1) The defendant is a persistent offender whose commitment
28 for an extended term is necessary for protection of the public. The
29 court shall not make this finding unless the defendant has previously

1 been convicted of two crimes, committed at different times
2 when he was over 21 years of age.

3 (2) The defendant is a professional criminal whose com-
4 mitment for an extended term is necessary for protection of the public.
5 The court shall not make this finding unless

6 (A) the circumstances of the crime show that the
7 defendant has knowingly devoted himself to criminal activity as
8 a major source of livelihood; or

9 (B) the defendant has substantial income or resources
10 not explained to be derived from a source other than criminal
11 activity.

12 (3) The defendant is a chronic alcoholic, narcotic addict,
13 prostitute or person of abnormal mental condition who requires re-
14 habilitative treatment for a substantial period of time. The court
15 shall not make this finding unless, with respect to the particular
16 category to which the defendant belongs, the commissioner of health
17 and social services has certified that there is a specialized institution
18 or facility which is satisfactory for the rehabilitative treatment
19 of these persons and which otherwise meets the requirements of sec.
20 140(b) of this chapter.

21 (4) The defendant is a multiple offender whose criminality
22 was so extensive that a sentence of imprisonment for an extended term
23 is warranted. The court shall not make this a finding unless

24 (A) the defendant is being sentenced for more than
25 one misdemeanor or petty misdemeanor or is already under
26 sentence of imprisonment for misdemeanors or petty misdemeanors;
27 and

28 (B) maximum fixed sentences of imprisonment for each of
29 the defendant's crimes, if made to run consecutively, would ex-

ceed in length the maximum period of the extended term imposed.

Sec. 11.09.155. FORMER CONVICTION IN ANOTHER JURISDICTION. (a)

For purposes of sec. 120(1) or sec. 150(1) of this chapter, a conviction of the commission of a crime in another jurisdiction constitutes a previous conviction. The conviction is considered to have been of a felony if sentence of death or of imprisonment in excess of one year was authorized under the law of the other jurisdiction, and of a misdemeanor if sentence of imprisonment in excess of 30 days but not in excess of a year was authorized and of a petty misdemeanor if sentence of imprisonment for not more than 30 days was authorized.

(b) An adjudication by a court of competent jurisdiction that the defendant committed a crime constitutes a conviction for purposes of secs. 120 and 150 - 155 of this chapter, although sentence or the execution of it was suspended, provided that the time to appeal has expired and that the defendant was not pardoned on the ground of innocence.

(c) Prior conviction may be proved by any evidence, including fingerprint records made in connection with arrest, conviction or imprisonment, that reasonably satisfies the court that the defendant was convicted.

(d) When the defendant has asked that other crimes admitted in open court be taken into account when he is sentenced and the court has not rejected the request, the sentence bars the prosecution or conviction of the defendant in this state for the admitted crime.

Sec. 11.09.160. CRITERIA FOR IMPOSING FINES. (a) No court may sentence a defendant to pay a fine only, when any other disposition is authorized by law, unless with regard to the nature and circumstances of the crime and the history and character of the defendant, it determines that the fine alone is sufficient for protection of the

1 public.

2 (b) No court may sentence a defendant to pay a fine in addition
3 to a sentence of imprisonment or probation unless

4 (1) the defendant has derived a pecuniary gain from the
5 crime; or

6 (2) the court concludes that a fine is specially adapted
7 to deterrence of the crime involved or to the correction of the offender.

8 (c) Notwithstanding (a) and (b) of this section, no court may
9 sentence a defendant to pay a fine unless

10 (1) the defendant is or will be able to pay the fine within
11 a reasonable time from the date of conviction; and

12 (2) the fine will not prevent the defendant from making
13 restitution or reparation to the victim of the crime.

14 (d) In determining the amount and method of payment of a fine,
15 the court shall consider the financial resources of the defendant and
16 the nature of the burden that its payment will impose.

17 Sec. 11.09.170. CIVIL COMMITMENT IN LIEU OF PROSECUTION OR OF
18 SENTENCE. (a) Notwithstanding any other provision of law, when a per-
19 son prosecuted for a misdemeanor or petty misdemeanor is a chronic
20 alcoholic, or mentally ill person as defined in AS 47.30.340(10), the
21 court may order the civil commitment of the person to a hospital or
22 other institution for medical, psychiatric or other rehabilitative
23 treatment, and dismiss the prosecution. The order of commitment may be
24 made after conviction, in which case the court may set aside the
25 verdict or judgment of conviction and dismiss the prosecu-
26 tion.

27 (b) No court may make an order under (a) of this section unless
28 it is of the view that civil commitment will substantially further
29 the rehabilitation of the defendant, without jeopardizing the safety

1 of the public.

2 CHAPTER 11. GENERAL PRINCIPLES OF LIABILITY.

3 Sec. 11.11.010. REQUIREMENT OF VOLUNTARY ACT. (a) A person
4 is not guilty of an offense unless his liability is based on conduct
5 which includes a voluntary act or the omission to perform an act of
6 which he is physically capable.

7 (b) The following acts are not voluntary within the meaning
8 of this section:

- 9 (1) a reflex or convulsion;
10 (2) a bodily movement during unconsciousness or sleep;
11 (3) conduct during hypnosis or resulting from hypnotic
12 suggestion;
13 (4) a bodily movement that otherwise is not a product of the
14 effort or determination of the actor, either conscious or habitual.

15 Sec. 11.11.020. LIABILITY BASED ON OMISSION. Liability for
16 the commission of an offense may not be based on an omission
17 unaccompanied by action unless

- 18 (1) the omission is expressly made sufficient by the law
19 defining the offense; or
20 (2) a duty to perform the omitted act is otherwise imposed
21 by law.

22 Sec. 11.11.030. POSSESSION AN ACT. Possession is an act, within
23 the meaning of secs. 10 - 20 of this chapter if the possessor knowingly
24 procured or received the thing possessed or was aware of his control
25 of it for a sufficient period to have been able to terminate his
26 possession.

27 Sec. 11.11.040. GENERAL REQUIREMENTS OF CULPABILITY. (a) Except
28 as provided in secs. 60 - 70 of this chapter, a person is not guilty
29 of an offense unless he acted purposely, knowingly, recklessly or

1 negligently with respect to each material element of the offense.

2 For the purposes of this title

3 (1) a person acts purposely, with respect to a material
4 element of an offense when

5 (A) if the element involves the nature of his conduct
6 or a result of it, it is his conscious object to engage in conduct
7 of that nature or to cause such a result; and

8 (B) if the element involves the attendant circumstances,
9 he is aware of the existence of the circumstances or he believes
10 that they exist.

11 (2) A person acts knowingly with respect to a material
12 element of an offense when:

13 (A) if the element involves the nature of his conduct
14 or the attendant circumstances, he is aware that his conduct is of
15 that nature or that the circumstances exist; and

16 (B) if the element involves a result of his conduct, he
17 is aware that it is practically certain that his conduct will
18 cause such a result.

19 (3) A person acts recklessly with respect to a material element
20 of an offense when he consciously disregards a substantial and unjustifi-
21 able risk that the material element exists or will result from his
22 conduct. The risk must be of such a nature and degree that, considering
23 the nature and purpose of the actor's conduct and the circumstances
24 known to him, its disregard involves a gross deviation from the
25 standard of conduct that a reasonable person would observe in the
26 actor's situation.

27 (4) A person acts negligently with respect to a material
28 element of an offense when he should be aware of a substantial and
29 unjustifiable risk that the material element exists or will result

1 from his conduct. The risk must be of such a nature and degree that
2 the actor's failure to perceive it, considering the nature and purpose
3 of his conduct and the circumstances known to him, involves a gross
4 deviation from the standard of care that a reasonable person would
5 observe in the actor's situation.

6 (b) When the culpability sufficient to establish a material
7 element of an offense is not prescribed by law, the element is
8 established if a person acts purposely, or knowingly or recklessly with
9 respect to it.

10 (c) When the law defining an offense prescribes the kind of
11 culpability that is sufficient for the commission of an offense, without
12 distinguishing among the material elements of it, the provision applies
13 to all the material elements of the offense, unless a contrary purpose
14 plainly appears.

15 (d) When the law provides that negligence suffices to establish
16 an element of an offense, the element also is established if a person
17 acts purposely, knowingly or recklessly. When recklessness is
18 sufficient to establish an element, the element also is established if
19 a person acts purposely or knowingly. When acting knowingly is
20 sufficient to establish an element, the element also is established if
21 a person acts purposely.

22 (e) When a particular purpose is an element of an offense, the
23 element is established although the purpose is conditional, unless the
24 condition negatives the harm or evil sought to be prevented by law
25 defining the offense.

26 (f) When knowledge of the existence of a particular fact is an
27 element of an offense, the knowledge is established if a person is
28 aware of a high probability of its existence, unless he actually
29 believes that it does not exist.

1 (g) A requirement that an offense be committed wilfully is
2 satisfied if a person acts knowingly with respect to the material
3 elements of the offense, unless a purpose to impose further require-
4 ments appears.

5 (h) Neither knowledge nor recklessness or negligence as to
6 whether conduct constitutes an offense or as to the existence, meaning
7 or application of the law determining the elements of an offense is an
8 element of the offense, unless the definition of the offense or this
9 title so provides.

10 (i) When the grade or degree of an offense depends on whether the
11 offense is committed purposely, knowingly, recklessly or negligently,
12 its grade or degree shall be the lowest for which the determinative
13 kind of culpability is established with respect to any material element
14 of the offense.

15 Sec. 11.11.050. CAUSAL RELATIONSHIP BETWEEN CONDUCT AND RESULT.

16 (a) Conduct is the cause of a result when

17 (1) it is an antecedent but for which the result in question
18 would not have occurred; and

19 (2) the relationship between the conduct and result
20 satisfies any additional causal requirements imposed by this title
21 or by the law defining the offense.

22 (b) When purposely or knowingly causing a particular result is
23 an element of an offense, the element is not established if the actual
24 result is not within the purpose or the contemplation of the actor
25 unless

26 (1) the actual result differs from that designed or
27 contemplated, as the case may be, only in the respect that a different
28 person or different property is injured or affected or that the injury
29 or harm designed or contemplated would have been more serious or more

1 extensive than that caused; or

2 (2) the actual result involves the same kind of injury or
3 harm as that designed or contemplated and is not too remote or
4 accidental in its occurrence to have a bearing on the actor's
5 liability or on the gravity of his offense.

6 (c) When recklessly or negligently causing a particular result
7 is an element of an offense, the element is not established if the
8 actual result is not within the risk of which the actor is aware or,
9 in the case of negligence, of which he should be aware unless

10 (1) the actual result differs from the probable result only
11 in the respect that a different person or different property is injured
12 or affected or that the probable injury or harm would have been more
13 serious or more extensive than that caused; or

14 (2) the actual result involves the same kind of injury or
15 harm as the probable result and is not too remote or accidental in its
16 occurrence to have a bearing on the actor's liability or on the gravity
17 of his offense.

18 (d) When causing a particular result is a material element of an
19 offense for which absolute liability is imposed by law, the element is
20 not established unless the actual result is a probable consequence of
21 the actor's conduct.

22 Sec. 11.11.060. IGNORANCE OR MISTAKE. (a) Ignorance or
23 mistake as to a matter of fact or law is a defense if

24 (1) the ignorance or mistake negatives the purpose,
25 knowledge, belief, recklessness or negligence required to establish a
26 material element of the offense; or

27 (2) the law provides that the state of mind established by
28 the ignorance or mistake constitutes a defense.

29 (b) Although ignorance or mistake would otherwise afford a

1 defense to the offense charged, the defense is not available if the
2 defendant would be guilty of another offense had the situation been
3 as he thought. In that case, however, the ignorance or mistake of the
4 defendant shall reduce the grade and degree of the offense of which
5 he may be convicted to those of the offense of which he would be
6 guilty had the situation been as he thought.

7 (c) A belief that conduct does not legally constitute an offense
8 is a defense to a prosecution for that offense based upon the conduct
9 if

10 (1) the statute defining the offense is not known to the
11 actor and has not been published or otherwise reasonably made available
12 prior to the conduct alleged; or

13 (2) he acts in reasonable reliance upon an official statement
14 of law, thereafter determined to be invalid or erroneous, contained in

15 (A) a statute or other enactment;

16 (B) a judicial decision, opinion or judgment;

17 (C) an administrative order or grant of permission; or

18 (D) an official interpretation of the public officer
19 or body charged by law with responsibility for the interpretation,
20 administration or enforcement of the law defining the offense.

21 (3) The defendant must prove a defense arising under (c)
22 of this section by a preponderance of evidence.

23 Sec. 11.11.070. WHEN CULPABILITY REQUIREMENTS INAPPLICABLE.
24 The requirements of culpability prescribed by secs. 10 - 40 of this
25 chapter do not apply to

26 (1) offenses which constitute violations, unless the
27 requirement involved is included in the definition of the offense or
28 the court determines that its application is consistent with effective
29 enforcement of the law defining the offense; or

1 (2) offenses defined by statutes other than this title,
2 if a legislative purpose to impose absolute liability for the offenses
3 or with respect to any material element in them plainly appears.

4 Sec. 11.11.080. LIABILITY FOR CONDUCT OF ANOTHER. (a) A person
5 is guilty of an offense if it is committed by his own conduct or by
6 the conduct of another person for which he is legally accountable,
7 or both.

8 (b) A person is legally accountable for the conduct of another
9 person when

10 (1) acting with the kind of culpability that is sufficient
11 for the commission of the offense, he causes an innocent or irresponsi-
12 ble person to engage in the conduct; or

13 (2) he is made accountable for the conduct of the other
14 person by a provision of this title or by the law defining the offense;
15 or

16 (3) he is an accomplice of the other person in the commission
17 of the offense.

18 (c) Except when authorized by law, a person is an accomplice of
19 another person in the commission of an offense if

20 (1) with the purpose of promoting or facilitating the
21 commission of the offense, he

22 (A) solicits the other person to commit it; or

23 (B) aids or agrees or attempts to aid the other person
24 in planning or committing it; or

25 (2) his conduct is expressly declared by law to establish
26 his complicity.

27 (d) Unless otherwise provided, a person is not an accomplice in
28 an offense committed by another person if

29 (1) he is a victim of that offense;

1 (2) the offense is defined so that his conduct is inevitably
2 incident to its commission but no culpability is present; or

3 (3) he terminates his complicity prior to the commission
4 of the offense and

5 (A) wholly deprives it of effectiveness in the
6 commission of the offense; or

7 (B) gives timely warning to the law enforcement
8 authorities or otherwise makes proper effort to prevent the
9 commission of the offense.

10 (e) An accomplice may be convicted on proof of the commission
11 of the offense and of his complicity in it though the person claimed
12 to have committed the offense has not been prosecuted or convicted or
13 has been convicted of a different offense or degree of offense or has
14 an immunity to prosecution or conviction or has been acquitted.

15 Sec. 11.11.090. INTOXICATION. (a) Except as provided in (d)
16 of this section, intoxication of the actor is not a defense unless it
17 negatives an element of the offense.

18 (b) When recklessness establishes an element of the offense, if
19 the actor, due to self-induced intoxication, is unaware of a risk of
20 which he would have been aware had he not been intoxicated, the
21 unawareness is immaterial.

22 (c) Intoxication does not, in itself, constitute mental disease.

23 (d) Intoxication which (1) is not self-induced or (2) is
24 pathological is an affirmative defense if, as a result of the
25 intoxication, the actor at the time of his conduct lacked substantial
26 capacity either to appreciate its wrongfulness or to conform his
27 conduct to the requirements of law.

28 (e) In this section

29 (1) "intoxication" means a disturbance of mental or

1 physical capacities resulting from the introduction of substances, in-
2 cluding but not limited to alcohol and narcotic drugs as defined in
3 AS 11.31.430(s) , into the body;

4 (2) "self-induced intoxication" means intoxication caused by
5 substances which the actor knowingly introduces into his body, the
6 tendency of which to cause intoxication he knows or ought to know, un-
7 less he introduces them under medical advice or under circumstances
8 that would afford a defense to a charge of crime;

9 (3) "pathological intoxication" means intoxication grossly
10 excessive in degree, given the amount of the intoxicant, to which the
11 actor does not know he is susceptible.

12 Sec. 11.11.100. DURESS. (a) It is an affirmative defense to
13 conduct constituting a crime, other than conduct causing bodily injury
14 or violence to another, that the actor engaged in the conduct consti-
15 tuting the offense acted because he was coerced to do so by the use of,
16 or a threat to use, unlawful force against his person or another, con-
17 stituting a fear of serious bodily injury to himself or the other per-
18 son, which a person of reasonable firmness in his situation would have
19 been unable to resist. However, if the actor causes bodily injury or
20 violence to another as a result of duress as specified in this section,
21 the duress shall be taken into consideration by the court in mitigating
22 the sentence.

23 (b) The defense provided by this section is unavailable if the
24 actor recklessly placed himself in a situation in which it was probable
25 that he would be subjected to duress, or if he was negligent in
26 placing himself in such a situation, when negligence is sufficient
27 to establish culpability for the offense charged.

28 (c) It is not a defense that a person acted on the command of his
29 spouse, unless she acted under such coercion as would establish a

1 defense under this section.

2 (d) When the conduct of the actor would otherwise be justifiable
3 under AS 11.13.020, this section does not preclude the defense.

4 Sec. 11.11.110. CONSENT. (a) The consent of the victim to
5 conduct constituting an offense or to the result of it is a
6 defense if the consent negatives an element of the offense or precludes
7 the infliction of the harm or evil sought to be prevented by the law
8 defining the offense.

9 (b) When conduct is charged to constitute an offense because it
10 causes or threatens bodily harm, consent to the conduct or to the
11 infliction of the harm is a defense if

12 (1) the bodily harm consented to or threatened by the conduct
13 consented to is not serious;

14 (2) the conduct and the harm are reasonably foreseeable
15 hazards of joint participation in a lawful athletic contest or
16 competitive sport; or

17 (3) the consent establishes a justification for the conduct
18 under ch. 13 of this title.

19 (c) Assent does not constitute consent if

20 (1) it is given by a person who is legally incompetent to
21 authorize the conduct charged to constitute the offense;

22 (2) it is given by a person who by reason of youth, mental
23 disease or defect or intoxication is manifestly unable or known by
24 the actor to be unable to make a reasonable judgment as to the nature
25 or harmfulness of the conduct charged to constitute the offense;

26 (3) it is given by a person whose improvident consent is
27 sought to be prevented by the law defining the offense; or

28 (4) it is induced by force, duress or deception of a kind
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sought to be prevented by the law defining the offense.

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Sec. 11.11.120. DE MINIMIS INFRACTIONS. (a) The court shall dismiss a prosecution if, with regard to the nature of the conduct charged to constitute an offense and the nature of the attendant circumstances, it finds that the defendant's conduct

(1) was within a customary license or tolerance, neither expressly negatived by the person whose interest was infringed nor inconsistent with the purpose of the law defining the offense;

(2) did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an extent too trivial to warrant the condemnation of conviction; or

(3) presents such other extenuations that it cannot reasonably be regarded as contemplated by the legislature in prohibiting the offense.

(b) No court may dismiss a prosecution under (3) of this section without filing a written statement of its reasons for doing so.

Sec. 11.11.130. ENTRAPMENT. (a) A peace officer or a person acting with authorization from a peace officer perpetrates an entrapment if for the purpose of obtaining evidence of the commission of an offense, he induces or encourages another person to engage in conduct constituting the offense by either

(1) making knowingly false representations designed to induce the belief that the conduct is not prohibited; or

(2) employing methods of persuasion or inducement which create a substantial risk that the offense will be committed by persons other than those who are ready and willing to commit it.

(b) Except as provided in (c) of this section, a person prosecuted for an offense shall be acquitted if he proves by a preponderance of evidence that his conduct occurred in response

1 to an entrapment. The issue of entrapment shall be tried by the
2 court in the absence of the jury.

3 (c) The defense afforded by this section is unavailable when
4 causing or threatening bodily injury is an element of the offense
5 charged and the prosecution is based on conduct causing or threatening
6 injury to a person other than the person perpetrating the entrapment.

7 CHAPTER 13. GENERAL PRINCIPLES OF JUSTIFICATION.

8 Sec. 11.13.010. JUSTIFICATION AN AFFIRMATIVE DEFENSE. In a
9 prosecution based on conduct which is justifiable under this chapter,
10 justification is an affirmative defense. The fact that conduct is
11 justifiable under this chapter does not abolish or impair a remedy
12 for the conduct which is available in a civil action.

13 Sec. 11.13.020. JUSTIFICATION IN GENERAL. (a) Conduct which the
14 actor reasonably believes to be necessary to avoid a harm to himself or
15 to another is justifiable if

16 (1) the harm sought to be avoided by the conduct is greater
17 than that sought to be prevented by the law defining the offense
18 charged;

19 (2) neither this title nor other law defining the offense
20 provides exceptions or defenses dealing with the specific situation
21 involved; and

22 (3) a legislative purpose to exclude the justification
23 claimed does not otherwise appear.

24 (b) When the actor was reckless or negligent in bringing about
25 the situation requiring a choice of harms or in appraising the necessity
26 for his conduct, the justification afforded by this section is unavail-
27 able in a prosecution for an offense for which recklessness or
28 negligence, as the case may be, is sufficient to establish culpability.

29 Sec. 11.13.030. EXECUTION OF PUBLIC DUTY. (a) Except as

1 provided in (b) of this section, conduct is justifiable when the actor
2 reasonably believes his conduct to be required or authorized by

3 (1) the law defining the duties or functions of a public
4 officer or the assistance to be rendered to the officer in the
5 performance of his duties;

6 (2) the law governing the execution of legal process; or

7 (3) the judgment or order of a competent court;

8 (4) the law governing the armed services or the lawful
9 conduct of war; or

10 (5) any other provision of law imposing a public duty.

11 (b) Secs.10 - 130 of this chapter apply to

12 (1) the use of force upon or toward the person of another
13 for any of the purposes dealt with in this chapter; and

14 (2) the use of deadly force for any purpose, unless the
15 use of such force is otherwise expressly authorized by law or occurs
16 in the lawful conduct of war.

17 (c) The justification afforded by (a) of this section applies

18 (1) when the actor reasonably believes his conduct to be
19 required or authorized by the judgment or direction of a competent
20 court or in the lawful execution of legal process, notwithstanding
21 lack of jurisdiction of the court or defect in the legal process; and

22 (2) when the actor reasonably believes his conduct to be re-
23 quired or authorized to assist a public officer in the performance of
24 his duties, notwithstanding that the officer exceeded his legal authority.

25 Sec. 11.13.040. USE OF FORCE IN SELF-PROTECTION. (a) Subject
26 to the provisions of this section and sec. 80 of this chapter, the use
27 of force upon or toward a person is justifiable when the actor reason-
28 ably believes that the force is immediately necessary for the purpose
29 of protecting himself against the use of unlawful force by the other

1 person under the circumstances present.

2 (b) The use of force is not justifiable under this section

3 (1) to resist an arrest which the actor knows is being
4 made by a peace officer, although the arrest is unlawful, unless the
5 actor reasonably apprehends bodily injury;

6 (2) to resist force used by the occupier or possessor of
7 property or by another person on his behalf, where the actor knows that
8 the person using the force is doing so under a claim of right to
9 protect the property, except that this limitation shall not apply if

10 (A) the actor is a public officer acting in the
11 performance of his duties or a person lawfully assisting him
12 or a person making or assisting in a lawful arrest;

13 (B) the actor has been unlawfully dispossessed of the
14 property and is making a re-entry or recaption justified by
15 sec. 60 of this chapter; or

16 (C) the actor believes that such force is necessary to
17 protect himself against death or serious bodily harm.

18 (c) The use of deadly force is not justifiable under this section
19 unless the actor believes that the force is necessary to protect
20 himself against death, serious bodily harm, kidnapping or sexual
21 intercourse compelled by force or threat; nor is it justifiable if

22 (1) the actor, with the purpose of causing death or serious
23 bodily harm, provoked the use of force against himself in the same
24 encounter; or

25 (2) the actor knows that he can avoid the necessity of
26 using such force with complete safety by retreating or by surrendering
27 possession of a thing to a person asserting a claim of right to it or
28 by complying with a demand that he abstain from any action which he
29 has no duty to take, except that

1 (A) the actor is not obliged to retreat from his
2 dwelling or place of work, unless he was the initial aggressor
3 or is assailed in his place of work by another person whose place
4 of work the actor knows it to be; and

5 (B) a public officer justified in using force in the
6 performance of his duties or a person justified in using force in
7 the assistance of a public officer or a person justified in using
8 force in making an arrest or preventing an escape is not obliged to
9 desist from efforts to perform the duty, make the arrest or prevent
10 the escape because of resistance or threatened resistance by or on
11 behalf of the person against whom the action is directed.

12 (d) Except as required by (b) and (c) of this section, a person
13 employing protective force may estimate the necessity of it under the
14 circumstances as he believes them to be when the force is used, without
15 retreating, surrendering possession, or doing any other act which
16 he has no legal duty to do or abstaining from any lawful action.

17 (e) The justification afforded by this section applies to the use
18 of confinement as protective force only if the actor takes all rea-
19 sonable measures to terminate the confinement as soon as he knows that
20 he safely can terminate it, unless the person confined has been
21 arrested on a charge of crime.

22 Sec. 11.13.050. USE OF FORCE FOR THE PROTECTION OF OTHER PERSONS.

23 (a) Subject to the provisions of this section and sec. 80 of this
24 chapter, the use of force upon or toward a person is justifiable to
25 protect a third person when

26 (1) the actor would be justified under sec. 40 of this
27 chapter in using force to protect himself against the injury he
28 believes to be threatened to the person whom he seeks to protect;

29 (2) under the circumstances as the actor reasonably be-

1 believes them to be, the person whom he seeks to protect would be
2 justified in using such protective force; and

3 (3) the actor reasonably believes that his intervention is
4 necessary for the protection of the other person.

5 (b) Notwithstanding (a) of this section

6 (1) when the actor would be obliged under sec. 40 of this
7 chapter to retreat, surrender the possession of a thing, or
8 comply with a demand before using force in self-protection, he is not
9 obliged to do so before using force for the protection of another
10 person, unless he knows that he can thereby secure the complete
11 safety of the other person;

12 (2) when the person whom the actor seeks to protect would
13 be obliged under sec. 40 of this chapter to retreat, to surrender the
14 possession of a thing or to comply with a demand if he knew that he
15 could obtain complete safety by so doing, the actor is obliged to try to
16 cause him to do so before using force in his protection if the actor
17 knows that he can obtain complete safety in that way; and

18 (3) neither the actor nor the person whom he seeks to
19 protect is obliged to retreat when in the other's dwelling or place of
20 work to any greater extent than in his own.

21 Sec. 11.13.060. USE OF FORCE FOR THE PROTECTION OF PROPERTY. (a)
22 Subject to the provisions of this section and of sec. 80 of this chapter,
23 the use of force upon or toward a person is justifiable when the actor
24 reasonably believes that the force is immediately necessary

25 (1) to prevent or terminate an unlawful entry or other tres-
26 pass upon land or a trespass against or the unlawful carrying away of
27 tangible, movable property, provided that the land or movable property
28 is, or is reasonably believed by the actor to be, in his possession or
29 in the possession of another person for whose protection he acts; or

1 (2) to effect an entry or re-entry upon land or to retake
2 tangible movable property, provided that the actor reasonably believes
3 he or the person by whose authority he acts or a person from whom he or
4 the other person derives title was unlawfully dispossessed of the land
5 or movable property and is entitled to possession, and provided that

6 (A) the force is used immediately or on fresh pursuit
7 after the dispossession; or

8 (B) the actor reasonably believes that the person a-
9 gainst whom he uses force has no claim of right to the possession
10 of the property and, in the case of land, the circumstances, as
11 the actor reasonably believes them to be, are of such urgency that
12 it would be an exceptional hardship to postpone the entry or re-
13 entry until a court order is obtained.

14 (b) For the purposes of (a) of this section

15 (1) a person who has parted with the custody of property to
16 another is no longer in possession, unless the property is movable
17 and was and still is located on land in the initial person's
18 possession;

19 (2) a person who has been dispossessed of land does not
20 regain possession of it merely by setting foot on it;

21 (3) a person who has a license to use or occupy real
22 property is deemed to be in possession of it except against the
23 licensor acting under claim of right.

24 (c) The use of force is justifiable under this section only if
25 the actor first requests the person against whom force is used to
26 desist from his interference with the property, unless the actor
27 reasonably believes that

28 (1) it would be dangerous to himself or another
29 person to make the request; or

1 (2) substantial harm will be done to the
2 physical condition of the property which is sought to be
3 protected before the request can effectively be
4 made.

5 (d) The use of force to prevent or terminate a trespass is not
6 justifiable under this section if the actor knows that the exclusion
7 of the trespasser will expose the trespasser to substantial danger of
8 serious bodily harm.

9 (e) The use of force to prevent an entry or re-entry upon land
10 or the recaption of movable property is not justifiable under this
11 section, although the actor reasonably believes that the re-entry or
12 recaption is unlawful, if

13 (1) the re-entry or recaption is made by or on behalf of a
14 person who was actually dispossessed of the property; and

15 (2) it is otherwise justifiable under (a)(2) of this
16 section.

17 (f) The use of deadly force is not justifiable under this section
18 unless the actor reasonably believes that

19 (1) the person against whom the force is used is attempting
20 to dispossess him of his dwelling otherwise than under a claim of right
21 to its possession; or

22 (2) the person against whom the force is used is attempting
23 to commit or consummate arson, burglary, robbery or other felonious
24 theft or property destruction and either

25 (A) has employed or threatened deadly force against
26 or in the presence of the actor; or

27 (B) the use of force other than deadly force to
28 prevent the commission or the consummation of the crime would
29 expose the actor or another in his presence to substantial danger

of serious bodily harm.

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Sec. 11.13.070. USE OF FORCE IN LAW ENFORCEMENT. (a) Subject to the provisions of this section and sec. 110 of this chapter, the use of force upon or toward a person is justifiable when the actor is making or assisting in making an arrest and the actor reasonably believes that the force is immediately necessary to effect a lawful arrest.

(b) The use of force is not justifiable under secs. 70 - 90 of this chapter unless

(1) the actor makes known the purpose of the arrest or believes that it is otherwise known by or cannot reasonably be made known to the person to be arrested; and

(2) when the arrest is made under a warrant, the warrant is valid or believed by the actor to be valid.

(c) The use of deadly force is not justifiable under this section unless

(1) the arrest is for a felony;

(2) the person effecting the arrest is authorized to act as a peace officer or is assisting a person whom he reasonably believes to be authorized to act as a peace officer;

(3) the actor reasonably believes that the force employed creates no substantial risk of injury to innocent persons; and

(4) the actor reasonably believes that

(A) the crime for which the arrest is made involved conduct including the use of threatened use of deadly force; or

(B) there is a substantial risk that the person to be arrested will cause death or serious bodily harm if his apprehension is delayed.

(d) The use of force to prevent the escape of an arrested person from custody is justifiable when the force could justifiably have been

employed to effect the arrest under which the person is in custody.

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Sec. 11.13.080. USE OF FORCE BY PRIVATE PERSON ASSISTING AN UNLAWFUL ARREST. (a) A private person who is summoned by a peace officer to assist in effecting an unlawful arrest, is justified in using any force which he would be justified in using if the arrest were lawful, provided that he does not believe the arrest is unlawful.

(b) A private person who assists another private person in effecting an unlawful arrest, or who, not being summoned, assists a peace officer in effecting an unlawful arrest, is justified in using any force which he would be justified in using if the arrest were lawful, provided that

(1) he reasonably believes the arrest is lawful, and

(2) the arrest would be lawful if the facts were as he believes them to be.

Sec. 11.13.090. USE OF FORCE TO PREVENT SUICIDE OR THE COMMISSION OF A CRIME. (a) The use of force upon or toward a person is justifiable when the actor reasonably believes that the force is immediately necessary to prevent the person from committing suicide, inflicting serious bodily harm upon himself, committing or consummating the commission of a crime involving or threatening bodily harm, damage to or loss of property or a breach of the peace, except that any limitations imposed by this chapter on the justifiable use of force in self-protection, for the protection of others, the protection of property, the effectuation of an arrest or the prevention of an escape from custody shall apply notwithstanding the criminality of the conduct against which the force is used.

(b) The justification afforded by sec. 90 of this chapter extends to the use of confinement as preventive force only if the actor takes all reasonable measures to terminate the confinement as soon as he

1 knows that he safely can do so, unless the person confined has been
2 arrested on a charge of crime.

3 Sec. 11.13.100. USE OF FORCE BY PERSONS WITH SPECIAL RESPONSI-
4 BILITY FOR CARE, DISCIPLINE OR SAFETY OF OTHERS. (a) The use of
5 force upon or toward a person is justifiable if

6 (1) the actor is the parent or guardian or other person
7 similarly responsible for the general care and supervision of a minor
8 or a person acting at the request of the parent, guardian or other
9 responsible person and

10 (A) the force is used for the purpose of safeguarding
11 or promoting the welfare of the minor, including the prevention
12 or punishment of his misconduct; and

13 (B) the force used is not designed to cause or known to
14 create a substantial risk of causing death, serious bodily harm,
15 disfigurement, extreme pain or mental distress or gross degradation;
16 or

17 (2) the actor is a teacher or a person otherwise entrusted
18 with the care of supervision for a special purpose of a minor and

19 (A) the actor reasonably believes that the force used
20 is necessary to further the special purpose, including the main-
21 tenance of reasonable discipline in a school, class or other group,
22 and that the use of the force is consistent with the welfare of
23 the minor; and

24 (B) the degree of force, if it had been used by the
25 parent or guardian of the minor, would not be unjustifiable under
26 subsection (1)(B) of this section.

27 (3) the actor is the guardian or other person similarly
28 responsible for the general care and supervision of an incompetent
29 person; and

1 (A) the force is used for the purpose of safeguarding
2 or promoting the welfare of the incompetent person, including
3 the prevention of his misconduct, or, when the incompetent
4 person is in a hospital or other institution for his care and
5 custody, for the maintenance of reasonable discipline in the
6 institution; and

7 (B) the force used is not designed to cause or known
8 to create a substantial risk of causing death, serious bodily
9 harm, disfigurement, extreme or unnecessary pain, mental distress,
10 or humiliation; or

11 (4) the actor is a doctor or other therapist or a person
12 assisting him at his direction; and

13 (A) the force is used for the purpose of administering
14 a recognized form of treatment which the actor reasonably believes
15 to be adapted to promoting the physical or mental health of the
16 patient; and

17 (B) the treatment is administered with the consent of the
18 patient or, if the patient is a minor or an incompetent person,
19 with the consent of his parent or guardian or other person legally
20 competent to consent in his behalf, or the treatment is administered
21 in an emergency when the actor believes that no one competent to
22 consent can be consulted and that a reasonable person, wishing to
23 safeguard the welfare of the patient, would consent; or

24 (5) the actor is an authorized official of a correctional
25 institution, and

26 (A) he reasonably believes that the force used is neces-
27 sary for the purpose of enforcing the rules of the institution, un-
28 less his belief in the lawfulness of the rule sought to be en-
29 forced is erroneous and his error is due to ignorance or mistake as

1 to the provisions of this title or other provision of law; and

2 (B) the nature or degree of force used is not prohibited
3 by secs. 30 - 40 of this chapter; and

4 (C) if deadly force is used, its use is otherwise
5 justifiable under this chapter; or

6 (6) the actor is a person responsible for the safety of a
7 vessel or an aircraft or a person acting at his direction, and

8 (A) he reasonably believes that the force used is nec-
9 essary to prevent interference with the operation of the vessel
10 or aircraft or obstruction of the execution of a lawful order,
11 unless his belief in the lawfulness of the order is erroneous and
12 his error is due to ignorance or mistake as to the law defining
13 his authority; and

14 (B) if deadly force is used, its use is otherwise
15 justifiable under this chapter; or

16 (7) the actor is a person who is authorized or required by
17 law to maintain order or decorum in a vehicle, train or other carrier
18 or in a place where others are assembled, and

19 (A) he reasonably believes that the force used is
20 necessary for the purpose; and

21 (B) the force used is not designed to cause or known
22 to create a substantial risk of causing death, bodily harm, or
23 extreme mental distress.

24 Sec. 11.13.110. JUSTIFICATION AS TO USE OF FORCE QUALIFIED.

25 (a) The justification afforded by secs. 40 - 70 of this chapter
26 is unavailable when

27 (1) the actor's belief in the unlawfulness of the force or
28 conduct against which he employs protective force or his belief in the
29 lawfulness of an arrest which he endeavors to effect by force is

erroneous; and

(2) his error is due to ignorance or mistake as to the provisions of this title or any other provision of law.

(b) When the actor believes that the use of force upon or toward a person is necessary for any of the purposes for which the belief would establish a justification under secs. 30 - 100 of this chapter but the actor is reckless or negligent in having the belief or in acquiring or failing to acquire any knowledge or belief which is material to the justifiability of his use of force, the justification afforded by those sections is unavailable in a prosecution for an offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

(c) When the actor is justified under secs. 30 - 100 of this chapter in using force upon or toward a person but he recklessly or negligently injures or creates a risk of injury to innocent persons, the justification afforded by those sections is unavailable in a prosecution for recklessness or negligence towards innocent persons.

Sec. 11.13.120. JUSTIFICATION IN PROPERTY CRIMES. Conduct involving the appropriation, seizure, destruction of, damage to, intrusion on or interference with property is justifiable under circumstances which would establish a defense of privilege in a civil action based on it, unless

(1) the law defining the offense deals with the specific situation involved; or

(2) a legislative purpose to exclude the justification claimed otherwise plainly appears.

Sec. 11.13.130. DEFINITIONS. In this chapter, unless a different meaning plainly is required

(1) "unlawful force" means force, including confinement,

1 which is employed without the consent of the person against whom it is
2 directed and the employment of which constitutes an offense or actionable
3 tort or would constitute the offense or tort except for a defense
4 not amounting to a privilege to use the force.

5 (2) "deadly force" means force which the actor uses with
6 the purpose of causing or which he knows will create a substantial risk
7 of causing death or serious bodily harm. A threat to cause death or
8 serious bodily harm, by the production of a weapon or otherwise, so
9 long as the actor's purpose is limited to creating an apprehension
10 that he will use deadly force if necessary, does not constitute
11 deadly force;

12 (3) "dwelling" means a building or structure, though
13 movable or temporary, or a portion of it, which is the actor's home or
14 place of lodging.

15 CHAPTER 17. INCHOATE CRIMES.

16 Sec. 11.17.010. ATTEMPT. (a) A person is guilty of an attempt
17 to commit a crime if, acting with the kind of culpability otherwise
18 required for commission of the crime, he

19 (1) purposely engages in conduct which would constitute
20 the crime if the attendant circumstances were as he believes them to
21 be; or

22 (2) when causing a particular result is an element of the
23 crime, does or omits to do anything with the purpose of causing or
24 with the belief that it will cause the result without further conduct
25 on his part; or

26 (3) purposely does or omits to do anything which, under the
27 circumstances as he believes them to be, is an act or omission
28 constituting a substantial step in a course of conduct planned to
29 culminate in his commission of the crime.

1 (b) Conduct shall not be held to constitute a substantial step
2 under (a)(3) of this section unless it is strongly corroborative of
3 the actor's criminal purpose. Without negating the sufficiency of
4 other conduct, the following, if strongly corroborative of the actor's
5 criminal purpose, shall not be held insufficient as a matter of law:

6 (1) lying in wait, searching for or following the
7 contemplated victim of the crime;

8 (2) enticing or seeking to entice the contemplated victim
9 of the crime to go to the place contemplated for its commission;

10 (3) reconnoitering the place contemplated for the commission
11 of the crime;

12 (4) unlawful entry of a structure, vehicle or enclosure in
13 which it is contemplated that the crime will be committed;

14 (5) possession of materials to be employed in the
15 commission of the crime, which are specially designed for unlawful
16 use or which can serve no lawful purpose of the actor under the
17 circumstances;

18 (6) possession, collection or fabrication of materials
19 to be employed in the commission of the crime, at or near the place
20 contemplated for its commission, where the possession, collection
21 or fabrication of materials serves no lawful purpose of the actor
22 under the circumstances;

23 (7) soliciting an innocent agent to engage in conduct
24 constituting an element of the crime.

25 (c) A person who engages in conduct designed to aid another to
26 commit a crime which would establish his complicity under AS 11.11.080
27 if the crime were committed by the other person, is guilty of an
28 attempt to commit the crime, although the crime is not committed or
29 attempted by the other person.

1 (d) When the actor's conduct would otherwise constitute an
2 attempt under (a)(2) or (a)(3) of this section, it is an affirmative
3 defense that he abandoned his effort to commit the crime or otherwise
4 prevented its commission, under circumstances manifesting a complete
5 and voluntary renunciation of his criminal purpose. The establishment
6 of this defense does not, however, affect the liability of an
7 accomplice who did not join in the abandonment or prevention. Within
8 the meaning of this chapter, renunciation of criminal purpose is not
9 voluntary if it is motivated, in whole or in part, by circumstances,
10 not present or apparent at the inception of the actor's course of
11 conduct, which increase the probability of detection or apprehension
12 or which make more difficult the accomplishment of the criminal
13 purpose. Renunciation is not complete if it is motivated by a
14 decision to postpone the criminal conduct until a more advantageous
15 time or to transfer the criminal effort to another but similar
16 objective or victim.

17 Sec. 11.17.020. SOLICITATION. (a) A person is guilty of
18 solicitation to commit a crime if, with the purpose of promoting or
19 facilitating its commission, he commands, encourages or requests
20 another person to engage in specific conduct which would constitute
21 a crime or an attempt to commit a crime or which would establish his
22 complicity in its commission or attempted commission.

23 (b) It is immaterial under (a) of this section that the actor
24 fails to communicate with the person he solicits to commit a crime
25 if his conduct was designed to effect the communication.

26 (c) It is an affirmative defense that the actor, after
27 soliciting another person to commit a crime, persuaded him not to do
28 so or otherwise prevented the commission of the crime, under
29 circumstances manifesting a complete and voluntary renunciation of his

1 criminal purpose.

2 Sec. 11.17.030. INCAPACITY, IRRESPONSIBILITY OR IMMUNITY
3 OF PARTY TO SOLICITATION OR CONSPIRACY. (a) Except as
4 provided in (b) of this section, it is immaterial to the
5 liability of a person who solicits or conspires with another to
6 commit a crime that

7 (1) he or the person whom he solicits or with whom he
8 conspires does not occupy a particular position or have a particular
9 characteristic which is an element of the crime, if he believes that
10 one of them does; or

11 (2) the person whom he solicits or with whom he conspires
12 is irresponsible or has an immunity to prosecution or conviction for
13 the commission of the crime.

14 (b) It is a defense to a charge of solicitation or conspiracy
15 to commit a crime that if the criminal object were achieved, the actor
16 would not be guilty of a crime under the law defining the offense or
17 as an accomplice under AS 11.11.080.

18 Sec. 11.17.040. GRADING OF CRIMINAL ATTEMPT, SOLICITATION AND
19 CONSPIRACY. (a) Except as otherwise provided in this section, attempt
20 solicitation and conspiracy are crimes of the same grade and degree as
21 the most serious offense which is attempted or solicited or is an object
22 of the conspiracy. An attempt, solicitation or conspiracy to commit
23 a felony of the first degree is a felony of the second degree.

24 (b) If the particular conduct charged to constitute a criminal
25 attempt, solicitation or conspiracy is so inherently unlikely to result
26 or culminate in the commission of a crime that neither the conduct nor
27 the actor presents a public danger warranting the grading of the
28 offense under this section, the court shall exercise its power under
29 AS 11.07.120 to enter judgment and impose sentence for a crime of

1 lower grade or degree or, in extreme cases, may dismiss the prosecution

2 (c) No person may be convicted of more than one offense defined
3 by this chapter for conduct designed to commit or to culminate in the
4 commission of the same crime.

5 Sec. 11.17.050. POSSESSING INSTRUMENTS OF CRIME. (a) A person
6 commits a misdemeanor if he possesses an instrument of crime with
7 purpose to employ it criminally. For purposes of this section,
8 "instrument of crime" means:

9 (1) anything specially made or specially adapted for criminal
10 use; or

11 (2) anything commonly used for criminal purposes and
12 possessed by the actor under circumstances which do not negative
13 unlawful purpose.

14 (b) Where a weapon or other instrument of crime is found in an
15 automobile, it shall be presumed to be in the possession of the occupant
16 if there is only one occupant. If there is more than one occupant, it
17 is presumed to be in the possession of all of them, except under the
18 following circumstances:

19 (1) where it is found upon the person of one of the
20 occupants;

21 (2) where the automobile is not a stolen one and the weapon
22 or instrument is found out of view in a glove compartment, car
23 trunk, or other enclosed customary depository, in which case it shall
24 be presumed to be in the possession of the occupant or occupants who
25 own or have authority to operate the automobile.

26 CHAPTER 19. OFFENSES AGAINST THE PERSON.

27 Sec. 11.19.010. CRIMINAL HOMICIDE. (a) A person is guilty of
28 criminal homicide if he purposely, knowingly, recklessly or negligently
29 causes the death of another human being.

1 (b) Criminal homicide is murder, manslaughter or negligent
2 homicide.

3 Sec. 11.19.020. MURDER. (a) Except as provided in sec. 30(a)(2)
4 of this chapter, criminal homicide constitutes murder when

5 (1) it is committed purposely or knowingly; or

6 (2) it is committed recklessly under circumstances manifesting
7 extreme indifference to the value of human life. Recklessness and
8 indifference are presumed if the actor is engaged or is an accomplice
9 in the commission of, or an attempt to commit, or flight after
10 committing or attempting to commit robbery, rape, arson, burglary,
11 kidnapping or felonious escape.

12 (b) Murder is a felony of the first degree.

13 Sec. 11.19.030. MANSLAUGHTER. (a) Criminal homicide constitutes
14 manslaughter when

15 (1) it is committed recklessly; or

16 (2) a homicide which would otherwise be murder is committed
17 under the influence of extreme mental or emotional disturbance for
18 which there is a reasonable explanation or excuse. The reasonableness
19 of the explanation or excuse shall be determined from the viewpoint
20 of a person in the actor's situation under the circumstances as he
21 believes them to be.

22 (b) Manslaughter is a felony of the second degree.

23 Sec. 11.19.040. NEGLIGENT HOMICIDE. (a) Criminal homicide
24 constitutes negligent homicide when it is committed negligently.

25 (b) Negligent homicide is a felony of the third degree.

26 Sec. 11.19.050. CAUSING OR AIDING SUICIDE. (a) A person may
27 be convicted of criminal homicide for causing another to commit
28 suicide only if he purposely causes the suicide by force, duress or
29 deception.

1 (b) A person who purposely aids or solicits another to commit
2 suicide is guilty of a felony of the second degree if his conduct
3 causes a suicide or an attempted suicide. Solicitation that does not
4 lead to an attempted suicide or actual suicide is a misdemeanor.

5 Sec. 11.19.060. ASSAULT. (a) A person is guilty of simple
6 assault if he

7 (1) attempts to cause, or purposely, knowingly or
8 recklessly causes bodily injury to another; or

9 (2) negligently causes bodily injury to another with a
10 deadly weapon; or

11 (3) attempts by physical menace to put another in fear of
12 imminent serious, bodily injury.

13 Simple assault is a misdemeanor unless committed in a fight or scuffle
14 entered into by mutual consent, in which case it is a petty mis-
15 demeanor.

16 (b) A person is guilty of aggravated assault if he

17 (1) causes serious bodily injury to another purposely,
18 knowingly or recklessly under circumstances manifesting extreme
19 indifference to the value of human life; or

20 (2) purposely or knowingly causes bodily injury to another
21 with a deadly weapon.

22 (c) Aggravated assault under (b)(1) of this section is a felony
23 of the second degree. Aggravated assault under (b)(2) of this section
24 is a felony of the third degree.

25 Sec. 11.19.070. RECKLESSLY ENDANGERING ANOTHER PERSON. A person
26 commits a misdemeanor if he recklessly engages in conduct which creates
27 a substantial risk of death or serious physical injury to another person.

28 Sec. 11.19.080. CARELESS USE OF FIREARMS. (a) A person who
29 intentionally, and without malice, points or aims a firearm at or toward

1 a person, or discharges a firearm so pointed or aimed at a person, or
2 points and discharges a firearm at or toward a person or object without
3 knowing the identity of the object and maims or injures a human being,
4 is guilty of the careless use of firearms, and upon conviction is
5 punishable by a misdemeanor. If an offense specified in this section
6 was committed by a person licensed to hunt and was committed while he
7 was hunting, upon conviction, the court shall, in addition to the
8 penalty imposed in this section, revoke the person's hunting license.
9 A person whose license has been revoked may not purchase another
10 hunting license of any class for a period of not less than one year
11 nor more than 10 years from the date of revocation as determined by
12 the court. If an offense specified in this section was committed by
13 a person not licensed to hunt and was committed while he was hunting,
14 the court shall, in addition to the penalty imposed in this section,
15 prohibit the person from purchasing any class hunting license for a
16 period of not less than one year nor more than 10 years as determined
17 by the court.

18 (b) If death ensues from the maiming or injuring, the person
19 discharging the firearm may, in the discretion of the prosecuting
20 officer or grand jury, be charged with the crime of manslaughter.

21 (c) This section does not apply to a case where firearms are
22 used in self-defense or in the discharge of official duty, or in case
23 of a homicide justifiable under law.

24 Sec. 11.19.090. THREATS AND FALSE REPORTS OF BOMBING. (a) A
25 person who wilfully and maliciously threatens to throw, place or dis-
26 charge a bomb or other explosive or incendiary device which could
27 reasonably be expected to (1) to bodily harm to a person or (2)
28 damage the property of a person, upon conviction, is guilty of a
29 felony of the third degree.

1 (b) A person who makes a false report, with the intent to deceive,
2 mislead, or otherwise misinform a person, concerning the placing, plant-
3 ing or discharging of a bomb or other explosive or incendiary device,
4 upon conviction, is guilty of a felony of the third degree.

5 Sec. 11.19.100. KIDNAPPING. (a) A person is guilty of kidnapping
6 if he unlawfully removes a person from one place to another place, or if
7 he unlawfully confines another for a substantial period in a place of
8 isolation, with any of the following purposes:

9 (1) to hold for ransom or reward, or as a shield or hostage;

10 (2) To facilitate commission of a felony or flight after a
11 felony;

12 (3) to inflict bodily injury on or to terrorize the victim or
13 another;

14 (4) to interfere with the performance of a governmental or
15 political function; or

16 (5) to inflict extreme mental distress on him or a third
17 person.

18 (b) Kidnapping is a felony of the first degree; however, if the
19 actor, before he is apprehended, voluntarily releases the victim alive
20 and in a safe place prior to the payment of ransom, money benefit, or
21 other valuable thing from the person kidnapped or from any other person,
22 it is a felony of the second degree. A removal or confinement is unlaw-
23 ful within the meaning of this section if it is accomplished by force,
24 threat or deception, or, in the case of a person who is under the age of
25 14 or incompetent, if it is accomplished without the consent of a parent,
26 guardian or other person responsible for general supervision of his
27 welfare.

28 Sec. 11.19.110. FELONIOUS RESTRAINT. A person commits a felony
29 of the third degree if he knowingly

1 (1) restrains another unlawfully in circumstances exposing
2 him to risk of serious bodily injury; or

3 (2) holds another in a condition of involuntary servitude.

4 Sec. 11.19.120. FALSE IMPRISONMENT. A person commits a misdemeanor
5 if he knowingly and unlawfully restrains another, interfering substan-
6 tially with his liberty.

7 Sec. 11.19.130. REASONABLE DETENTION AS DEFENSE. (a) In a civil
8 or criminal action brought by a person having been detained on or in the
9 immediate vicinity of the premises of a mercantile establishment for the
10 purpose of investigation or questioning as to the ownership of merchan-
11 dise, it shall be a defense that the person was detained in a reasonable
12 manner and for not more than a reasonable time to permit investigation
13 or questioning by a peace officer or by the owner of mercantile establish-
14 ment, his authorized employee or agent, and that the peace officer, owner,
15 employee or agent had reasonable grounds to believe that the person
16 detained was unlawfully concealing merchandise.

17 (b) In this section reasonable grounds includes knowledge that a
18 person has concealed upon or about his person unpurchased merchandise of
19 the mercantile establishment, and reasonable time means the time neces-
20 sary to permit the person detained to make a statement or to refuse to
21 make a statement, and also the time necessary to examine employees and
22 records of the mercantile establishment relative to the ownership of the
23 merchandise.

24 Sec. 11.19.140. INTERFERENCE WITH CUSTODY OF CHILDREN. (a) A
25 person commits a misdemeanor if he knowingly or recklessly takes or
26 entices a child under the age of 18 from the custody of its parent,
27 guardian or other lawful custodian, when he has no privilege to do so.
28 If the actor, not being a parent or person in equivalent relation to
29 the child, acted with knowledge that his conduct would cause serious

1 alarm for the child's safety, or in reckless disregard of a likelihood of
2 causing such alarm, the offense is a felony of the third degree.

3 (b) A person is guilty of a misdemeanor if he knowingly or reck-
4 lessly takes or entices a committed person away from lawful custody when
5 he is not privileged to do so. In this section, "committed person" means,
6 in addition to anyone committed under judicial warrant, an orphan,
7 neglected or delinquent child, mentally defective or insane person, or
8 other dependent or incompetent person entrusted to another's custody by
9 or through a recognized social agency or otherwise by law.

10 Sec. 11.19.150. CRIMINAL COERCION. (a) A person is guilty of
11 criminal coercion if, with purpose unlawfully to restrict another's free-
12 dom of action to his detriment, he threatens to

13 (1) commit a criminal offense;

14 (2) accuse anyone of committing a criminal offense;

15 (3) expose a confidence which would subject a person to hatred,
16 contempt or ridicule, or to impair his credit or business repute; or

17 (4) take or withhold action as an official, or cause an
18 official to take or withhold action.

19 (b) It is an affirmative defense to prosecution based on (a)(2) -(4)
20 of this section that the actor believed the accusation or confidence to
21 be true or the proposed official action justified and that his purpose was
22 limited to compelling the other to behave in a way reasonably related to
23 the circumstances which were the subject of the accusation, exposure or
24 proposed official action, as by desisting from further misbehavior, mak-
25 ing good a wrong done, refraining from taking any action or responsibility
26 for which the actor believes the other disqualified.

27 (c) Criminal coercion is a misdemeanor unless the threat is to
28 commit a felony or the actor's purpose is felonious, in which cases the
29 offense is a felony of the third degree.

1 Sec. 11.19.160. SEXUAL ASSAULT. (a) A person who has sexual
2 contact with another not his spouse or causes the other to have sexual
3 contact with him is guilty of sexual assault if

4 (1) he knows that the contact is offensive to the other person

5 (2) he knows that the other person suffers from a mental dis-
6 ease or defect rendering him incapable of appraising the nature of his
7 conduct;

8 (3) he knows that the other person is unaware that a sexual
9 act is being committed;

10 (4) the other person is less than 14 years old;

11 (5) he has substantially impaired the other person's power to
12 appraise or control his conduct, by administering or employing without
13 without the other's knowledge drugs, intoxicants or other means for the
14 purpose of preventing resistance;

15 (6) the other person is less than 16 years old and the actor
16 is at least four years older than the other person;

17 (7) the other person is less than 19 years old and the actor
18 is his guardian or otherwise responsible for general supervision of his
19 welfare; or

20 (8) the other person is in custody of law or detained in a
21 hospital or other institution and the actor has supervisory or disci-
22 plinary authority over him.

23 (b) The offense of sexual assault is a misdemeanor. For the pur-
24 poses of this section "sexual contact" is any touching of the genitals of
25 the person for the purpose of arousing or gratifying sexual desire.

26 Sec. 11.19.170. AGGRAVATED SEXUAL ASSAULT. (a) A person who has
27 sexual intercourse with another person not his spouse is guilty of
28 aggravated sexual assault if

29 (1) the other person is compelled to submit by force or by

1 threat of imminent death, serious bodily injury, extreme pain or kid-
2 napping, to be inflicted on anyone;

3 (2) the person substantially impairs the other person's power
4 to appraise or control his conduct by administering or employing without
5 his knowledge or consent drugs, intoxicants or other means for the pur-
6 pose of preventing resistance;

7 (3) the other person is unconscious; or

8 (4) the other person is less than 14 years old.

9 (b) Aggravated sexual assault is a felony of the second degree
10 unless the following occurs:

11 (1) in the course of it the actor inflicts serious bodily
12 injury upon anyone, or the victim was not a voluntary social companion
13 of the actor upon the occasion of the crime and had not previously per-
14 mitted him sexual liberties, in which case the offense is a felony of
15 the first degree; or

16 (2) if the victim is less than 16 years old and the person
17 committing the offense is less than four years older than the victim, in
18 which case the offense is a felony of the third degree.

19 (c) For the purpose of this section, sexual intercourse includes
20 intercourse by means of the mouth or rectum, with some penetration
21 however slight; emission is not required.

22 Sec. 11.19.210. INDECENT EXPOSURE. A person commits a misdemeanor
23 if, for the purpose of arousing or gratifying sexual desire of himself or
24 of any person, he wilfully and lewdly exposes his genitals in a public
25 place under circumstances in which his conduct is likely to cause offense
26 or annoyance.

27 Sec. 11.19.220. GENERAL PROVISIONS. (a) In secs. 160 - 230 of this
28 chapter, when the criminality of conduct depends on a child's being below
29 the age of 14, it is no defense that the actor did not know the child's

1 age, or reasonably believed that the child to be older than 14. When
2 criminality depends on the child's being below a critical age other than
3 14, it is a defense for the actor to prove by a preponderance of the
4 evidence that he reasonably believed the child to be above the critical
5 age.

6 (b) In secs. 160 - 230 of this chapter, when the definition of an
7 offense excludes conduct with a spouse, the exclusion extends to persons
8 living as man and wife, regardless of the legal status of their relation-
9 ship. The exclusion shall be inoperative as respects spouses living
10 apart under a decree of judicial separation. When the definition of an
11 offense excludes conduct with a spouse or conduct by a woman, this does
12 not preclude conviction of a spouse or woman as accomplice in a sexual
13 act which he or she causes another person, not within the exclusion, to
14 perform.

15 (c) Notwithstanding any other provision of law, no prosecution may
16 be instituted or maintained under secs. 160 - 230 of this chapter unless
17 the alleged offense is brought to the notice of public authority within
18 three months of its occurrence or, where the alleged victim was less than
19 16 years old or otherwise incompetent to make complaint, within three
20 months after a parent, guardian or other competent person specially
21 interested in the victim learns of the offense.

22 (d) Notwithstanding any other provision of law, no person may be
23 convicted of a felony under secs. 160 - 230 of this chapter upon the un-
24 corroborated testimony of the alleged victim. Corroboration may be cir-
25 cumstantial. In a prosecution before a jury for an offense under secs.
26 160 - 230 of this chapter, the jury shall be instructed to evaluate the
27 testimony of a victim or complaining witness with special care in view
28 of the emotional involvement of the witness and the difficulty of de-
29 termining the truth with respect to alleged sexual activities carried out

1 in private.

2 Sec. 11.19.230. DEFINITIONS. In this chapter

3 (1) "human being" means a person who has been born and is alive;

4 (2) "bodily injury" means physical pain, illness or an impair-
5 ment of physical condition;

6 (3) "serious bodily injury" means bodily injury which creates
7 a substantial risk of death or which causes serious, permanent disfigure-
8 ment, or protracted loss or impairment of the function of a bodily member
9 or organ;

10 (4) "deadly weapon" means a firearm, or other weapon, device,
11 instrument, material or substance, whether animate or inanimate, which in
12 the manner it is used or is intended to be used is known to be capable of
13 producing death or serious bodily injury.

14 CHAPTER 21. OFFENSES AGAINST PROPERTY.

15 ARTICLE 1. ARSON AND RELATED OFFENSES.

16 Sec. 11.21.010. ARSON. A person is guilty of arson, a felony of
17 the second degree, if he starts a fire or causes an explosion with the

18 (1) destroying an occupied structure of another; or

19 (2) destroying or damaging any property, whether his own or
20 another's, to collect insurance for the loss. It is an affirmative
21 defense to prosecution under this section that the actor's conduct did
22 not recklessly endanger a building or occupied structure of another or
23 place any other person in danger of death or bodily injury.

24 Sec. 11.21.020. RECKLESS BURNING OR EXPLODING. A person commits a
25 felony of the third degree if he purposely starts a fire or causes an
26 explosion, whether on his own property or another's and thereby recklessly

27 (1) places another person in danger of death or bodily injury; or

28 (2) places a building or occupied structure of another in
29 danger of damage or destruction.

1 Sec. 11.21.030. FAILURE TO CONTROL OR REPORT DANGEROUS FIRE. A
2 person who knows that a fire is endangering life or the property of an-
3 other and fails to take reasonable measures to put out or control the
4 fire, when he can do so without substantial risk to himself, or to give
5 a prompt fire alarm, commits a misdemeanor if

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

8 (2) the fire was started, lawfully, by him or with his assent
9 or on property in his custody or control.

10 Sec. 11.21.040. DEFINITIONS. In secs. 10 - 40 of this chapter

11 (1) "occupied structure" includes a vessel, trailer, sleeping
12 car, airplane, or other vehicle, structure or place adapted for over-
13 night accommodation of persons or for the conducting of business, whether
14 or not a person is actually present.

15 (2) "property" is property of another, if anyone other than
16 the actor has a possessory or proprietary interest in it. If a building
17 or structure is divided into separately occupied units, a unit not
18 occupied by the actor is an occupied structure of another.

19 Sec. 11.21.050. CAUSING CATASTROPHE. (a) Other than one acting
20 under legal authority, a person who causes a catastrophe by explosion,
21 fire, flood, avalanche, collapse of building, release of poison gas,
22 radioactive material or other harmful or destructive force or substance,
23 or by any other means of causing potentially widespread injury or damage,
24 commits a felony of the second degree if he does so purposely or knowingly.
25 A person causing a catastrophe mentioned in this subsection commits a
26 felony of the third degree if he does so recklessly.

27 (b) A person is guilty of a misdemeanor if he recklessly creates a
28 risk of catastrophe in the employment of fire, explosives or other danger-
29 ous agents specified in (a) of this section.

1 (c) A person who knowingly or recklessly fails to take reasonable
2 measures to prevent or mitigate a catastrophe commits a misdemeanor if

3 (1) he knows that he is under an official, contractual or
4 other legal duty to take such measures; or

5 (2) he did or assented to the act causing or threatening the
6 catastrophe.

7 Sec. 11.21.060. CRIMINAL MISCHIEF. (a) A person is guilty of
8 criminal mischief if he

9 (1) damages tangible property of another purposely, recklessly,
10 or by negligence in the employment of fire, explosives, or other danger-
11 ous means specified in sec. 50(a) of this chapter; or

12 (2) purposely or recklessly tampers with tangible property of
13 another so as to endanger a person or property; or

14 (3) purposely or recklessly causes another to suffer pecuniary
15 loss by deception or threat;

16 (4) as a tenant maliciously or wantonly breaks the glass in or
17 defaces a building in which he is a tenant, or wilfully destroys or
18 injures personal property belonging to the landlord.

19 (b) Criminal mischief is a felony of the third degree if the actor
20 purposely causes pecuniary loss in excess of \$5,000, or a substantial
21 interruption or impairment of public communication, transportation,
22 supply of water, gas or power, or other public service. It is a mis-
23 demeanor if the actor purposely causes pecuniary loss in excess of \$100,
24 or a petty misdemeanor if he purposely or recklessly causes pecuniary
25 loss in excess of \$25. A person guilty of violating (a)(4) of this
26 section may also be ordered by the court to make restitution to the
27 landlord. All other criminal mischief is a violation.

28 ARTICLE 2. BURGLARY

29 Sec. 11.21.070. BURGLARY (a) A person is guilty of burglary if he

1 enters an occupied structure, or separately secured or occupied portions
2 of an occupied structure, with purpose to commit a crime in it, unless
3 the premises are at the time open to the public or the actor is licensed
4 or privileged to enter. It is an affirmative defense to prosecution
5 for burglary that the structure was abandoned.

6 (b) Burglary is a felony of the second degree if, in the course of
7 committing the offense, the actor

8 (1) purposely, knowingly or recklessly inflicts or attempts to
9 inflict bodily injury on anyone; or

10 (2) is armed with explosives or a deadly weapon.

11 (c) All other burglary is a felony of the third degree. An act is
12 considered "in the course of committing" an offense if it occurs while
13 attempting to commit the offense or while in flight after the attempt or
14 commission of the offense.

15 (d) No person may be convicted both for burglary and for the offense
16 which it was his purpose to commit after the burglarious entry or for an
17 attempt to commit that offense, unless the additional offense constitutes
18 a felony of the first or second degree.

19 Sec. 11.21.080. CRIMINAL TRESPASS. (a) A person commits the of-
20 fense of criminal trespass if, knowing that he is not licensed or privi-
21 leged to do so, he enters or surreptitiously remains in or uses or occu-
22 pies a building or occupied structure, or separatley secured or occupied
23 portion of a building or occupied structure. This offense is a petty
24 misdemeanor.

25 (b) A person commits the offense of criminal trespass if, knowing
26 that he is not licensed or privileged to do so, he enters or remains in a
27 place as to which notice against trespass is given by

28 (1) actual communication to the actor;

29 (2) posting in a manner prescribed by law or reasonably likely

1 to come to the attention of an intruder; or

2 (3) fencing or other enclosure manifestly designed to exclude
3 intruders.

4 (c) An offense under (b) of this section constitutes a petty mis-
5 demeanor if the offender defies an order to leave personally communicated
6 to him by the owner of the premises or other authorized person. Other-
7 wise it is a violation.

8 (d) It is an affirmative defense to prosecution under this section
9 that

10 (1) the building or occupied structure involved in an offense
11 under (a) of this section was abandoned;

12 (2) the premises were at the time open to members of the
13 public and the actor complied with all lawful conditions imposed on access
14 to or remaining in the premises; or

15 (3) the actor reasonably believed that the owner of the pre-
16 mises, or other person empowered to license access to them, would have
17 licensed him to enter or remain.

18 (e) No person may be prosecuted for an offense under this section if

19 (1) the entry, use or occupancy of any of the facilities
20 described in this section is for an emergency in the case of im-
21 mediate and dire need, and

22 (2) the person contacts the owner or agent within 15
23 days after using the facility, or if the owner is unknown, the
24 nearest state or local police agency, and makes a report of the time
25 of the entry, use or occupancy of the facility and any damage to
26 the facility or personal property, unless notice waiving necessity
27 of the report is posted in the facility by the owner or his agent.

28 (f) A court having jurisdiction to impose sentence for vio-
29 lation of this section may suspend all or part of a sentence on

1 condition, among any other which might be lawfully ordered by the
2 court, that the defendant make restitution for, or repair, any
3 damage he caused or compensate the owner for property used or con-
4 sumed.

5 (g) The Department of Public Safety shall provide forms upon
6 which reports required by this section can be made and shall supply
7 the forms to all local and state police agencies in the state for
8 public distribution. The department may adopt rules and regulations
9 regarding reports required under this section.

10 Sec. 11.21.090. DEFINITIONS. In secs. 70 - 90 of this
11 chapter, "occupied structure" means a structure, vehicle, or place
12 adapted for overnight accommodation of persons, or for the carrying
13 on of business, whether or not a person is actually present.

14 ARTICLE 3. ROBBERY.

15 Sec. 11.21.100. ROBBERY. (a) A person is guilty of robbery,
16 if in the course of committing a theft, he

17 (1) recklessly inflicts serious bodily injury upon
18 the victim of the theft or another;

19 (2) threatens the victim of the theft or another with or
20 purposely puts him in fear of immediate serious bodily injury; or

21 (3) commits or threatens immediately to commit a felony
22 of the first or second degree.

23 (b) An act is considered "in the course of committing a theft"
24 if it occurs in an attempt to commit theft or in flight after the
25 attempt or commission of a theft.

26 (c) Robbery is a felony of the second degree, except that it
27 is a felony of the first degree if in the course of committing the
28 theft the actor attempts to kill the victim of the theft or another,
29 or purposely inflicts or attempts to inflict serious bodily injury

1 upon the victim of the theft or another.

2 ARTICLE 4. THEFT AND RELATED OFFENSES.

3 Sec. 11.21.110. THEFT BY UNLAWFUL TAKING. (a) A person
4 is guilty of theft if he unlawfully takes, or exercises unlawful con-
5 trol over, movable property of another with purpose to deprive him
6 of it permanently.

7 (b) A person is guilty of theft if he unlawfully transfers
8 immovable property of another or any interest in it with purpose
9 to benefit himself or another not entitled to it.

10 Sec. 11.21.120. THEFT BY DECEPTION. (a) A person is guilty of
11 theft if he purposely obtains property of another by deception. A
12 person deceives if he purposely

13 (1) creates or reinforces a false impression, including
14 false impressions as to law, value, intention or other state of mind;
15 but deception as to a person's intention to perform a promise shall
16 not be inferred from the fact alone that he did not subsequently
17 perform the promise;

18 (2) prevents another from acquiring information which would
19 affect his judgment of a transaction;

20 (3) fails to correct a false impression which the deceiver
21 previously created or reinforced, or which the deceiver knows to be
22 influencing another to whom he stands in a fiduciary or confidential
23 relationship; or

24 (4) fails to disclose a known lien, adverse claim or other
25 legal impediment to the enjoyment of property which he transfers or
26 encumbers in consideration for the property obtained, whether the
27 impediment is or is not valid, or is or is not a matter of official
28 record.

29 (b) The term "deceive" does not, however, include falsity as to

1 matters having no pecuniary significance, or puffing by statements un-
2 likely to deceive reasonably ordinary persons in the group addressed.

3 Sec. 11.21.130. THEFT BY EXTORTION. (a) A person is guilty
4 of theft if he purposely obtains property of another by threatening
5 to

6 (1) inflict bodily injury on a person or commit a criminal
7 offense;

8 (2) accuse anyone of a criminal offense;

9 (3) expose any secret tending to subject a person to
10 hatred, contempt or ridicule, or to impair his credit or business
11 repute;

12 (4) take or withhold action as an official, or cause an
13 official to take or withhold action;

14 (5) bring about or continue a strike, boycott or other col-
15 lective unofficial action, if the property is not demanded or received
16 for the benefit of the group in whose interest the actor purports
17 to act;

18 (6) testify or provide information or withhold testimony
19 or information with respect to another's legal claim or defense; or

20 (7) inflict any other harm which would not benefit the actor

21 (b) It is an affirmative defense to prosecution based on
22 paragraphs (a)(2), (3) or (4) of this section that the property obtained
23 by threat of accusation, exposure, lawsuit or other invocation of
24 official action was honestly claimed as restitution or indemnification
25 for harm done in the circumstances to which the accusation, exposure,
26 lawsuit or other official action relates, or as compensation for
27 property or lawful services.

28 Sec. 11.21.140. THEFT OF PROPERTY LOST, MISLAID OR DELIVERED BY
29 MISTAKE. A person who comes into control of property of another that

1 he knows to have been lost, mislaid, or delivered under a mistake as to
2 the nature or amount of the property or the identity of the recipient,
3 is guilty of theft if, with purpose to deprive the owner of it, he fails
4 to take reasonable measures to restore the property to a person entitled
5 to have it.

6 Sec. 11.21.150. RECEIVING STOLEN PROPERTY. (a) A person is guilty
7 of theft if he purposely receives, retains or disposes of movable proper-
8 ty of another knowing that it has been stolen, or believing that it has
9 probably been stolen, unless the property is received, retained, or
10 disposed with purpose to restore it to the owner. "Receiving" means
11 acquiring possession, control or title, or lending on the security of
12 the property.

13 (b) A person or his agent, employee, or representative whose
14 principal business is dealing in or collecting used or secondhand mer-
15 chandise or personal property, who buys or receives property which has
16 been stolen is rebuttably presumed to have bought or received the proper-
17 ty knowing it was stolen if a person in his capacity should have reason-
18 ably inquired as to whether the person from whom the property was bought
19 or received had the legal right to sell or deliver it, and he failed to
20 make the inquiry.

21 (c) In addition to the criminal penalty provided for a violation of
22 this section, a person who violates this section is liable in a civil
23 action to the owner of the stolen property for three times the amount of
24 actual damages sustained by him by the loss of the property, as well as
25 all costs and reasonable attorney fees.

26 Sec. 11.21.160. THEFT OF SERVICES. (a) A person is guilty of
27 theft if he purposely obtains services which he knows are available only
28 for compensation, by deception or threat, or by false token or other
29 means to avoid payment for the service. "Services" includes labor,

1 professional service, transportation, telephone or other public service,
2 accommodation in hotels, restaurants or elsewhere, admission to exhibi-
3 tions, use of vehicles or other movable property. When compensation
4 for service is ordinarily paid immediately upon the rendering of the
5 service, as in the case of hotels and restaurants, refusal to pay or
6 absconding without payment or offer to pay gives rise to the presumption
7 that the service was obtained by deception as to intention to pay.

8 (b) A person commits theft if, having control over the disposition
9 of services of others, to which he is not entitled, he knowingly diverts
10 the services to his own benefit or to the benefit of another not entitled
11 to them.

12 Sec. 11.21.170. THEFT BY FAILURE TO MAKE REQUIRED DISPOSITION OF
13 FUNDS RECEIVED. (a) A person who purposely obtains property upon
14 agreement, or subject to a known legal obligation, to make specified pay-
15 ment or other disposition, whether from the property or its proceeds or
16 from his own property to be reserved in equivalent amount, is guilty of
17 theft if he deals with the property obtained as his own and fails to
18 make the required payment or disposition, unless the actor proves that his
19 obligation in the transaction was limited to a promise or other duty to
20 be performed in the future without any present duty to reserve property
21 for the performance.

22 (b) This offense is committed notwithstanding that it may be impos-
23 sible to identify particular property as belonging to the victim at the
24 time of the actor's failure to make the required payment or disposition.

25 (c) An officer or employee of the government or of a financial
26 institution is presumed

27 (1) to know any legal obligation relevant to his criminal
28 liability under this section, and

29 (2) to have dealt with the property as his own if he fails to

1 pay or account upon lawful demand, or if an audit reveals a shortage or
2 falsification of accounts.

3 Sec. 11.21.180. UNAUTHORIZED USE OF AUTOMOBILES AND OTHER VEHICLES.

4 (a) A person commits a misdemeanor if he operates an automobile, air-
5 plane, motorcycle, motorboat, or other motor-propelled vehicle without
6 consent of the owner. It is an affirmative defense to prosecution under
7 this section if the owner would have consented to the operation had he
8 known of it.

9 (b) A court having jurisdiction to impose sentence for violation of
10 (a) of this section may (1) impose a longer sentence or a higher fine
11 than it would have ordinarily imposed, if substantial property destruc-
12 tion results from the unlawful operation of a vehicle under (a) of this
13 section, or (2) suspend all or part of a sentence on condition, among
14 any other which might be ordered by the court, that the defendant make
15 restitution for, or repair, any damage he has caused or compensate the
16 owner for property used or consumed.

17 Sec. 11.21.190. CONSOLIDATION OF THEFT OFFENSES. Conduct denomi-
18 nated theft in secs. 110 - 210 of this chapter constitutes a single
19 offense. An accusation of theft may be supported by evidence that it was
20 committed in any manner that would be theft under secs. 110 - 210 of
21 this chapter, notwithstanding the specification of a different manner in
22 the indictment or information, subject only to the power of the court to
23 ensure fair trial by granting a continuance or other appropriate relief
24 where the conduct of the defense would be prejudiced by lack of fair notice
25 or by surprise.

26 Sec. 11.21.200. GRADING OF THEFT OFFENSES. (a) Theft constitutes
27 a felony of the third degree if the amount involved exceeds \$500, or if
28 the property stolen is a firearm, automobile, airplane, motorcycle, motor-
29 boat, or other motor-propelled vehicle, or in the case of theft by receiv-

1 ing stolen property, if the receiver is in the business of buying or
2 selling stolen property.

3 (b) Theft not covered in (a) of this section constitutes a misde-
4 meanor, except that if the property was not taken from the person or by
5 threat, or in breach of a fiduciary obligation, and the actor proves by
6 a preponderance of the evidence that the amount involved was less than
7 \$50, the offense constitutes a petty misdemeanor.

8 (c) The amount involved in a theft is considered to be the replace-
9 ment value, in a way that is reasonably applicable, of the property or
10 services which the actor stole or attempted to steal. Amounts involved
11 in theft committed under one scheme or course of conduct, whether from
12 the same person or several persons, may be aggregated in determining the
13 grade of the offense.

14 Sec. 11.21.210. DEFENSE TO PROSECUTION FOR THEFT. (a) It is an
15 affirmative defense to prosecution for theft that the actor

16 (1) was unaware that the property or service was that of
17 another;

18 (2) acted under an honest claim of right to the property or
19 service involved or that he had a right to acquire or dispose of it as
20 he did; or

21 (3) took property exposed for sale, intending to purchase and
22 pay for it promptly, or reasonably believing that the owner, if present,
23 would have consented.

24 (b) It is not defense that theft was from the actor's spouse,
25 except that misappropriation of household and personal effects, or other
26 property normally accessible to both spouses, is theft only if it occurs
27 after the parties have ceased living together.

28 ARTICLE 5. FORGERY AND FRAUDULENT PRACTICES.

29 Sec. 11.21.220. FORGERY. (a) A person is guilty of forgery if,

1 with purpose to defraud or injure anyone, or with knowledge that he is
2 facilitating a fraud or injury to be perpetrated by anyone, the actor

3 (1) alters a writing of another without his authority; or

4 (2) makes, completes, executes, authenticates, issues or
5 transfers a writing so that it purports to be the act of another who did
6 not authorize that act, or to have been executed at a time or place or
7 in a numbered sequence other than was in fact the case, or to be a copy
8 of an original when no original existed; or

9 (3) utters any writing which he knows to be forged in a manner
10 specified in (1) and (2) of this subsection.

11 (b) Forgery is a felony of the second degree if the writing is
12 valued in excess of \$500, according to its replacement value, in a way
13 that is reasonably applicable. Forgery is a felony of the third degree
14 if the writing is valued at less than \$500, according to its replacement
15 value, in a way that is reasonably applicable. All other forgery is a
16 misdemeanor.

17 (c) For purposes of secs. 220 - 350 of this chapter, a "writing"
18 includes printing or any other method of recording information, money,
19 coins, tokens, stamps, seals, credit cards, badges, trade-marks, secur-
20 ities, wills, deeds, contracts, releases, commercial instruments, and
21 other symbols of value, right, privilege or identification.

22 Sec. 11.21.230. SIMULATING OBJECTS OF ANTIQUITY. A person commits
23 a misdemeanor if, with purpose to defraud a person or with knowledge that
24 he is facilitating a fraud to be perpetrated by a person he makes, alters
25 or utters any object so that it appears to have value because of anti-
26 quity, rarity, source, or authorship which it does not possess.

27 Sec. 11.21.240. FRAUDULENT DESTRUCTION, REMOVAL OR CONCEALMENT OF
28 RECORDABLE INSTRUMENTS. A person commits a felony of the third degree if,
29 with purpose to deceive or injure anyone, he destroys, removes or conceals

1 a will, deed, mortgage, security instrument or other writing requiring
2 public recording or filing.

3 Sec. 11.21.250. TAMPERING WITH RECORDS. A person commits a mis-
4 demeanor if, knowing that he has no privilege to do so, he falsifies,
5 destroys, removes or conceals a writing or record with purpose to deceive
6 or injure anyone or to conceal a wrongdoing.

7 Sec. 11.21.260. BAD CHECKS. A person who issues or passes a check
8 or similar sight order for the payment of money, knowing that it will not
9 be honored by the drawee, commits a misdemeanor. For the purposes of
10 this section as well as in any prosecution for theft committed by means
11 of a bad check, an issuer is presumed to know that the check or order
12 would not be paid if

13 (1) the issuer had no account with the drawee at the time the
14 check or order was issued; or

15 (2) payment was refused by the drawee for lack of funds, upon
16 presentation within 30 days after issue, and the issuer failed to make it
17 good within 10 days after receiving notice of that refusal by the bank.

18 Sec. 11.21.265. CREDIT CARDS. (a) A person commits an offense if
19 he uses a credit card for the purpose of obtaining money, property or
20 services with knowledge that

21 (1) the card is stolen or forged;

22 (2) the card has been revoked or canceled; or

23 (3) for any other reason his use of the card is unauthorized.

24 (b) It is an affirmative defense to prosecution under (3) of this
25 section if the actor proves by a preponderance of the evidence that he
26 had the purpose and ability to meet all obligations to the issuer arising
27 out of his use of the card, and that he has met the obligations to the
28 issuer at the time the prosecution is instituted.

29 (c) For purposes of this section, "credit card" means a writing

1 purporting to evidence an undertaking to pay for money, property or
2 services delivered or rendered to or upon the order of a designated
3 person or bearer.

4 (d) An offense under this section is a felony of the second degree
5 if the value of the money, property or services secured or sought to be
6 secured by means of the credit card exceeds \$500. If the value of the
7 property, money or services secured or sought to be secured by means of
8 the credit card is less than \$500, it is a misdemeanor, unless (a)(1) of
9 this section is applicable, in which case it is a felony of the third
10 degree.

11 Sec. 11.21.280. COMMERCIAL BRIBERY AND BREACH OF DUTY TO ACT
12 DISINTERESTEDLY. (a) A person commits a misdemeanor if he solicits,
13 accepts or agrees to accept a benefit as consideration for knowingly
14 violating or agreeing to violate a duty of fidelity to which he is
15 subject as

16 (1) agent, partner or employee of another;

17 (2) trustee, guardian, or other fiduciary;

18 (3) lawyer, physician, accountant, appraiser, or other
19 professional adviser or consultant;

20 (4) officer, director, partner, manager or other participant
21 in the direction of the affairs of an incorporated or unincorporated
22 association; or

23 (5) arbitrator or other purportedly disinterested adjudicator
24 or referee.

25 (b) A person who holds himself out to the public as being engaged
26 in the business of making disinterested selection, appraisal, or criticism
27 of commodities or services commits a misdemeanor if he solicits, accepts
28 or agrees to accept any benefit to influence his selection, appraisal or
29 criticism.

1 (c) A person commits a misdemeanor if he confers, or offers or
2 agrees to confer, a benefit the acceptance of which would be criminal
3 under this section.

4 Sec. 11.21.290. RIGGING PUBLICLY EXHIBITED CONTEST. (a) A person
5 commits a misdemeanor if, with purpose to prevent a publicly exhibited
6 contest from being conducted in accordance with the rules and usages
7 purporting to govern it, he

8 (1) confers or offers or agrees to confer a benefit upon, or
9 threatens an injury to a participant, official or other person associated
10 with the contest or exhibition; or

11 (2) tampers with a person, animal or thing.

12 (b) A person commits a misdemeanor if he knowingly solicits,
13 accepts or agrees to accept a benefit the giving of which would be
14 prohibited under (a) of this section.

15 (c) A person commits a misdemeanor if he knowingly engages in,
16 sponsors, produces, judges or otherwise participates in a publicly
17 exhibited contest knowing that the contest is not being conducted in
18 compliance with the rules and usages purporting to govern it, by reason
19 of conduct which would be criminal under this section.

20 Sec. 11.21.300. DEFRAUDING SECURED CREDITORS. A person commits a
21 misdemeanor if he destroys, removes, conceals, encumbers, transfers or
22 otherwise deals with property subject to a security interest with purpose
23 to hinder enforcement of that interest.

24 Sec. 11.21.310. FRAUD IN INSOLVENCY. A person commits a misdemeanor
25 or if, knowing that proceedings have been or are due to be instituted for
26 the appointment of a receiver or other person entitled to administer
27 property for the benefit of creditors, or that any other composition or
28 liquidation for the benefit of creditors has been or is about to be made,
29 he

1 (1) destroys, removes, conceals, encumbers, transfers, or
2 otherwise deals with property with purpose to defeat or obstruct the
3 claim of any creditor, or otherwise to obstruct the operation of a law
4 relating to administration of property for the benefit of creditors;

5 (2) knowingly falsifies a writing or record relating to the
6 property; or

7 (3) knowingly misrepresents or refuses to disclose to a
8 receiver or other person entitled to administer property for the benefit
9 of creditors, the existence, amount or location of the property, or any
10 other information which the actor could be legally required to furnish
11 in relation to such administration.

12 Sec. 11.21.320. RECEIVING DEPOSITS IN A FAILING FINANCIAL INSTITU-
13 TION. An officer, manager or other person directing or participating in
14 the direction of a financial institution commits a misdemeanor if he
15 receives or permits the receipt of a deposit, premium payment or other
16 investment in the institution knowing that

17 (1) due to financial difficulties the institution is about to
18 suspend operations or go into receivership or reorganization; and

19 (2) the person making the deposit or other payment is unaware
20 of the precarious situation of the institution.

21 Sec. 11.21.330. MISAPPLICATION OF ENTRUSTED PROPERTY AND PROPERTY
22 OF GOVERNMENT OR FINANCIAL INSTITUTION. A person commits a offense if he
23 applies or disposes of property that has been entrusted to him as a
24 fiduciary, or property of the government or of a financial institution,
25 in a manner which he knows is unlawful and involves substantial risk of
26 loss or detriment to the owner of the property or to a person for whose
27 benefit the property was entrusted. The offense is a misdemeanor if the
28 amount involved exceeds \$50 but is less than \$500. The offense is a
29 felony of the third degree if the amount involved exceeds \$500; otherwise

1 it is a petty misdemeanor. For the purposes of this section, "fiduciary"
2 includes trustee, guardian, executor, administrator, receiver, and any
3 person carrying on fiduciary functions on behalf of a corporation or other
4 organization which is a fiduciary.

5 Sec. 11.21.340. SECURING EXECUTION OF DOCUMENTS BY DECEPTION. A
6 person commits a misdemeanor if by deception he causes another to execute
7 an instrument affecting or purporting to affect or likely to affect the
8 pecuniary interest of a person.

9 Sec 11.21.350. DEFINITIONS. In secs. 110 - 350 of this chapter

10 (1) "deprive" means

11 (A) to withhold property of another permanently or for so
12 extended a period as to appropriate a major portion of its economic
13 value, or with intent to restore only upon payment of reward or other
14 compensation; or

15 (B) to dispose of the property in such a way to make it
16 unlikely that the owner will recover it;

17 (2) "financial institution" means a bank, insurance company,
18 credit union, building and loan association, investment trust or other
19 organization held out to the public as a place of deposit of funds or
20 medium of savings or collective investment;

21 (3) "government" means the United States, a state, county,
22 municipality, or other political unit, or a department, agency or
23 subdivision of the United States or a state, or a corporation or other
24 association carrying out the functions of government;

25 (4) "movable property" means property the location of which
26 can be changed, including things growing on, affixed to, or found in land,
27 and documents although the rights represented by them have no physical
28 location; "immovable property" is all other property;

29 (5) "obtain" means

1 (A) in relation to property, to bring about a transfer
2 or purported transfer of a legal interest in the property, whether
3 to the person obtaining the property or another; or

4 (B) in relation to labor or service, to secure perfor-
5 mance of it;

6 (6) "property" means anything of value, including real estate
7 tangible and intangible personal property, contract rights, choses-in-
8 action and other interests in or claims to wealth, admission or transpor-
9 tation tickets, captured or domestic animals, food and drink, electric or
10 other power;

11 (7) "property of another" includes property in which any
12 person other than the actor has an interest which the actor is not
13 privileged to infringe, regardless of the fact that the actor also has an
14 interest in the property and regardless of the fact that the other person
15 might be precluded from civil recovery because the property was used in
16 an unlawful transaction or was subject to forfeiture as contraband. Pro-
17 perty in possession of the actor is not considered property of another
18 who has only a security interest in it, even if legal title is in the
19 creditor under a conditional sales contract or other security agreement.

20 CHAPTER 23. OFFENSES AGAINST THE FAMILY.

21 Sec. 11.23.010. BIGAMY. A married person is guilty of bigamy, a
22 misdemeanor, if he contracts or purports to contract another marriage
23 unless at the time of the subsequent marriage

24 (1) the actor believes that his prior spouse is dead:

25 (2) the actor and his prior spouse have been living apart for
26 five consecutive years throughout which the prior spouse was not known by
27 the actor to be alive;

28 (3) a court has entered a judgment purporting to terminate or
29 annul any prior disqualifying marriage, and the actor does not know that

1 judgment to be invalid; or

2 (4) the actor reasonably believes that he is legally eligible
3 to remarry.

4 Sec. 11.23.020. POLYGAMY. A person is guilty of polygamy, a felony
5 of the third degree, if he marries or cohabits with more than one spouse
6 at a time in purported exercise of the right of plural marriage. The
7 offense is a continuing one until all cohabitation and claim of marriage
8 with more than one spouse terminates. Secs. 10 - 30 of this chapter
9 do not apply to parties to a polygamous marriage, lawful in the country
10 of which they are residents or nationals, while they are in transit
11 through or temporarily visiting the state.

12 Sec. 11.23.030. OTHER PARTY TO BIGAMOUS OR POLYGAMOUS MARRIAGE. A
13 person is guilty of bigamy or polygamy, as the case may be, if he con-
14 tracts or purports to contract marriage with another knowing that the
15 other is thereby committing bigamy or polygamy.

16 Sec. 11.23.040. INCEST. A person is guilty of incest, a felony of
17 the third degree, if he knowingly marries or cohabits or has sexual inter-
18 course with an ancestor or descendant, a brother or sister of the whole
19 or half blood or an uncle, aunt, nephew or niece of the whole blood.
20 "Cohabit" means to live together under the representation or appearance
21 of being married. The relationships referred to in this section include
22 blood relationships without regard to legitimacy or the relationship of
23 parent and child by adoption.

24 Sec. 11.23.050. ABORTIONS. (a) No abortion may be performed in
25 this state unless

26 (1) the abortion is performed by a physician or surgeon
27 licensed by the state Medical Board under AS 08.64.200;

28 (2) the abortion is performed in a hospital or other facility
29 approved for the purpose by the Department of Health and Social Services

1 or a hospital operated by the federal government or an agency of the
2 federal government;

3 (3) consent has been received from the parent or guardian of
4 an unmarried woman less than 18 years of age; and

5 (4) the woman is domiciled or physically present in the state
6 for 30 days before the abortion. "Abortion" in this section means an
7 operation or procedure to terminate the pregnancy of a nonviable fetus.
8 Nothing in this section requires a hospital or person to participate in
9 an abortion, nor is a hospital or person liable for refusing to partici-
10 pate in an abortion under this section.

11 (b) A person who knowingly violates a provision of (a) of this
12 section, upon conviction, is punishable for a felony of the third degree.

13 Sec. 11.23.070. PERSISTENT NONSUPPORT. A person commits a mis-
14 demeanor if he persistently fails to provide support which he can provide
15 and which he knows he is legally obliged to provide to a spouse, child, or
16 dependent under AS 47.25.230.

17 Sec. 11.23.080. CONCEALMENT OF DEATH OF CHILD. A person who con-
18 ceals the death of an issue of a woman's body, so that it may not be
19 known whether the issue was born alive or not, or whether or not it was
20 murdered, upon conviction, is guilty of a misdemeanor.

21 Sec. 11.23.090. JOINDER OF OFFENSE WITH CHARGE OF MURDER. A person
22 indicted for the murder of his bastard infant may also be charged in the
23 same indictment with the crime defined in sec. 80 of this chapter, and if
24 he is found not guilty of the charge of murder he may be found guilty of
25 the crime defined in sec. 80 of this chapter.

26 CHAPTER 27. OFFENSES AGAINST PUBLIC ADMINISTRATION.

27 ARTICLE 1. BRIBERY AND CORRUPT INFLUENCE.

28 Sec. 11.27.010. BRIBERY IN OFFICIAL AND POLITICAL MATTERS. (a) A
29 person is guilty of bribery, a felony of the third degree, if he corrupt-

1 ly offers, confers or agrees to confer upon another, or corruptly solici-
2 its, accepts or agrees to accept from another

3 (1) a pecuniary benefit as consideration for the recipient's
4 decision, opinion, recommendation, vote or other exercise of discretion
5 as a public servant, party official or voter; or

6 (2) a benefit as consideration for the recipient's decision,
7 vote, recommendation or other exercise of official discretion in a
8 judicial or administrative proceeding; or

9 (3) a benefit as consideration for a violation of a known
10 legal duty as public servant or party official.

11 (b) It is no defense to prosecution under this section that a per-
12 son whom the actor sought to influence was not qualified to act in the
13 desired way because he had not yet assumed office, or lacked jurisdiction,
14 or for any other reason.

15 Sec. 11.27.020. THREATS AND OTHER IMPROPER INFLUENCE IN OFFICIAL
16 AND POLITICAL MATTERS. (a) A person commits an offense of unlawful
17 threats if he

18 (1) threatens harm to a person with purpose to influence his
19 decision, opinion, recommendation, vote or other exercise of discretion
20 as a public servant, party official or voter; or

21 (2) threatens harm to a public servant with purpose to influ-
22 ence his decision, opinion, recommendation, vote or other exercise of
23 discretion in a judicial or administrative proceeding; or

24 (3) threatens harm to a public servant or party official with
25 purpose to influence him to violate his known legal duty.

26 (b) It is no defense to prosecution under this section that a
27 person whom the actor sought to influence was not qualified to act in the
28 desired way, because he had not yet assumed office, lacked jurisdiction,
29 or for any other reason.

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(c) An offense under this section is a misdemeanor unless the actor threatened to commit a crime or made a threat with purpose to influence a judicial or administrative proceeding, in which case the offense is a felony of the third degree.

Sec. 11.27.040. RETALIATION FOR PAST OFFICIAL ACTION. A person commits a misdemeanor if he harms another by an unlawful act in retaliation for an act lawfully done by the other person in the capacity of public servant.

1
2 ARTICLE 2. PERJURY AND OTHER
3 FALSIFICATION IN OFFICIAL MATTERS.

4 Sec. 11.27.100. PERJURY. (a) A person is guilty of perjury, a
5 felony of the third degree, if in an official proceeding he makes a
6 false statement under oath or equivalent affirmation, or swears or
7 affirms the truth of a statement previously made, when the statement
8 is material and he does not believe it to be true.

9 (b) Falsification is material, regardless of the admissibility
10 of the statement under rules of evidence, if it could have affected
11 the course or outcome of the proceeding. It is no defense that the
12 declarant mistakenly believed the falsification to be immaterial.
13 Whether a falsification is material in a given factual situation is a
14 question of law.

15 (c) It is not a defense to prosecution under this section that
16 the oath or affirmation was administered or taken in an irregular
17 manner or that the declarant was a minor. A document purporting
18 to be made upon oath or affirmation at any time when the actor
19 presents it as being so verified is considered to have been
20 duly sworn or affirmed.

21 (d) No person shall be guilty of an offense under this section
22 if he retracted the falsification in the course of the proceeding in
23 which it was made before it became manifest that the falsification
24 was or would be exposed and before the falsification substantially
25 affected the proceeding.

26 (e) Where the defendant made inconsistent statements under oath
27 or equivalent affirmation, both having been made within the period of
28 the statute of limitations, the prosecution may proceed by setting
29 forth the inconsistent statements in a single count alleging in the

1 alternative that one or the other was false and not believed by the
2 defendant. In this case it is not necessary for the prosecution to
3 prove which statement was false but only that one or the other was
4 false and not believed by the defendant to be true.

5 (f) No person shall be convicted of an offense under this
6 section where proof of falsity rests solely upon contradiction by
7 testimony of a single person other than the defendant.

8 Sec. 11.27.110. FALSE SWEARING. (a) A person who makes a false
9 statement under oath or equivalent affirmation, or swears or affirms
10 the truth of such a statement previously made, when he does not believe
11 the statement to be true, is guilty of a misdemeanor if

12 (1) the falsification occurs in an official proceeding; or

13 (2) the falsification is intended to mislead a public
14 servant in performing his official function.

15 (b) A person who makes a false statement under oath or equivalent
16 affirmation, or swears or affirms the truth of such a statement
17 previously made, when he does not believe the statement to be true,
18 is guilty of a petty misdemeanor, if the statement is one which is
19 required by law to be sworn or affirmed before a notary or other
20 person authorized to administer oaths.

21 (c) Sec. 100(c) - (f) of this chapter apply to this section

22 Sec. 11.27.120. UNSWORN FALSIFICATION TO AUTHORITIES. (a) A
23 person is guilty of a misdemeanor if, with purpose to mislead a public
24 servant in performing his official function, he

25 (1) makes a written false statement which he does not
26 believe to be true;

27 (2) purposely creates a false impression in a written
28 application for a pecuniary or other benefit, by omitting information
29 necessary to prevent statements in it from being misleading;

1 (3) submits or invites reliance on a writing which he
2 knows to be forged, altered or otherwise lacking in authenticity; or

3 (4) submits or invites reliance on a sample, specimen,
4 map, boundary-mark, or other object which he knows to be false.

5 (b) A person commits a petty misdemeanor if he makes a written
6 false statement which he does not believe to be true, on or pursuant
7 to a form bearing notice, authorized by law, to the effect that false
8 statements made in it are punishable.

9 (c) Sec. 100(c) - (f) of this chapter apply to this section

10 Sec. 11.27.130. FALSE ALARMS TO AGENCIES OF PUBLIC SAFETY. (a)

11 A person who knowingly causes a false alarm of fire or other emergency
12 to be transmitted to or within an organization, official or volunteer,
13 for dealing with emergencies involving danger to life or property
14 commits a misdemeanor.

15 (b) In addition to the penalty provided in (a) of this section,
16 the court may in its discretion require restitution by the convicted
17 person to the authority involved for any and all expenses incurred as
18 a direct result of the false alarm.

19 Sec. 11.27.140. FALSE REPORTS TO LAW ENFORCEMENT AUTHORITIES. (a)

20 A person who knowingly gives false information to a law enforcement
21 officer with purpose to implicate another commits a misdemeanor.

22 (b) A person commits a petty misdemeanor if he

23 (1) reports to law enforcement authorities an offense or
24 other incident within their concern knowing that it did not occur; or

25 (2) pretends to furnish the law enforcement authorities with
26 information relating to an offense or incident when he knows he has no
27 information relating to the offense or incident.

28 Sec. 11.27.150. TAMPERING WITH WITNESSES AND INFORMANTS. (a) A
29 person commits an offense if, believing that an official proceeding or

1 investigation is pending or about to be instituted, he attempts to induce
2 or otherwise cause a witness or informants to (1) testify or inform
3 falsely; or (2) withhold any testimony, information, document or thing;
4 or (3) elude legal process summoning him to testify or supply evidence;
5 or (4) absent himself from a proceeding or investigation to which
6 he has been legally summoned.

7 (b) The offense is a felony of the third degree if the actor
8 employs force, deception, threat or offer of pecuniary benefit.
9 Otherwise it is a misdemeanor.

10 (c) A person commits a misdemeanor if he harms another by an
11 unlawful act in retaliation for anything lawfully done in the capacity
12 of witness or informant.

13 (d) A person commits a felony of the third degree if he solicits,
14 accepts or agrees to accept any benefit in consideration of his doing
15 any of the things specified in (a) of this section.

16 Sec. 11.27.160. TAMPERING WITH OR FABRICATING PHYSICAL EVIDENCE.
17 A person commits a misdemeanor if, believing that an official
18 proceeding or investigation is pending or about to be instituted, he

19 (1) alters, destroys, conceals or removes any record,
20 document or thing with purpose to impair its verity or availability
21 in the proceeding or investigation; or

22 (2) makes, presents or uses a record, document or thing
23 knowing it to be false and with purpose to mislead a public servant
24 who is or may be engaged in the proceeding or investigation.

25 Sec. 11.27.170. TAMPERING WITH PUBLIC RECORDS OR INFORMATION.

26 (a) A person commits an offense if he

27 (1) knowingly makes a false entry in, or false alteration
28 of, a record, document or thing belonging to, or received or kept by,
29 the government for information or record, or required by law to be

1 kept by others for information of the government;

2 (2) makes, presents or uses a record, document or thing
3 knowing it to be false, and with purpose that it be taken as a genuine
4 part of information or records referred to in (1) of this subsection; or

5 (3) purposely and unlawfully destroys, conceals, removes
6 or otherwise impairs the verity or availability of any such record,
7 document or thing.

8 (b) An offense under (a) of this section is a misdemeanor unless
9 the actor's purpose is to defraud or injure anyone, in which case the
10 offense is a felony of the third degree.

11 Sec. 11.27.180. IMPERSONATING A PUBLIC SERVANT. A person
12 commits a misdemeanor if he falsely pretends to hold a position in
13 public service with purpose to induce another to submit to the
14 pretended official authority or otherwise act in reliance upon that
15 pretense to his prejudice.

16 ARTICLE 3. OBSTRUCTING GOVERNMENTAL
17 OPERATIONS AND ESCAPES.

18 Sec. 11.27.190. OBSTRUCTING ADMINISTRATION OF LAW OF OTHER
19 GOVERNMENTAL FUNCTION. A person commits a misdemeanor if he purposely
20 obstructs or impairs the administration of law or other governmental
21 function by force, violence, physical interference or obstacle,
22 breach of official duty, or other unlawful act, except that this
23 section does not apply to flight by a person charged with crime,
24 refusal to submit to arrest, failure to perform a legal duty other
25 than an official duty, or any other means of avoiding compliance with
26 law without affirmative interference with governmental functions.

27 Sec. 11.27.200. RESISTING ARREST OR OTHER LAW ENFORCEMENT. A
28 person commits a misdemeanor if, for the purpose of preventing a
29 public servant from effecting a lawful arrest or discharging any

1 other official duty, the person creates a substantial risk of bodily
2 injury to the public servant or another, or employs means justifying
3 or requiring substantial force to overcome the resistance.

4 Sec. 11.27.210. HINDERING APPREHENSION OR PROSECUTION. (a) A
5 person commits an offense if, with purpose to hinder the apprehension,
6 prosecution, conviction or punishment of another for crime, he

7 (1) harbors or conceals the other;

8 (2) provides or aids in providing a weapon, transportation,
9 disguise or other means of avoiding apprehension or effecting escape;

10 (3) conceals or destroys evidence of the crime, or tampers
11 with a witness, informant, document or other source of information,
12 regardless of its admissibility in evidence;

13 (4) warns the other of impending discovery or apprehension,
14 except that this paragraph does not apply to a warning given in
15 connection with an effort to bring another into compliance with law;
16 or

17 (5) volunteers false information to a law enforcement
18 officer.

19 (b) The offense is a felony of the third degree if the conduct
20 which the actor knows has been charged against the person aided
21 would constitute a felony of the first or second degree. Other-
22 wise it is a misdemeanor.

23 Sec. 11.27.220. AIDING CONSUMMATION OF CRIME. A person commits
24 an offense if he purposely aids another in accomplishing an unlawful
25 object of a crime, by safeguarding the proceeds of it or converting
26 the proceeds of it into negotiable funds. The offense is a felony of
27 the third degree if the principle offense was a felony of the first
28 or second degree. Otherwise it is a misdemeanor.

29 Sec. 11.27.230. COMPOUNDING. A person commits a misdemeanor if

1 he accepts or agrees to accept a pecuniary benefit in consideration of
2 refraining from reporting to law enforcement authorities the commission
3 or suspected commission of an offense or information relating to an
4 offense. It is an affirmative defense to prosecution under this
5 section that the pecuniary benefit did not exceed an amount which the
6 actor believed to be due as restitution or indemnification for harm
7 caused by the offense.

8 Sec. 11. 27.235. ESCAPE. (a) A person commits an offense if he
9 unlawfully removes himself from official detention or fails to return
10 to official detention following temporary leave granted for a specific
11 purpose or limited period. In this section, "official detention"
12 means arrest, detention in a facility for custody of persons under
13 charge or conviction of crime or alleged or found to be delinquent,
14 detention for extradition or deportation, or any other detention for
15 law enforcement purposes; but "official detention" does not include
16 supervision of probation or parole, or constraint incidental to
17 release on bail.

18 (b) A public servant authorized to enforce detention commits an
19 offense if he knowingly or recklessly permits an escape. Any person who
20 knowingly causes or facilitates an escape commits an offense.

21 (c) Irregularity in effecting or maintaining detention, or lack
22 of jurisdiction of the committing or detaining authority, is not a
23 defense to prosecution under this section if the escape is from a
24 prison or other custodial facility or from detention after commitment
25 by official proceedings. In the case of other detentions, irregularity
26 or lack of jurisdiction shall be a defense only if

27 (1) the escape involved no substantial risk of harm to the
28 person or property of anyone other than the detainee; or

29 (2) the detaining authority did not act in good faith under

1 color of law

2 (d) An offense under this section is a felony of the third
3 degree where

4 (1) the actor was under arrest for or detained on a charge
5 of felony or following conviction of crime;

6 (2) the actor employs force, threat, deadly weapon or
7 other dangerous instrumentality to effect the escape; or

8 (3) a public servant concerned in detention of persons
9 convicted of crime purposely facilitates or permits an escape from a
10 detention facility.

11 (e) Otherwise an offense under this section is a misdemeanor.

12 Sec. 11.27.240. IMPLEMENTS FOR ESCAPE AND OTHER CONTRABAND.

13 (a) A person commits a misdemeanor if he unlawfully introduces
14 within a detention facility, or unlawfully provides an inmate with,
15 a weapon, tool or other thing which may be used in escaping from
16 the detention facility. An inmate commits a misdemeanor if he
17 unlawfully procures, makes, or otherwise provides himself with,
18 or has in his possession, an implement of escape.

19 (b) A person commits a petty misdemeanor if he provides an
20 inmate with anything which the actor knows it is unlawful for the
21 inmate to possess.

22 Sec. 11.27.250. BAIL JUMPING OR DEFAULT IN REQUIRED APPEARANCE.

23 A person released by court order, with or without bail, upon
24 condition that he will subsequently appear at a specified time and
25 place, commits a misdemeanor if, without lawful excuse, he fails to
26 appear at that time and place. The offense constitutes a felony of
27 the third degree where the required appearance was to answer to a
28 charge of felony, or for disposition of the charge, and the actor
29 took flight or went into hiding to avoid apprehension, trial or

1 punishment. This section does not apply to obligations to appear
2 incident to release under suspended sentence or on probation or
3 parole.

4 Sec. 11.27.260. OFFICIAL OPPRESSION. A person acting or
5 purporting to act in an official capacity or taking advantage of his
6 actual or purported capacity commits a misdemeanor if, knowing that
7 his conduct is illegal, he

8 (1) subjects another to arrest, detention, search, seizure,
9 mistreatment, dispossession, assessment, lien or other infringement
10 of personal or property rights; or

11 (2) denies or impedes another in the exercise or enjoyment
12 of a right, privilege, power or immunity.

13 ARTICLE 4. DEFINITIONS.

14 Sec. 11.27.280. DEFINITIONS. In this chapter

15 (1) "benefit" means gain or advantage, or anything regarded
16 by the beneficiary as gain or advantage, including benefit to any
17 other person or entity in whose welfare he is interested, but not an
18 advantage promised generally to a group or class of voters as a
19 consequence of public measures which a candidate engages to support
20 or oppose;

21 (2) "government" includes a branch, subdivision or agency
22 of the government of the state or locality within it;

23 (3) "harm" means loss, disadvantage or injury, or anything
24 similarly regarded by the person affected, including loss, disadvantage
25 or injury to another person or entity in whose welfare he is interested;

26 (4) "official proceeding" means a proceeding heard or which
27 may be heard before a legislative, judicial, administrative or other
28 governmental agency or official authorized to take evidence under
29 oath, including a referee, hearing examiner, commissioner, notary

1 or other person taking testimony or deposition in connection with
2 the proceeding;

3 (5) "party official" means a person who holds an elective
4 or appointive post in a political party in the United States
5 in which he directs or conducts, or participates in directing
6 or conducting party affairs at any level of responsibility;

7 (6) "pecuniary benefit" means benefit in the form of money,
8 property, commercial interests or anything else the primary signifi-
9 cance of which is economic gain;

10 (7) "public servant" means an officer or employee of
11 government, including legislators and judges, and a person participating
12 as juror, advisor, consultant or otherwise, in performing a governmental
13 function; but the term does not include witnesses;

14 (8) "administrative proceeding" means a proceeding other
15 than a judicial proceeding the outcome of which is required to be
16 based on a record or documentation prescribed by law, or in which law
17 or regulation is particularized in application to individuals;

18 (9) "statement" means a representation, but includes a
19 representation of opinion, belief or other state of mind only if the
20 representation clearly relates to state of mind apart from or in
21 addition to any facts which are the subject of the representation.

22 CHAPTER 29. OFFENSES AGAINST PUBLIC

23 ORDER AND DECENCY

24 ARTICLE 1. RIOT, DISORDERLY CONDUCT,

25 AND RELATED OFFENSES.

26 Sec. 11.29.010. RIOT. A person is guilty of riot, a felony of the
27 third degree, if he participates with two or more persons in a course
28 of disorderly conduct

29 (1) with purpose to commit or facilitate the commission of

1 a felony or misdemeanor;

2 (2) with purpose to prevent or coerce official action; or

3 (3) when the actor or any other participant to the knowledge
4 of the actor uses or plans to use a firearm or other deadly weapon.

5 Sec. 11.29.030. DISORDERLY CONDUCT. (a) A person who does any of
6 the following is guilty of disorderly conduct:

7 (1) in a public place, repeatedly or continuously shouts,
8 blows a horn, plays a musical or recording or amplifying instrument, or
9 otherwise generates loud noises intending to disturb or acting with
10 reckless disregard for the peace and privacy of others, or, in a private
11 place, engages in the same conduct with the same intent or reckless
12 disregard, having been informed by another that the conduct is disturbing
13 the peace and privacy of others not in the same place;

14 (2) in a public place, when a criminal offense has occurred,
15 refuses to comply with a lawful order of the police to disperse, or, in
16 a private place, refuses to comply with an order of the police to leave
17 premises in which he has neither a right of occupancy nor the express
18 invitation to remain of the person having the right of possession;

19 (3) in a public or private place challenges another to fight,
20 or engages in fighting other than in self-defense; or

21 (4) in a public or private place knowingly or recklessly
22 creates a hazardous condition for others by an act which has no legal
23 justification or excuse.

24 (b) Upon conviction, a person who is guilty of disorderly conduct
25 is punishable by a fine of not more than \$300, or by imprisonment for
26 not more than 10 days, or by both.

27 (c) In a prosecution under (a)(1) of this section

28 (1) if the loud noise constitutes speech, the content of
29 speech or evidence of specific words used by the defendant is admissible

1 in evidence against him only as permitted by court rule;

2 (2) "loud noise" in a public place means noise which is loud
3 enough to inhibit the ability of the average person in the same place to
4 speak freely without leaving the public place;

5 (3) "loud noise" in a private place means noise which is loud
6 enough to awaken the average person sleeping in a place other than the
7 private place.

8 (d) In this section a "public place" is a place where the public
9 is permitted to assembly, enter or pass through, whether publicly or
10 privately maintained, including but not limited to places of accommoda-
11 tion, transportation, business and entertainment, or any other place
12 which is not a private place.

13 Sec. 11.29.040. FALSE PUBLIC ALARMS. A person is guilty of a
14 misdemeanor if he initiates or circulates a report or warning of an
15 impending bombing or other crime of catastrophe, knowing that the
16 report or warning is false and that it is likely to cause evacuation
17 of a building, place of assembly, or facility of public transport,
18 or to cause public inconvenience or alarm.

19 Sec. 11.29.070. LOITERING. (a) A person commits a violation
20 if he loiters, remains, or wanders in and about a place, at a time,
21 or in a manner and under circumstances that warrants alarm for the
22 safety of persons or property in the vicinity. Among the circumstances
23 which may be considered in determining whether alarm is warranted is
24 the fact that the actor takes flight upon appearance of a peace
25 officer, refuses to identify himself, or manifestly endeavors to
26 conceal himself or an object. Unless flight by the actor or other
27 circumstances makes it impracticable, a peace officer shall, before
28 any arrest for an offense under this section, afford the actor
29 an opportunity to dispel any alarm which would otherwise be warranted,

1 by requesting him to identify himself and explain his presence and
2 conduct.

3 (b) No person shall be convicted on an offense under this
4 section if the peace officer fails to afford the actor an opportunity
5 to dispel any alarm, or if it appears at trial that the explanation
6 given by the actor was true and, if believed by the peace officer at
7 the time, would have dispelled the alarm.

8 Sec. 11.29.080. OBSTRUCTING HIGHWAYS AND OTHER PUBLIC PASSAGES.

9 (a) A person, who, not legally privileged, purposely or recklessly
10 obstructs a highway or other public passage, whether alone or with
11 others, commits a violation, or, if he persists after warning by a
12 law officer, a petty misdemeanor. In this section, "obstructs" means
13 to render impassable without unreasonable inconvenience or hazard. No
14 person shall be guilty of recklessly obstructing in violation of this
15 section solely because of a gathering of persons to hear him speak or
16 otherwise communicate, or solely because of being a member of such a
17 gathering.

18 (b) A person in a gathering commits a violation if he refuses
19 to obey a reasonable official request or order to move

20 (1) to prevent obstruction of a highway or other public
21 passage; or

22 (2) to maintain public safety by dispersing those gathered
23 in dangerous proximity to a fire or other hazard.

24 (c) An order to move, addressed to a person whose speech or
25 other lawful behavior attracts an obstructing audience, is not reasonable
26 if the obstruction can be readily remedied by police control of the size
27 or location of the gathering.

28 Sec. 11.29.100. DESECRATION OF VENERATED OBJECTS. A person
29 commits a misdemeanor if he purposely desecrates any public monument

1 or structure, or place of worship or burial, or if he purposely
2 desecrates the national flag or any other object of veneration by the
3 public or a substantial segment of it in a public place. In this
4 section, "desecrate" means defacing, damaging, polluting or otherwise
5 physically mistreating in a way that the actor knows will outrage
6 the sensibilities of persons likely to observe or discover his action.

7 Sec. 11.29.110. ABUSE OF CORPSE. Except as authorized by law,
8 a person who treats a corpse in a way that would create public outrage
9 commits a misdemeanor.

10 Sec. 11.29.120. CRUELTY TO ANIMALS. (a) A person commits a
11 misdemeanor if he purposely or recklessly

- 12 (1) subjects an animal to cruel mistreatment;
13 (2) subjects an animal in his custody to cruel neglect; or
14 (3) kills or injures an animal belonging to another without
15 legal privilege or consent of the owner.

16 (b) Provisions (1) and (2) of this section are not applicable to
17 accepted veterinary practices and activities carried on for scientific
18 research.

19 (c) For purposes of this section "animal" includes birds.

20 Sec. 11.29.130. UNLAWFUL EAVESDROPPING OR SURVEILLANCE. (a)
21 Unless authorized by law, a person commits a misdemeanor if he

22 (1) trespasses on property with purpose to subject a person
23 to eavesdropping or other surveillance in a private place;

24 (2) installs in a private place, without the consent of
25 the persons entitled to privacy there, a device for observing, photo-
26 graphing, recording, amplifying or broadcasting sounds or events in
27 the place, or uses any other unauthorized installation; or

28 (3) installs or uses outside a private place a device for
29 hearing, recording, amplifying or broadcasting sounds originating in

1 the place which would not ordinarily be audible or comprehensible
2 outside, without the consent of the person or persons entitled to
3 privacy there.

4 (b) In this section, "private place" means a place where one may
5 reasonably expect to be safe from casual or hostile intrusion or
6 surveillance.

7 Sec. 11.29.140. OTHER BREACH OF PRIVACY OF MESSAGES. Unless
8 authorized by law, a person commits a misdemeanor if he

9 (1) intercepts without the consent of the sender or
10 receiver a message by telephone, telegraph, letter or other means
11 of communicating privately; however, this paragraph does not extend
12 to

13 (A) overhearing of messages through a regularly
14 installed instrument on a telephone party line or on an
15 extension, or

16 (B) interception by the telephone company or
17 subscriber incident to enforcement of regulations limiting use of
18 the facilities or incident to other normal operation and use; or

19 (2) divulges without the consent of the sender or receiver
20 the existence or contents of a message if the actor knows that the
21 message was illegally intercepted, or if he learned of the message
22 in the course of employment with an agency engaged in transmitting it.

23 ARTICLE 2. PUBLIC INDECENCY.

24 Sec. 11.29.160. PROSTITUTION. (a) A person is guilty of
25 prostitution, a petty misdemeanor, if he or she

26 (1) is an inmate of a house of prostitution or otherwise
27 engages in sexual activity as a business; or

28 (2) loiters in or within view of a public place for the
29 purpose of being hired to engage in sexual activity.

1 (b) For purposes of secs. 160 - 210,

2 (1) "sexual activity" includes homosexual and other deviate
3 sexual relations;

4 (2) "house of prostitution" is a place where prostitution
5 or promotion of prostitution is regularly carried on by one person
6 under the control, management or supervision of another;

7 (3) "inmate" is a person who engages in prostitution in or
8 through the agency of a house of prostitution;

9 (4) "public place" means a place to which the public has
10 access.

11 Sec. 11.29.170. PROMOTING PROSTITUTION. (a) A person who
12 knowingly promotes the prostitution of another commits a misdemeanor
13 or felony as provided in (b) and (c) of this section. The following acts
14 constitute promoting prostitution:

15 (1) owning, controlling, managing, supervising or otherwise
16 keeping, alone or in association with others, a house of prostitution
17 or a prostitution business;

18 (2) procuring an inmate for a house of prostitution or a
19 place in a house of prostitution for one who would be an inmate;

20 (3) encouraging, inducing, or otherwise purposely causing
21 another to become or remain a prostitute;

22 (4) soliciting a person to patronize a prostitute; or

23 (5) procuring a prostitute for a patron;

24 (6) transporting a person into or within this state with
25 purpose to promote that person's engaging in prostitution, or procuring
26 or paying for transportation with that purpose;

27 (7) leasing or otherwise permitting a place controlled by
28 the actor, alone or in association with others, to be regularly used
29 for prostitution or the promotion of prostitution, or failure to make

1 reasonable effort to abate such use by ejecting the tenant, notifying
2 law enforcement authorities, or other legally available means; or

3 (8) soliciting, receiving, or agreeing to receive any
4 benefit for doing or agreeing to do anything forbidden by (a) of this
5 section.

6 (b) An offense under this section constitutes a felony of the
7 third degree if (1) the offense falls within (a)(1), (a)(2) or
8 (a)(3) of this section; (2) the actor promotes prostitution of a child
9 under 16, whether or not he knows the child's age; or (3) the actor
10 promotes prostitution of his wife, child, ward or any person for whose
11 care, protection of support he is responsible.

12 (c) An offense under this section is a felony of the second
13 degree if the actor compels another by force to engage in prostitution.

14 (d) Otherwise the offense is a misdemeanor.

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18 Sec. 11.29.180. PRESUMPTION FROM LIVING OFF PROSTITUTES. A
19 person, other than a prostitute or a prostitute's minor child or
20 other legal dependent incapable of self-support, who is supported
21 in whole or substantial part by the proceeds of prostitution is
22 presumed to be knowingly promoting prostitution in violation of sec.
23 170 of this chapter.

24 Sec. 11.29.200. EVIDENCE. (a) On the issue of whether a place is
25 a house of prostitution the following is admissible evidence:

26 (1) the general repute of the place;
27 (2) the repute of the persons who reside in or frequent
28 the place;

29 (3) the frequency, timing and duration of visits by nonresidents.

1 (b) Testimony of a person against his spouse is admissable to
2 prove offenses under secs. 160 - 210 of this chapter.

3 Sec. 11.29.210. LOITERING TO SOLICIT SEXUAL RELATIONS. A per-
4 son is guilty of a petty misdemeanor if he loiters in or near a public
5 place for the purpose of soliciting or being solicited to engage in
6 sexual relations. For the purposes of this section (1)"sexual rela-
7 tions" means sexual intercourse and includes contact between the penis
8 and the anus; or between the mouth or tongue and the penis, the scrotum,
9 the anus, or the vulva; (2) "loitering" means repeated and persistent
10 behavior to the annoyance of another.

11 ARTICLE 3. WEAPONS.

12 Sec. 11.29.320. CARRYING CONCEALED WEAPONS. Unless authorized
13 under the terms of a permit issued by the Department of Public Safety,
14 it is unlawful for a person to carry concealed about his person, in
15 any manner, a revolver, pistol, or other firearm, or knife, other
16 than an ordinary pocketknife, or a dirk or dagger, metal
17 knuckles, or an instrument by the use of which injury could be
18 inflicted upon the person or property of another.

19 Sec. 11.29.330. PUNISHMENT FOR CARRYING CONCEALED WEAPONS. A
20 person violating sec. 320 of this chapter is guilty of a petty
21 misdemeanor. Section 320 of this chapter and this section do not
22 apply to a peace officer.

23 Sec. 11.29.340. POSSESSION BY CONVICTS. (a) A person who
24 has been convicted on a felony,
25 or assault with a dangerous weapon by any court, whether inside or
26 outside the state, may not own or have in his possession or within
27 his custody or control a pistol, revolver, or other firearm capable
28 of being concealed about his person, or carry concealed about his
29 person a knife with a blade over two inches long or a dirk or dagger,

1 metal knuckles, or an instrument by the use of which injury could be
2 inflicted upon the person or property of another.

3 (b) A person who violates this section is guilty of a felony of the
4 third degree.

5 Sec. 11.29.360. FLOURISHING, POINTING OR DISCHARGING FIREARM IN
6 PUBLIC PLACE. Unless specifically permitted by law or ordinance, a person
7 who flourishes, points or discharges a firearm in a city of any class or
8 in or on a railway coach, steamboat or steamship, or in or near a park
9 or public grounds, or at a public place, whether public in itself, or
10 made public at the time by an assemblage of persons, is guilty of a
11 misdemeanor.

12 Sec. 11.29.370. SHOOTING AT BUILDINGS. A person who discharges
13 or shoots a pistol or other firearm at, into, in, through or against
14 a dwelling house, schoolhouse, church building, factory, storehouse,
15 court house or a house or building used for manufacturing purposes, or
16 any house or building used for the assembling of people for business
17 or pleasure, is guilty of a misdemeanor.

18 Sec. 11.29.375. SHOOTING FROM, ON, OR ACROSS HIGHWAYS. A person
19 who discharges a firearm from, on, or across a highway is guilty of a
20 misdemeanor. In this section "highway" means all highways (whether
21 included in federal-aid primary or secondary systems), roads, road
22 rights-of-way, streets, public trails, walks, bridges, tunnels and other
23 similar or related structures or facilities.

24 Sec. 11.29.380. POSSESSION OF FIREARM WHILE UNDER INFLUENCE OF
25 INTOXICATING LIQUOR OR DRUG. A person who, while under the influence
26 of intoxicating liquor or drug, the use of which is prohibited under
27 AS 17, carries, has in his possession or under his control, or uses
28 or discharges a firearm is guilty of a misdemeanor.

29 Sec. 11.29.390. PURCHASE OF FIREARMS IN CONTINGUOUS STATES. No

1 resident of this state is prohibited from purchasing a rifle or shotgun
2 in a contiguous state if he complies with the provisions of PL 90-618.

3 ARTICLE 4. GAMBLING.

4 Sec. 11.29.460. GAMBLING. (a) Unless otherwise provided by law,
5 no person may:

6 (1) engage in bookmaking, or knowingly engage in conduct
7 which facilitates bookmaking;

8 (2) establish, promote, operate, or knowingly engage
9 in conduct which facilitates a scheme or game of chance conducted
10 for profit;

11 (3) knowingly procure, transmit, exchange, or engage in
12 conduct which facilitates the procurement, transmission, or exchange
13 of, information for use in establishing odds or determining winners in
14 connection with bookmaking or with any scheme or game of chance
15 conducted for profit;

16 (4) engage in betting or in playing any scheme or game of
17 chance as a substantial source of income or livelihood;

18 (5) with purpose to violate (a)(1) - (4) of this section,
19 acquire, possess, control, or operate a gambling device.

20 (b) A person who violates this section is guilty of a misdemeanor.
21 If the offender has previously been convicted of a gambling offense,
22 he is guilty of a felony of the third degree.

23 Sec. 11.29.470. PUBLIC GAMBLING. (a) Unless authorized by law, no
24 person, while at a hotel, restaurant, tavern, store, arena, or other place
25 of public accommodation, business, or amusement, may make a bet or play
26 a game of chance.

27 (b) No person, being the owner or lessee, or having custody, control,
28 or supervision of a hotel, restaurant, tavern, store, arena, or other place
29 of public accommodation, business or amusement, may recklessly permit the

1 premises to be used or occupied in violation of sec. 460 of this chapter
2 or (a) of this section.

3 (c) A person who violates this section is guilty of a petty
4 misdemeanor. If the offender has previously been convicted of a
5 gambling offense, he is guilty of a felony of the third degree.

6 Sec. 11.29.480. PARTICIPANTS IN GAME NOT ACCOMPLICES. A person
7 engaged in a gambling game is not an accomplice of another participant
8 or of a person carrying on, conducting, concerned or interested in the
9 game, or of a person who maintains, aids or abets the maintaining of
10 a gambling nuisance, as defined in sec. 490 of this chapter.

11 Sec. 11.29.490. PLACES WHERE GAMBLING OR UNLICENSED LIQUOR TRAFFIC
12 CONDUCTED AS NUISANCES. A place where activity prohibited in sec. 460 -
13 470 of this chapter is carried on or sale or drinking of intoxicating
14 liquor is allowed, or where persons are permitted to resort for the
15 purpose of gaming or gambling as prohibited in sec. 460 - 470 of this
16 chapter and all implements or property used and kept in maintaining
17 these places are declared to be common nuisances.

18 Sec. 11.29.500. TEMPORARY INJUNCTION IN ACTION TO ABATE AND
19 ENJOIN NUISANCE FOLLOWING CONVICTION. The prosecuting attorney may
20 maintain an action in the superior court whenever a nuisance, as
21 defined in sec. 490 of this chapter, exists or is maintained to abate
22 and enjoin it, and upon a showing of notice and good cause a temporary
23 injunction may be granted after the commencement of the action and no
24 bond shall be required.

25 Sec. 11.29.510. PUNISHMENT FOR VIOLATION OF INJUNCTION. A person
26 who violates the terms of the injunction granted under sec. 500 of
27 this chapter is punishable for contempt by a misdemeanor. No action
28 may be maintained under this section unless there has been a conviction
29 under sec. 490 of this chapter.

1 Sec. 11.29.520. DEFINITIONS. In secs. 460 - 520 of this chapter,

2 (1) "bookmaking" means the business of quoting odds, and
3 receiving and paying off bets;

4 (2) "bet" means the hazarding or anything of value upon the
5 result of an event, undertaking, or contingency, but does not include
6 a bona fide business risk;

7 (3) "scheme of chance" means a lottery, numbers game, pool,
8 or other scheme in which a participate gives a valuable consideration
9 for a chance to win a prize.

10 (4) "game of chance" means poker, craps, roulette, or other
11 game in which a player gives anything of value for gain, the outcome
12 of which is determined largely by chance.

13 (5) "gambling device" means

14 (A) a book, totalizer, or other equipment for recording
15 bets;

16 (B) a ticket, token, or other device representing a
17 chance, share, or interest in a scheme of chance, or evidencing
18 a bet;

19 (C) a deck of cards, dice, gaming table, roulette wheel,
20 slot machine, punch board, or other apparatus designed for use
21 in connection with a game of chance;

22 (D) any equipment, device, apparatus, or paraphernalia
23 specially designed for gambling purposes.

24 ARTICLE 5. MISCELLANEOUS OFFENSES.

25 Sec. 11.29.640. CONTRIBUTING TO DELINQUENCY OF CHILD. (a) A
26 person who commits an act, or omits the performance of a duty, which
27 causes or tends to cause, encourage or contribute to the delinquency
28 of a child under the age of 18 years, is guilty of a misdemeanor.

29 (b) A person who by threats, command or persuasion endeavors

1 to induce a child under the age of 18 years to perform an act or follow
2 a course of conduct which would cause or manifestly tend to cause him
3 to become or remain a delinquent is guilty of a felony of the third
4 degree.

5 Sec. 11.29.650. SUSPENSION OF SENTENCE. The court may suspend
6 the execution of sentence for a violation of sec. 640 of this chapter
7 and impose conditions as to conduct on the premises of the person
8 convicted and make suspension depend upon the fulfillment by the
9 person of the conditions. In case of the breach of the conditions or
10 any of them the court may order the defendant arrested and placed in
11 custody as though there had been no suspension.

12 Sec. 11.29.660. DELINQUENT DEFINED. For the purpose of sec. 640
13 of this chapter a child is a delinquent if he is under the age of 18
14 years and

15 (1) violates a law of the United States, or the state, or
16 an ordinance or regulation of a political subdivision of the state;

17 (2) by reason of being wayward or habitually disobedient is
18 uncontrolled by his parent, guardian or custodian;

19 (3) is habitually truant from school or home, or habitually
20 so conducts himself as to injure or endanger the morals of himself
21 or others;

22 (4) associates with vagrant, vicious or immoral people, or
23 engages in an occupation or is in a situation dangerous to life or limb
24 or injurious to the health, morals, or welfare of himself or others;

25 (5) is addicted to the habitual use of intoxicating liquor
26 or a drug.

27 Sec. 11.29.680. IMPROPER USE OF STATE SEAL. (a) It is unlawful
28 to use or make a die or impression of the state seal for any advertising
29

1 or commercial purpose, unless written permission has first been obtained
2 from the lieutenant governor.

3 (b) Violation of this section constitutes a misdemeanor.

4 Sec. 11.29.690. DISCHARGING BALLAST INTO NAVIGABLE WATERS. A
5 person, whether or not he is an officer of a vessel, who discharges
6 the ballast of a vessel into the navigable portion or channel of a
7 bay, harbor, or river of the state, or within the jurisdiction of the
8 state, so as to injuriously affect the navigable portion or channel,
9 or to obstruct the navigation of the navigable portion or channel,
10 upon conviction, is guilty of a misdemeanor.

11 Sec. 11.29.700. INTERFERING WITH BUOYS AND BEACONS. A person
12 who moors a vessel, boat, skiff, barge, scow, raft, or part of a raft
13 to a buoy or beacon placed in the navigable waters of the state, or in
14 a bay, river, or arm of the sea bordering the state by the authority
15 of the United States Coast Guard, or who hangs on with a vessel, boat,
16 skiff, barge, scow, raft, or part of a raft to the buoy or beacon, or
17 who wilfully removes, damages, or destroys the buoy or beacon, or who
18 cuts down, removes, damages, or destroys a beacon erected on land in the
19 state by authority of the United States Coast Guard is guilty of a
20 misdemeanor.

21 Sec. 11.29.710. TAMPERING WITH POSTED NOTICES. A person who
22 wilfully tears down, alters, or defaces a posted, written or printed
23 notice, posted or put up under a law requiring or authorizing it to
24 be done, before the time for which the notice is given has expired,
25 upon conviction, is guilty of a petty misdemeanor.

26 Sec. 11.29.720. LABELING OF IMITATION GOLD, JADE OR IVORY. (a)
27 It is unlawful for a person to sell or offer to sell imitation gold
28 nuggets manufactured of any material other than gold, nuggets manu-
29 factured of gold, or imitation Alaskan jade or ivory, or jewelry con-

1 taining imitation gold nuggets, or nuggets manufactured of gold or
2 imitation Alaskan jade or ivory, without having a label affixed, set-
3 ting out in legible type or writing the material used in the nuggets,
4 jade or ivory, or jewelry containing the nuggets, jade or ivory.

5 (b) A person violating this section is guilty of a misdemeanor.

6 CHAPTER 31. UNIFORM

7 CONTROLLED SUBSTANCES.

8 ARTICLE 1. STANDARDS AND

9 SCHEDULES.

10 Sec. 11.31.010. AUTHORITY TO CONTROL. (a) The commissioner may
11 by regulation add substances to those enumerated in the schedules in
12 secs. 40, 60, 80, 100 - 120 or 125 of this chapter. The commissioner
13 may present to the legislature during the first 10 days of a regular
14 session the proposed deletion or rescheduling of any substance
15 enumerated in the schedules in secs. 40, 60, 80, 100 - 120 or 125 of
16 this chapter. An addition, deletion or rescheduling shall be in
17 accordance with the advice and determination of the Controlled
18 Substances Advisory Committee established in sec. 15 of this chapter.
19 In making a determination regarding a substance, the committee shall
20 consider the following:

- 21 (1) the actual or relative potential for abuse;
- 22 (2) the scientific evidence of its pharmacological effect,
23 if known;
- 24 (3) the state of current scientific knowledge regarding the
25 substance;
- 26 (4) the history and current pattern of abuse;
- 27
- 28
- 29

- 1 (5) the scope, duration, and significance of abuse;
2 (6) the risk to the public health;
3 (7) the potential of the substance to produce psychic or
4 physiological dependence liability, and
5 (8) whether the substance is an immediate precursor of a
6 substance already controlled under this chapter.

7 (b) After considering the factors enumerated in (a) of this
8 section, the committee shall make findings with respect to them and,
9 subject to sec. 15 of this chapter, the commissioner shall issue a
10 regulation controlling the substance as required by the findings of the
11 committee or shall propose to the legislature during the first 10 days
12 of a regular session the deletion or rescheduling of the substance as
13 required by the findings of the committee.

14 (c) If the commissioner designates a substance as an immediate
15 precursor, substances which are precursors of the controlled precursor
16 shall not be subject to control solely because they are precursors of
17 the controlled precursor.

18 (d) When the deletion or rescheduling of a particular substance
19 is proposed to the legislature during the first 10 days of a regular
20 session, the proposed action becomes effective 45 days after presenta-
21 tion or at the end of the session whichever is earlier, unless dis-
22 approved by a resolution concurred in by a majority of the members of
23 each house.

24 Sec. 11.31.015. CONTROLLED SUBSTANCES ADVISORY COMMITTEE. (a)
25 There is within the department the Controlled Substances Advisory
26 Committee, comprised of the director, division of public health, one
27 physician designated by the State Medical Board, one person designated
28 by the Board of Pharmacy and two physicians appointed by the governor.
29 The director, division of public health, serves ex officio. Other

1 members serve terms of four years. Members appointed initially serve
2 four, three, two and one year terms. Members may be reappointed, and
3 vacancies on the committee are filled by the appointing authority.
4 Committee members receive no salary but are entitled to per diem and
5 travel expenses authorized by law for boards and commissions.

6 (b) The committee meets at the call of the commissioner, and
7 three members constitute a quorum. The committee may adopt bylaws
8 for its proceedings as it determines necessary.

9 (c) Before making a determination regarding addition, deletion
10 or rescheduling of a substance under sec. 10 of this chapter, the
11 committee shall hold hearings under the Administrative Procedure Act
12 and shall include with its recommendations findings of fact and other
13 supporting information as it considers appropriate.

14 (d) Notwithstanding sec. 10 of this chapter, if any substance is
15 designated, rescheduled or deleted as a controlled substance under
16 federal law and notice to that effect is given to the commissioner, he
17 shall similarly control the substance under this chapter after the
18 expiration of 30 days from publication in the Federal Register of a
19 final order designating a substance as a controlled substance or
20 rescheduling or deleting a substance, unless within that 30 day period,
21 the commissioner or the committee objects to inclusion, rescheduling,
22 or deletion. In that case, the committee shall publish the reasons
23 for objection and afford all interested parties an opportunity to be
24 heard. At the conclusion of the hearing, the committee shall publish
25 its decision, which shall be final unless altered by statute. Upon
26 publication of objection to inclusion, rescheduling, or deletion
27 under this chapter by the commissioner or the committee, control under
28 this chapter is stayed until the committee publishes its decision.

29 (e) Notwithstanding sec. 10 of this chapter, the commissioner,

1 unless the committee objects, shall delete from a schedule any non-
2 narcotic substance which may, under the Federal Food, Drug and
3 Cosmetic Act and the law of the state, be lawfully sold over the
4 counter without a prescription. If the committee objects, the
5 committee shall publish the reasons for objection and afford all
6 interested parties an opportunity to be heard. At the conclusion the
7 committee shall publish its decision, which shall be final unless
8 altered by statute.

9 (f) Authority to control under this section does not extend to
10 intoxicating liquor as defined in AS 04.20.010 or tobacco.

11 Sec. 11.31.020. NOMENCLATURE. The controlled substances listed
12 or to be listed in the schedules in secs, 40, 60, 80, 100 - 120 and
13 125 of this chapter are included by whatever official, common, usual,
14 chemical, or trade name designated.

15 Sec. 11.31.030. SCHEDULE I TESTS. The commissioner shall place
16 a substance in Schedule I upon a finding that the substance:

- 17 (1) has high potential for abuse, and
18 (2) has no accepted medical use in treatment in the United
19 States or lacks accepted safety for use in treatment under medical
20 supervision.

21 Sec. 11.31.040. SCHEDULE I. (a) The controlled substances
22 listed in this section are included in Schedule I.

23 (b) Any of the following opiates, including their isomers,
24 esters, ethers, salts, and salts of isomers, esters, and ethers, unless
25 specifically excepted, whenever the existence of these isomers, esters,
26 ethers and salts is possible within the specific chemical designation:

- 27 (1) Acetylmethadol;
28 (2) Allylprodine;
29 (3) Alphacetylmethadol;

- 1 (4) Alphameprodine;
- 2 (5) Alphamethadol;
- 3 (6) Benzethidine;
- 4 (7) Betacetylmethadol;
- 5 (8) Betameprodine;
- 6 (9) Betamethadol;
- 7 (10) Betaprodine;
- 8 (11) Clonitazene;
- 9 (12) Dextromoramide;
- 10 (13) Dextrorphan;
- 11 (14) Diampromide;
- 12 (15) Diethylthiambutene;
- 13 (16) Dimenoxadol;
- 14 (17) Dimepheptanol;
- 15 (18) Dimethylthiambutene;
- 16 (19) Dioxaphetyl butyrate;
- 17 (20) Dipipanone;
- 18 (21) Ethylmethylthiambutene;
- 19 (22) Etonitazene;
- 20 (23) Etoxeridine;
- 21 (24) Furethidine;
- 22 (25) Hydroxypethidine;
- 23 (26) Ketobemidone;
- 24 (27) Levomoramide;
- 25 (28) Levophenacylmorphan;
- 26 (29) Morpheridine;
- 27 (30) Noracymethadol;
- 28 (31) Norlevorphanol;
- 29 (32) Normethadone;

- 1 (33) Norpipanone;
- 2 (34) Phenadoxone;
- 3 (35) Phenampromide;
- 4 (36) Phenomorphan;
- 5 (37) Phenoperidine;
- 6 (38) Piritramide;
- 7 (39) Proheptazine;
- 8 (40) Properidine;
- 9 (41) Racemoramide;
- 10 (42) Trimeperidine.

11 (c) Any of the following opium derivatives, their salts, isomers
12 and salts of isomers, unless specifically excepted, whenever the
13 existence of these salts, isomers and salts of isomers is possible
14 within the specific chemical designation:

- 15 (1) Acetorphine;
- 16 (2) Acetyldihydrocodeine;
- 17 (3) Benzylmorphine;
- 18 (4) Codeine methylbromide;
- 19 (5) Codeine-N-Oxide;
- 20 (6) Cyprenorphine;
- 21 (7) Desomorphine;
- 22 (8) Dihydromorphine;
- 23 (9) Etorphine;
- 24 (10) Heroin;
- 25 (11) Hydromorphanol;
- 26 (12) Methyldesorphine;
- 27 (13) Methyldihydromorphine;
- 28 (14) Morphine methylbromide;
- 29 (15) Morphine methylsulfonate;

1 (16) Morphine-N-Oxide;

2 (17) Myrophine;

3 (18) Nicocodeine;

4 (19) Nicomorphine;

5 (20) Normorphine;

6 (21) Phoclodine;

7 (22) Thebacon.

8 (d) Any material, compound, mixture or preparation which contains
9 any quantity of the following hallucinogenic substances, their salts,
10 isomers and salts of isomers, unless specifically excepted, whenever
11 the existence of these salts, isomers, and salts of isomers is
12 possible within the specific chemical designation:

13 (1) 3,4-methylenedioxy amphetamine;

14 (2) 5-methoxy-3,4-methylenedioxy amphetamine;

15 (3) 3,4,5-trimethoxy amphetamine;

16 (4) Bufotenine;

17 (5) Diethyltryptamine;

18 (6) Dimethyltryptamine;

19 (7) 4-methyl-2,5-dimethoxylamphetamine;

20 (8) Ibogaine;

21 (9) Lysergic acid diethylamide;

22 (10) Mescaline;

23 (11) Peyote;

24 (12) N-ethyl-3-piperidyl benzilate;

25 (13) N-methyl-3-piperidyl benzilate;

26 (14) Psilocybin;

27 (15) Psilocyn.

28 Sec. 11.31.050. SCHEDULE II TESTS. The commissioner shall place
29 a substance in Schedule II upon a finding that:

1 (1) the substance has high potential for abuse;
2 (2) the substance has currently accepted medical use in
3 treatment in the United States, or currently accepted medical use with
4 severe restrictions, and

5 (3) the abuse of the substance may lead to severe psychic or
6 physical dependence.

7 Sec. 11.31.060. SCHEDULE II. (a) The controlled substances
8 listed in this section are included in Schedule II.

9 (b) Any of the following substances, except those narcotic drugs
10 listed in other schedules, whether produced directly or indirectly by
11 extraction from substances of vegetable origin, or independently by
12 means of chemical synthesis, or by combination of extraction and
13 chemical synthesis:

14 (1) Opium and opiate, and any salt, compound, derivative,
15 or preparation of opium or opiate;

16 (2) Any salt, compound, isomer, derivative, or preparation
17 thereof which is chemically equivalent or identical with any of the
18 substances referred to in paragraph (1), but not including the
19 isoquinoline alkaloids of opium;

20 (3) Opium poppy and poppy straw;

21 (4) Coca leaves and any salt, compound, derivative, or
22 preparation of coca leaves, and any salt, compound, derivative, or
23 preparation thereof which is chemically equivalent or identical with
24 any of these substances, but not including decocainized coca leaves
25 or extractions which do not contain cocaine or ecgonine.

26 (c) Any of the following opiates, including their isomers, esters,
27 ethers, salts, and salts of isomers, whenever the existence of these
28 isomers, esters, ethers and salts is possible within the specific
29 chemical designation:

- 1 (1) Alphaprodine;
- 2 (2) Anileridine;
- 3 (3) Bezitramide;
- 4 (4) Dihydrocodeine;
- 5 (5) Diphenoxylate;
- 6 (6) Fentanyl;
- 7 (7) Isomethadone;
- 8 (8) Levomethorphan;
- 9 (9) Levorphanol;
- 10 (10) Metazocine;
- 11 (11) Methadone;
- 12 (12) Methadone-Intermediate, 4-cyano-2-dimethylamino-4,
13 4-diphenyl butane;
- 14 (13) Moramide-Intermediate, 2-methyl-3-morpholino-1,
15 1-diphenyl-propane-carboxylic acid;
- 16 (14) Pethidine;
- 17 (15) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-
18 phenylpiperidine;
- 19 (16) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-
20 4-carboxylate;
- 21 (17) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-
22 4-carboxylic acid;
- 23 (18) Phenazocine;
- 24 (19) Piminodine;
- 25 (20) Racemethorphan;
- 26 (21) Racemorphan.

27 Sec. 11.31.070. SCHEDULE III TESTS. The commissioner shall place
28 a substance in Schedule III upon a finding that:

- 29 (1) the substance has a potential for abuse less than the

1 substances listed in Schedules I and II;

2 (2) the substance has currently accepted medical use in
3 treatment in the United States, and

4 (3) abuse of the substance may lead to moderate or low
5 physical dependence or high psychological dependence.

6 Sec. 11.31.080, SCHEDULE III. (a) The controlled substances
7 listed in this section are included in Schedule III.

8 (b) Any material, compound, mixture, or preparation which
9 contains any quantity of the following substances having a potential
10 for abuse associated with a stimulant effect on the central nervous
11 system:

12 (1) Amphetamine, its salts, optical isomers, and salts of
13 its optical isomers;

14 (2) Phenmetrazine and its salts;

15 (3) any substance which contains any quantity of meth-
16 amphetamine, including its salts, isomers, and salts of isomers;

17 (4) Methylphenidate.

18 (c) Unless listed in another schedule, any material, compound,
19 mixture, or preparation which contains any quantity of the following
20 substances having a potential for abuse associated with a depressant
21 effect on the central nervous system:

22 (1) any substance which contains any quantity of a derivative
23 of barbituric acid, or any salt of a derivative of barbituric acid,
24 except those substances which are specifically listed in other
25 Schedules;

26 (2) Chlorhexadol;

27 (3) Glutethimide;

28 (4) Lysergic acid;

29 (5) Lysergic acid amide;

- 1 (6) Methyprylon;
- 2 (7) Phencyclidine;
- 3 (8) Sulfondiethylmethane;
- 4 (9) Sulfonethylmethane;
- 5 (10) Sulfonmethane.

6 (d) Nalorphine.

7 (e) Any material, compound, mixture, or preparation containing
8 limited quantities of any of the following narcotic drugs, or any
9 salts thereof:

10 (1) not more than 1.8 grams of codeine, or any of its salts,
11 per 100 milliliters or not more than 90 milligrams per dosage unit,
12 with an equal or greater quantity of an isoquinoline alkaloid of
13 opium;

14 (2) not more than 1.8 grams of codeine, or any of its salts,
15 per 100 milliliters or not more than 90 milligrams per dosage unit,
16 with one or more active, nonnarcotic ingredients in recognized
17 therapeutic amounts;

18 (3) not more than 300 milligrams of dihydrocodeinone, or
19 any of its salts, per 100 milliliters or not more than 15 milligrams
20 per dosage unit, with a fourfold or greater quantity of an
21 isoquinoline alkaloid of opium;

22 (4) not more than 300 milligrams of dihydrocodeinone, or
23 any of its salts, per 100 milliliters or not more than 15 milligrams
24 per dosage unit, with one or more active, nonnarcotic ingredients in
25 recognized therapeutic amounts;

26 (5) not more than 1.8 grams of dihydrocodeine, or any of
27 its salts, per 100 milliliters or not more than 90 milligrams per
28 dosage unit, with one or more active, nonnarcotic ingredients in
29 recognized therapeutic amounts;

1 (6) not more than 300 milligrams of ethylmorphine, or any
2 of its salts, per 100 milliliters or not more than 15 milligrams per
3 dosage unit, with one or more ingredients in recognized therapeutic
4 amounts;

5 (7) not more than 500 milligrams of opium per 100 milli-
6 liters or per 100 grams, or not more than 25 milligrams per dosage
7 unit, with one or more active, nonnarcotic ingredients in recognized
8 therapeutic amounts;

9 (8) not more than 50 milligrams of morphine, or any of its
10 salts, per 100 milliliters or per 100 grams with one or more active,
11 nonnarcotic ingredients in recognized therapeutic amounts.

12 (f) Marihuana.

13 (g) Tetrahydracannabinols.

14 (h) The commissioner may except by regulation any compound,
15 mixture or preparation containing any stimulant or depressant sub-
16 stance listed in subsections (b) and (c) of this section from the
17 application of all or part of this chapter if the compound, mixture,
18 or preparation contains one or more active medicinal ingredients not
19 having a stimulant or depressant effect on the central nervous system,
20 and if the admixtures are included in the compound, mixture or
21 preparation in combinations, quantity, proportion, or concentration
22 that vitiate the potential for abuse of the substances which have a
23 stimulant or depressant effect on the central nervous system.

24 Sec. 11.31.090. SCHEDULE IV TESTS. The commissioner shall
25 place a substance in Schedule IV upon a finding that:

26 (1) the substance has a low potential for abuse relative to
27 substances in Schedule III;

28 (2) the substance has currently accepted medical use in
29 treatment in the United States, and

1 (3) abuse of the substance may lead to limited physical
2 dependence or psychological dependence relative to the substances in
3 Schedule III.

4 Sec. 11.31.100. SCHEDULE IV. (a) The controlled substances
5 listed in this section are included in Schedule IV.

6 (b) Any material, compound, mixture, or preparation which
7 contains any quantity of the following substances having a potential
8 for abuse associated with a depressant effect on the central nervous
9 system:

- 10 (1) Barbital;
- 11 (2) Chloral betaine;
- 12 (3) Chloral hydrate;
- 13 (4) Ethchlorvynol;
- 14 (5) Ethinamate;
- 15 (6) Methohexital;
- 16 (7) Meprobamate;
- 17 (8) Methylphenobarbital;
- 18 (9) Paraldehyde;
- 19 (10) Petrichloral;
- 20 (11) Phenobarbital.

21 (c) The commissioner may except by regulation a compound,
22 mixture, or preparation containing any depressant substance listed in
23 (b) of this section from the application of all or part of this chapter
24 if the compound, mixture, or preparation contains one or more active
25 medicinal ingredients not having a depressant effect on the central
26 nervous system, and if the admixtures are included in the compound,
27 mixture or preparation in combinations, quantity, proportion, or
28 concentration that vitiate the potential for abuse of the substances
29 which have a depressant effect on the central nervous system.

1 Sec. 11.31.110. SCHEDULE V TESTS. The commissioner shall place
2 a substance in Schedule V upon a finding that:

3 (1) the substance has low potential for abuse relative to
4 the controlled substances listed in Schedule IV;

5 (2) the substance has currently accepted medical use in
6 treatment in the United States, and

7 (3) the substance has limited physical dependence or
8 psychological dependence liability relative to the controlled sub-
9 stances listed in Schedule IV.

10 Sec. 11.31.120. SCHEDULE V. (a) The controlled substances
11 listed in this section are included in Schedule V.

12 (b) Any compound, mixture, or preparation containing limited
13 quantities of any of the following narcotic drugs, which also contains
14 one or more nonnarcotic active medicinal ingredients in sufficient
15 proportion to confer upon the compound, mixture, or preparation,
16 valuable medicinal qualities other than those possessed by the narcotic
17 drug alone:

18 (1) not more than 200 milligrams of codeine, or any of its
19 salts, per 100 milliliters or per 100 grams;

20 (2) not more than 100 milligrams of dihydrocodeine, or any
21 of its salts, per 100 milliliters or per 100 grams;

22 (3) not more than 100 milligrams of ethylmorphine, or any
23 of its salts, per 100 milliliters or per 100 grams;

24 (4) not more than 2.5 milligrams of diphenoxylate and not
25 less than 25 micrograms of atropine sulfate per dosage unit;

26 (5) Not more than 100 milligrams of opium per 100 milliliters
27 or per 100 grams.

28 Sec. 11.31.125. SCHEDULE VI. The commissioner shall place a
29 substance in Schedule VI upon a finding that:

1 (1) the substance should be classified as a controlled
2 substance for purposes of this chapter;

3 (2) the substance has low potential for abuse;

4 (3) the limited use of the substance without regard to
5 prescription requirements or medical purposes poses no significant
6 risk to the public health or the health or safety of the users or
7 the health or safety of others in the community.

8 Sec. 11.31.130. REPUBLISHING OF SCHEDULES. The commissioner
9 shall revise and republish the schedules semi-annually for two years
10 from the effective date of this chapter and thereafter annually.

11 ARTICLE 2. REGULATION OF MANUFACTURE, DIS-

12 TRIBUTION AND DISPENSING OF CONTROLLED SUBSTANCES.

13 Sec. 11.31.150. REGULATIONS. The commissioner may promulgate
14 regulations and charge reasonable fees relating to the registration
15 and control of the manufacture, distribution, and dispensing of
16 controlled substances within the state.

17 Sec. 11.31.160. REGISTRATION REQUIREMENTS. (a) A person who
18 manufactures, distributes, or dispenses a controlled substance within
19 the state or who proposes to engage in the manufacture, distribution,
20 or dispensing of a controlled substance within the state, must obtain
21 annually a registration issued by the commissioner in accordance with
22 his regulations.

23 (b) Persons registered by the commissioner under this chapter to
24 manufacture, distribute, dispense, or conduct research with controlled
25 substances may possess, manufacture, distribute, dispense, or conduct
26 research with those substances to the extent authorized by their
27 registration and in conformity with the other provisions of secs. 150 -
28 220 of this chapter.

29 (c) The following persons need not register and may lawfully

1 possess controlled substances under this chapter:

2 (1) an agent or employee of a registered manufacturer,
3 distributor, or dispenser of a controlled substance if he is acting
4 in the usual course of his business or employment;

5 (2) a common or contract carrier or warehouseman, or his
6 employee, whose possession of a controlled substance is in the usual
7 course of business or employment;

8 (3) an ultimate user or a person in possession of a
9 controlled substance under a lawful order of a practitioner or in
10 lawful possession of a Schedule V substance.

11 (d) The commissioner may waive by regulation the requirement
12 for registration of certain manufacturers, distributors, or dispensers
13 if he finds it consistent with the public health and safety.

14 (e) A separate registration is required at each principal place
15 of business or professional practice where the applicant manufactures,
16 distributes, or dispenses controlled substances.

17 (f) The commissioner may inspect the establishment of a
18 registrant or applicant for registration in accordance with the
19 commissioner's regulation.

20 Sec. 11.31.170. REGISTRATION. (a) The commissioner shall
21 register an applicant to manufacture or distribute controlled substances
22 included in secs. 40, 60, 80, 100 and 120 of this chapter unless he
23 finds that the issuance of that registration would be inconsistent with
24 the public interest. In determining the public interest, the commis-
25 sioner shall consider the following factors:

26 (1) maintenance of effective controls against diversion of
27 controlled substances into other than legitimate medical, scientific,
28 or industrial channels;

29 (2) compliance with applicable state and local law;

1 (3) any convictions of the applicant under federal or state
2 laws relating to a controlled substance;

3 (4) past experience in the manufacture or distribution of
4 controlled substances, and the existence in the applicant's establish-
5 ment of effective controls against diversion;

6 (5) furnishing by the applicant of false or fraudulent
7 material in an application filed under this chapter;

8 (6) suspension or revocation of the applicant's federal
9 registration to manufacture, distribute, or dispense controlled sub-
10 stances as authorized by federal law, and

11 (7) any other factors relevant to and consistent with the
12 public health and safety.

13 (b) Registration under (a) of this section does not entitle a
14 registrant to manufacture and distribute controlled substances in
15 Schedule I or II other than those specified in the registration.

16 (c) Practitioners must be registered to dispense controlled
17 substances or to conduct research with controlled substances in
18 Schedules II - V if they are authorized to dispense or conduct research
19 under state law. The commissioner need not require separate
20 registration under secs. 150 - 220 of this chapter for practitioners
21 engaging in research with non-narcotic controlled substances in
22 Schedules II - V where the registrant is already registered under
23 these sections in another capacity. Practitioners registered under
24 federal law to conduct research with Schedule I substances may conduct
25 research with Schedule I substances within the state upon furnishing
26 the commissioner evidence of that federal registration.

27 (d) Compliance by manufacturers and distributors with the pro-
28 visions of the federal law respecting registration (excluding fees)
29 entitles them to be registered under this chapter.

1 Sec. 11.31.180. REVOCATION AND SUSPENSION OF REGISTRATION. (a)

2 A registration under sec. 170 of this chapter to manufacture, dis-
3 tribute, or dispense a controlled substance may be suspended or revoked
4 by the commissioner upon a finding that the registrant:

5 (1) has furnished false or fraudulent material information
6 in any application filed under this chapter;

7 (2) has been convicted of a felony under state or federal
8 law relating to a controlled substance, or

9 (3) has had his federal registration suspended or revoked
10 to manufacture, distribute, or dispense controlled substances.

11 (b) The commissioner may limit revocation or suspension of a
12 registration to the particular controlled substance with respect to
13 which grounds for revocation or suspension exist.

14 (c) If the commissioner suspends or revokes a registration, all
15 controlled substances owned or possessed by the registrant at the time
16 of suspension or the effective date of the revocation order may be
17 placed under seal. No disposition may be made of substances under seal
18 until the time for taking an appeal has elapsed or until all appeals
19 have been concluded unless a court, upon application, orders the sale
20 or perishable substances and the deposit of the proceeds of the sale
21 with the court. Upon a revocation order becoming final, all controlled
22 substances may be forfeited to the state.

23 (d) The commissioner shall promptly notify the bureau of all
24 orders suspending or revoking registration and all forfeitures of
25 controlled substances.

26 Sec. 11.31.190. ORDER TO SHOW CAUSE. (a) Before denying,
27 suspending or revoking a registration, or refusing a renewal of
28 registration, the commissioner shall serve upon the applicant or
29 registrant an order to show cause why registration should not be denied,

1 revoked, or suspended, or why the renewal should not be refused. The
2 order to show cause shall contain a statement of the basis for it and
3 shall call upon the applicant or registrant to appear before the
4 commissioner at a time and place not less than 30 days after the
5 date of the service of the order, but in the case of a denial or
6 renewal of registration the show cause order shall be served not later
7 than 30 days before the expiration of the registration. These
8 proceedings shall be conducted in accordance with procedures for
9 administrative adjudication under AS 44.62.330 - 44.62.630 without
10 regard to a criminal prosecution or other proceeding. Proceedings to
11 refuse renewal of registration shall not abate the existing registra-
12 tion which shall remain in effect pending the outcome of the
13 administrative hearing.

14 (b) The commissioner may suspend, without an order to show
15 cause, a registration simultaneously with the institution of proceed-
16 ings under sec. 180 of this chapter, or where renewal of registration
17 is refused, if he finds that there is an imminent danger to the
18 public health or safety which warrants this action. The suspension
19 shall continue in effect until the conclusion of the proceedings,
20 including judicial review of the proceedings, unless sooner withdrawn
21 by the commissioner or dissolved by a court of competent jurisdiction.

22 Sec. 11.31.200. RECORDS OF REGISTRANTS. Persons registered to
23 manufacture, distribute, or dispense controlled substances under this
24 chapter shall keep records and maintain inventories in conformance
25 with the record-keeping and inventory requirements of federal law and
26 with additional regulations the commissioner may issue.

27 Sec. 11.31.210. ORDER FORMS. Controlled substances in Schedule
28 I and II shall be distributed by a registrant to another registrant
29 only under an order form. Compliance with the provisions of federal

1 law respecting order forms shall be considered compliance with this
2 section.

3 Sec. 11.31.220. PRESCRIPTIONS. (a) Except when dispensed
4 directly by a practitioner, other than a pharmacy, to an ultimate user,
5 no controlled substance in Schedule II may be dispensed without the
6 written prescription of a practitioner.

7 (b) In emergency situations, as defined by rule of the
8 commissioner, Schedule II drugs may be dispensed upon oral prescription
9 of a practitioner, reduced promptly to writing and filed by the
10 pharmacy. Prescriptions shall be retained in conformity with the
11 requirements of sec. 200 of this chapter. No prescription for a
12 Schedule II substance may be refilled.

13 (c) Except when dispensed directly by a practitioner, other than
14 a pharmacy, to an ultimate user, a controlled substance included in
15 Schedule III or IV, which is a prescription drug as determined under
16 state or federal law (or a substance designated in sec. 80(f) or (g)
17 of this chapter) shall not be dispensed without a written or oral
18 prescription of a practitioner. The prescription shall not be filled
19 or refilled more than six months after its date or be refilled more
20 than five times, unless renewed by the practitioner.

21 (d) A controlled substance included in Schedule V shall not be
22 distributed or dispensed other than for a medical purpose.

23 ARTICLE 3. OFFENSES AND PENALTIES.

24 Sec. 11.31.250. PROHIBITED ACTS A - PENALTIES. (a) Except as
25 authorized by this chapter, it is unlawful for a person to manufacture,
26 deliver, or possess with intent to manufacture or deliver a controlled
27 substance, or to create, deliver or possess with intent to deliver, a
28 counterfeit substance.

29 (1) a person who violates this subsection with respect to:

1 (A) a controlled substance classified in Schedule I
2 or II which is a narcotic drug is guilty of a felony of the
3 second degree;

4 (B) another controlled substance classified in
5 Schedule I or II is guilty of a felony of the third degree;

6 (C) a substance classified in Schedule III is guilty
7 of a felony of the third degree; however, with respect to
8 distribution of a small amount of marihuana for no remuneration,
9 a person is guilty of a petty misdemeanor;

10 (D) a substance classified in Schedule IV is guilty
11 of a misdemeanor;

12 (E) a substance classified in Schedule V is guilty of
13 a petty misdemeanor.

14 (b) It is unlawful for a person knowingly or intentionally to
15 possess a controlled substance unless the substance was obtained
16 directly from, or under, a valid prescription or order of a
17 practitioner while acting in the course of his professional practice,
18 or except as otherwise authorized by this chapter

19 (1) A person who violates this subsection with respect to:

20 (A) a controlled substance classified in Schedule I
21 or II which is a narcotic drug is guilty of a felony
22 of the second degree;

23 (B) another controlled substance classified in
24 Schedule I or II is guilty of a felony of the third degree;

25 (C) a substance classified in Schedule III is guilty
26 of a misdemeanor; however, in case of a conviction with respect
27 to marihuana, the penalties of paragraph (D) of this subsection
28 apply;

1 (D) a substance classified in Schedule IV is guilty of a
2 petty misdemeanor.

3 (2) In place of a fine, imprisonment or other imposition
4 of sentence under (1) of this subsection, an offender may be committed
5 to the custody of the division of public health for rehabilitative
6 treatment for not more than one year.

7 (c) A person who consumes a controlled substance listed in
8 Schedule VI other than in a private place or who, if a person is over
9 18, distributes such substance to a person under 18 is guilty of a
10 petty misdemeanor.

11 Sec. 11.31.260. PROHIBITED ACTS B - PENALTIES. (a) It is
12 unlawful for a person:

13 (1) who is subject to secs. 150 - 220 of this chapter to
14 distribute or dispense a controlled substance in violation of sec.
15 220 of this chapter;

16 (2) who is a registrant, to manufacture a controlled sub-
17 stance not authorized by his registration, or to distribute or dispense
18 a controlled substance not authorized by his registration to another
19 registrant or other authorized person;

20 (A) to refuse or fail to make, keep or furnish a
21 record, notification, order form, statement, invoice or
22 information required under this chapter;

23 (B) to refuse an entry into any premises for an
24 inspection authorized by this chapter, or

25 (3) knowingly to keep or maintain a store, shop, warehouse,
26 dwelling, building, vehicle, boat, aircraft, or other structure or
27 place, which is resorted to by persons using controlled substances in
28 violation of this chapter for the purpose of using these substances,
29 or which is used for keeping or selling them in violation of this

1 chapter.

2 (b) A person who violates this section is guilty of a mis-
3 demeanor except that if the
4 trier of fact specifically finds that a violation of (a)(1) - (4) of
5 this section was not knowingly committed, a civil penalty of not more
6 than \$1,000 shall be imposed with respect to the violation, and such
7 violation does not constitute a crime.

8 Sec. 11.31.270. PROHIBITED ACTS C - PENALTIES. (a) It is
9 unlawful for a person knowingly or intentionally:

10 (1) to distribute as a registrant a controlled substance
11 classified in Schedules I or II, except under an order form as
12 required by sec. 210 of this chapter;

13 (2) to use in the course of the manufacture or distribution
14 of a controlled substance a registration number which is fictitious,
15 revoked, suspended, or issued to another person;

16 (3) to acquire or obtain possession of a controlled sub-
17 stance by misrepresentation, fraud, forgery, deception or subterfuge;

18 (4) to furnish false or fraudulent material information in,
19 or omit any material information from, any application, report, or
20 other document required to be kept or filed under this chapter, or
21 any record required to be kept by this chapter, or

22 (5) to make, distribute, or possess a punch, die, plate,
23 stone, or other thing designed to print, imprint, or reproduce the
24 trademark, trade name, or other identifying mark, imprint, or device
25 of another or a likeness of any of the foregoing upon a drug or
26 container or labeling of a drug or container so as to render the drug
27 a counterfeit substance.

28 (b) A person who violates this section is guilty of a felony
29 of the third degree.

1 Sec. 11.31.280. PENALTIES UNDER OTHER LAWS. A penalty imposed
2 for violation of this chapter is in addition to, and not in place of,
3 a civil or administrative penalty or sanction otherwise authorized by
4 law.

5 Sec. 11.31.290. BAR TO PROSECUTION. If a violation of this
6 chapter is a violation of a federal law or the law of another state,
7 a conviction or acquittal under federal law or the law of another state
8 for the same act is a bar to prosecution in this state.

9 Sec. 11.31.300. DISTRIBUTION TO PERSONS UNDER AGE 18. A person
10 18 years of age or over who violates sec. 250(a) of this chapter by
11 distributing a controlled substance listed in Schedules I or II which
12 is a narcotic drug to a person under 18 years of age who is at least
13 three years his junior is punishable by the fine authorized by sec.
14 250(a)(1)(A) of this chapter, by a term of imprisonment of up to twice
15 that authorized by that paragraph, or by both. A person 18 years of
16 age or over who violates sec. 250(a) of this chapter by distributing
17 another controlled substance listed in Schedules I, II, III, IV, and V
18 to a person under 18 years of age who is at least three years his
19 junior is punishable by:

20 (1) imprisonment for a term up to twice that authorized
21 by sec. 250(a)(1)(B), by the fine authorized by that paragraph, or
22 by both, for an offense respecting a substance listed in Schedules
23 I or II;

24 (2) imprisonment for a term up to twice that authorized
25 by sec. 250(a)(1)(C), by the fine authorized by that paragraph, or
26 by both, for an offense respecting a substance listed in Schedule
27 III;

28 (3) imprisonment for a term up to twice that authorized
29 by sec. 250(a)(1)(D), by the fine authorized by that paragraph, or

1 by both, for an offense respecting a substance listed in Schedule IV;

2 (4) by imprisonment for a term up to twice that authorized
3 by sec. 250(a)(1)(E), by the fine authorized by that paragraph, or both,
4 for an offense respecting a substance listed in sec. 120 of this chapter,

5 ARTICLE 4. ENFORCEMENT AND ADMINISTRATIVE PROVISIONS.

6 Sec. 11.31.330. POWERS OF ENFORCEMENT PERSONNEL. (a) An officer
7 or employee designated by the commissioner may:

8 (1) execute and serve administrative inspection warrants
9 and subpoenas issued under the authority of the state;

10 (2) make seizures of property under this chapter, or

11 (3) perform other enforcement duties as the commissioner
12 designates.

13 Sec. 11.31.340. ADMINISTRATIVE INSPECTIONS AND WARRANTS. (a)
14 Issuance and execution of administrative inspection warrants shall be
15 as follows:

16 (1) A judicial officer within the judicial district in
17 which he serves and upon proper oath or affirmation showing probable
18 cause, may issue warrants for the purpose of conducting administrative
19 inspections authorized by this chapter or regulations under it, and
20 seizures of property appropriate to the inspections. For purposes of
21 the issuance of administrative inspection warrants, probable cause
22 exists upon showing a valid public interest in the effective enforce-
23 ment of this chapter or regulations under it, sufficient to justify
24 administrative inspection of the area, premises, building or conveyance
25 in the circumstances specified in the application for the warrant;

26 (2) A warrant shall issue only upon an affidavit of a
27 designated officer or employee having knowledge of the facts alleged,
28 sworn to before the judicial officer and establishing the grounds for
29 issuing the warrant. If the judicial officer is satisfied that grounds

1 for the application exist or that there is probable cause to believe
2 they exist, he shall issue a warrant identifying the area, premises,
3 building, or conveyance to be inspected, the purpose of the inspection,
4 and, if appropriate, the type of property to be inspected, if any. The
5 warrant shall:

6 (A) state the grounds for its issuance and the name of
7 each person whose affidavit has been taken in support of it;

8 (B) be directed to a person authorized by sec. 330 of
9 this chapter to execute it;

10 (C) command the person to whom it is directed to
11 inspect the area, premises, building, or conveyance identified for
12 the purpose specified and, if appropriate, direct the seizure of
13 the property specified;

14 (D) identify the item or types of property to be
15 seized, if any;

16 (E) direct that it be served during normal business
17 hours and designate the judicial officer to whom it shall be
18 returned.

19 (b) A warrant issued under this section shall be executed and
20 returned as prescribed by the rules of civil procedure.

21 (c) The commissioner may make administrative inspections of
22 controlled premises in accordance with the provisions of (d) - (h) of
23 this section.

24 (d) If authorized by an administrative inspection warrant
25 issued under (a) of this section, an officer or employee designated by
26 the commissioner upon presenting the warrant and appropriate creden-
27 tials to the owner, operator, or agent in charge, may enter controlled
28 premises for the purpose of conducting an administrative inspection.

29 (e) If authorized by an administrative inspection warrant, an

1 officer or employee designated by the commissioner may:

2 (1) inspect and copy records required by this chapter to be
3 kept;

4 (2) inspect, within reasonable limits and in a reasonable
5 manner, controlled premises and all pertinent equipment, finished and
6 unfinished material, containers and labeling found on the premises,
7 and except as provided in (g) of this section, all other things on
8 the premises, including records, files, papers, processes, controls,
9 and facilities bearing on violation of this chapter, and

10 (3) inventory any stock of a controlled substance on the
11 premises and obtain samples of it.

12 (f) This section does not prevent the inspection without a
13 warrant of books and records under an administrative subpoena issued in
14 accordance with the rules of civil procedure, nor does it prevent
15 entries and administrative inspections, including seizures of property,
16 without a warrant:

17 (1) if the owner, operator, or agent in charge of the
18 controlled premises consents;

19 (2) in situations presenting imminent danger to health or
20 safety;

21 (3) in situations involving inspection of conveyances if
22 there is reasonable cause to believe that the mobility of the
23 conveyance makes it impracticable to obtain a warrant;

24 (4) in any other exceptional or emergency circumstance
25 where time or opportunity to apply for a warrant is lacking, or,

26 (5) in all other situations in which a warrant is not
27 constitutionally required.

28 (g) An inspection authorized by this section shall not extend to
29 financial data, sales data, other than shipment data, or pricing data

1 unless the owner, operator, or agent in charge of the controlled
2 premises consents in writing.

3 (h) For purposes of this section, "controlled premises" means:

4 (1) places where persons registered or exempted from
5 registration requirements under this chapter are required to keep
6 records, and

7 (2) places including factories, warehouses, establishments,
8 and conveyances in which persons registered or exempted from registra-
9 tion requirements under this chapter are permitted to hold, manufacture,
10 compound, process, sell, deliver, or otherwise dispose of any controlled
11 substance.

12 Sec. 11.31.350. ADDITIONAL REMEDIES. (a) In addition to the
13 remedies provided in this chapter, the commissioner is authorized to
14 apply to the superior court for, and the court shall have jurisdiction
15 upon hearing and for cause shown to grant, an injunction or
16 restraining order restraining a person from violating a provision of
17 this chapter irrespective of whether there exists an adequate remedy
18 at law.

19 (b) The defendant may demand trial by jury for an alleged
20 violation of an injunction or restraining order under (a) of this
21 section.

22 Sec. 11.31.360. COOPERATIVE ARRANGEMENTS AND CONFIDENTIALITY.

23 (a) The commissioner shall cooperate with federal and other state
24 agencies in discharging his responsibilities concerning traffic in
25 controlled substances and in suppressing the abuse of controlled
26 substances. To this end, he may:

27 (1) arrange for the exchange of information among govern-
28 mental officials concerning the use and abuse of controlled substances;

29 (2) coordinate and cooperate in training programs concerning

1 controlled substance law enforcement at local and state levels;

2 (3) cooperate with the bureau by establishing a centralized
3 unit to accept, catalogue, file, and collect statistics, including
4 records of drug dependent persons and other controlled substance law
5 offenders within the state, and make the information available for
6 federal, state and local law enforcement purposes. He shall not
7 furnish the name or identity of a patient or research subject whose
8 identity could not be obtained under (c) of this section, and

9 (4) conduct programs of eradication aimed at destroying
10 wild or illicit growth of plant species from which controlled sub-
11 stances may be extracted.

12 (b) Results, information, and evidence received from the bureau
13 relating to the regulatory functions of this chapter, including
14 results of inspections conducted by it may be relied and acted upon by
15 the commissioner in the exercise of his regulatory functions under
16 this chapter.

17 (c) A practitioner engaged in medical practice or research is
18 not required or compelled to furnish the name or identity of a patient
19 or research subject to the commissioner nor may he be compelled in a
20 state or local civil, criminal, administrative, legislative or other
21 proceeding to furnish the name or identity of an individual that the
22 practitioner is obligated to keep confidential.

23 Sec. 11.31.370. FORFEITURES. (a) The following are subject to
24 forfeiture:

25 (1) controlled substances which have been manufactured,
26 distributed, dispensed or acquired in violation of this chapter;

27 (2) raw materials, products and equipment of any kind which
28 are used, or intended for use, in manufacturing, compounding, process-
29 ing, delivering, importing, or exporting any controlled substance in

1 violation of this chapter;

2 (3) property which is used, or intended for use, as a
3 container for property described in paragraphs (1) or (2);

4 (4) conveyances, including aircraft, vehicles or vessels,
5 which are used, or intended for use, to transport, or in any manner to
6 facilitate the transportation, for the purpose of sale or receipt of
7 property described in paragraph (1) or (2), but:

8 (A) no conveyance used by a person as a common carrier
9 in the transaction of business as a common carrier is subject to
10 forfeiture under this section unless it appears that the owner or
11 other person in charge of the conveyance is a consenting party or
12 privy to a violation of this chapter;

13 (B) no conveyance is subject to forfeiture under this
14 section because of an act or omission established by the owner of
15 the conveyance to have been committed or omitted without his
16 knowledge or consent;

17 (C) a conveyance is not subject to forfeiture for a
18 violation of sec. 250(c) of this chapter, and

19 (D) a forfeiture of a conveyance encumbered by a bona
20 fide security interest is subject to the interest of the secured
21 party if he neither had knowledge of nor consented to the act
22 or omission.

23 (5) all books, records, and research products and materials,
24 including formulas, microfilm, tapes, and data which are used, or
25 intended for use, in violation of this chapter.

26 (b) Property subject to forfeiture under this section may be
27 seized by the commissioner or Department of Public Safety upon process
28 issued by the court having jurisdiction over the property. Seizure
29 without process may be made if:

1 (1) the seizure is incident to an arrest or a search under a
2 search warrant or an inspection under an administrative inspection
3 warrant;

4 (2) the property subject to seizure has been the subject of
5 a prior judgment in favor of the state in a criminal injunction or
6 forfeiture proceeding based upon this chapter;

7 (3) the commissioner or department has probable cause to
8 believe that the property is directly or indirectly dangerous to health
9 or safety, or

10 (4) the commissioner or department has probable cause to
11 believe that the property was used or is intended to be used in
12 violation of this chapter.

13 (c) In the event of seizure under (b) of this section, proceed-
14 ings under (d) of this section shall be instituted promptly.

15 (d) Property taken or detained under this section shall not be
16 subject to replevin but is deemed to be in the custody of the
17 Department of Public Safety subject only to the orders and decrees of
18 court having jurisdiction over the forfeiture proceedings. If
19 property is seized under this chapter, the department may:

20 (1) place the property under seal;

21 (2) remove the property to a place designated by it, or

22 (3) take custody of the property and remove it to an
23 appropriate location for disposition in accordance with law.

24 (e) If property is forfeited under this section the Department of
25 Public Safety shall destroy that which is harmful to the public, and
26 as to other property forfeited, may:

27 (1) retain it for official use;

28 (2) sell it and use the proceeds for payment of all proper
29 expenses of the proceedings for forfeiture and sale, including expenses

1 of seizure, maintenance of custody, advertising and court costs;

2 (3) take custody of the property and remove it for dis-
3 position in accordance with law, or

4 (4) forward it to the bureau for disposition.

5 (f) Controlled substances listed in Schedule I that are
6 possessed, transferred, sold, or offered for sale in violation of this
7 chapter are contraband and shall be seized and summarily forfeited to
8 the state. Controlled substances listed in Schedule I, which are
9 seized or come into the possession of the state, the owners of which are
10 unknown, are contraband and shall be summarily forfeited to the state.

11 (g) Species of plants from which controlled substances in
12 Schedules I, II and sec. 80(f)-(g) of this chapter may be derived
13 which have been planted or cultivated in violation of this chapter, or
14 of which the owners or cultivators are unknown, or which are wild
15 growths, may be seized and summarily forfeited to the state.

16 (h) The failure, upon demand by the commissioner or Department of
17 Public Safety or an authorized agent, of the person in occupancy or in
18 control of land or premises upon which the species of plants are
19 growing or being stored, to produce an appropriate registration, or
20 proof that he is the holder of the registration, constitutes authority
21 for the seizure and forfeiture of the plants.

22 Sec. 11.31.380. BURDEN OF PROOF; LIABILITIES. (a) It is not
23 necessary for the state to negate an exemption or exception in this
24 chapter in any complaint, information, indictment or other pleading or
25 in any trial, hearing, or other proceeding under this chapter. The
26 burden of proof of an exemption or exception is upon the person
27 claiming it.

28 (b) In the absence of proof that a person is the duly authorized
29 holder of an appropriate registration or order form issued under this

1 chapter, he is presumed not to be the holder of the registration or
2 form. The burden of proof is upon him to rebut the presumption.

3 (c) No liability is imposed by this chapter upon an authorized
4 state, county or municipal officer, engaged in the lawful performance
5 of his duties.

6 Sec. 11.31.390. JUDICIAL REVIEW. All final determinations,
7 findings and conclusions of the commissioner under this chapter or
8 regulations issued under it are final and conclusive decisions of the
9 matters involved. A person aggrieved by the decision may obtain
10 review of the decision in the superior court in accordance with
11 AS 44.62.560 - 44.62.570.

12 Sec. 11.31.400. EDUCATION AND RESEARCH. (a) The commissioner
13 shall carry out educational programs designed to prevent and deter
14 misuse and abuse of controlled substances. In connection with these
15 programs he may:

16 (1) promote better recognition of the problems of misuse
17 and abuse of controlled substances within the regulated industry and
18 among interested groups and organizations;

19 (2) assist the regulated industry and interested groups and
20 organizations in contributing to the reduction of misuse and abuse of
21 controlled substances;

22 (3) consult with interested groups and organizations to aid
23 them in solving administrative and organizational problems;

24 (4) evaluate procedures, projects, techniques, and controls
25 conducted or proposed as part of educational programs on misuse and
26 abuse of controlled substances;

27 (5) disseminate the results of research on misuse and abuse
28 of controlled substances to promote a better public understanding of
29 what problems exist and what can be done to combat them, and

1 (6) assist in the education and training of state and local
2 law enforcement officials in their efforts to control misuse and abuse
3 of controlled substances.

4 (b) The commissioner shall encourage research on misuse and
5 abuse of controlled substances. In connection with the research, and
6 in furtherance of the enforcement of this chapter, he may:

7 (1) establish methods to assess accurately the effects of
8 controlled substances and identify and characterize those with
9 potential for abuse;

10 (2) make studies and undertake programs of research to:

11 (A) develop new or improved approaches, techniques,
12 systems, equipment and devices to strengthen the enforcement of
13 this chapter;

14 (B) determine patterns of misuse and abuse of
15 controlled substances and their social effects;

16 (C) improve methods for preventing, predicting, under-
17 standing and dealing with the misuse and abuse of controlled
18 substances, and

19 (3) enter into contracts with public agencies, institutions
20 of higher education, and private organizations or individuals for
21 conducting research, demonstrations, or special projects which bear
22 directly on misuse and abuse of controlled substances and for related
23 research and educational activities.

24 (c) The commissioner may authorize persons engaged in research on
25 the use and effects of controlled substances to withhold the names and
26 other identifying characteristics of individuals who are the subjects
27 of the research. Persons who obtain this authorization are not
28 compelled in a civil, criminal, administrative, legislative, or other
29 proceeding to identify the individuals who are the subjects of research

1 for which the authorization was obtained.

2 (d) The commissioner may authorize the possession and distribu-
3 tion of controlled substances by persons engaged in research. Persons
4 who obtain this authorization are exempt from state prosecution for
5 possession and distribution of controlled substances to the extent of
6 the authorization.

7 ARTICLE 5. GENERAL PROVISIONS.

8 Sec. 11.31.420. UNIFORMITY OF INTERPRETATION. This chapter shall
9 be so applied and construed as to effectuate its general purpose to
10 make uniform the law with respect to the subject of this chapter among
11 the states which enact it.

12 Sec. 11.31.430. DEFINITIONS. As used in this chapter

13 (a) "administer" means the direct application of a controlled
14 substance, whether by injection, inhalation, ingestion, or any other
15 means, to the body of a patient or research subject by:

16 (1) a practitioner (or, in his presence, by his authorized
17 agent); or

18 (2) the patient or research subject at the direction and in
19 the presence of the practitioner;

20 (b) "agent" means an authorized person who acts on behalf of or
21 at the direction of a manufacturer, distributor, or dispenser; it does
22 not include a common or contract carrier, public warehouseman, or
23 employee of the carrier or warehouseman;

24 (c) "bureau" means the Bureau of Narcotics and Dangerous Drugs,
25 United States Department of Justice, or its successor agency;

26 (d) "commissioner" means the commissioner of health and social
27 services;

28 (e) "committee" means the Controlled Substances Advisory
29 Committee established in sec. 15 of this chapter;

1 (f) "controlled substance" means a drug, substance, or immediate
2 precursor in Schedules I through VI of secs. 40, 60, 80, 100 - 120 or
3 125 of this chapter;

4 (g) "counterfeit substance" means a controlled substance which,
5 or the container or labeling of which, without authorization, bears
6 the trademark, trade name, or other identifying mark, imprint, number
7 or device, or any likeness of these, of a manufacturer, distributor,
8 or dispenser other than the person who in fact manufactured,
9 distributed, or dispensed the substance;

10 (h) "deliver" or "delivery" means the actual, constructive, or
11 attempted transfer from one person to another of a controlled sub-
12 stance whether or not there is an agency relationship;

13 (i) "department" means the Department of Health and Social
14 Services;

15 (j) "dispense" means to deliver a controlled substance to an
16 ultimate user or research subject by or under the lawful order of a
17 practitioner, including the prescribing, administering, packaging,
18 labeling, or compounding necessary to prepare the substance for that
19 delivery;

20 (k) "dispenser" means a practitioner who dispenses;

21 (l) "distribute" means to deliver other than by administering or
22 dispensing a controlled substance;

23 (m) "distributor" means a person who distributes;

24 (n) "drug" means (1) substances recognized as drugs in the
25 official United States Pharmacopoeia, official Homeopathic Pharma-
26 copoeia of the United States, or official National Formulary, or a
27 supplement to any of them; (2) substances intended for use in the
28 diagnosis, cure, mitigation, treatment, or prevention of disease in
29 man or animals; (3) substances (other than food) intended to affect

1 the structure or a function of the body of man or animals; and (4)
2 substances intended for use as a component of an article specified in
3 (1), (2), or (3) of this subsection; it does not include devices or
4 their components, parts or accessories;

5 (o) "immediate precursor" means a substance which the commissioner
6 has found to be and by regulation designates as being the principal
7 compound commonly used or produced primarily for use, and which is an
8 immediate chemical intermediary used or likely to be used in the
9 manufacture of a controlled substance, the control of which is
10 necessary to prevent, curtail, or limit manufacture;

11 (p) "judicial officer" means a judge of the superior court, a
12 district judge and a magistrate;

13 (q) "manufacture" means the production, preparation, propagation,
14 compounding, conversion or processing of a controlled substance, either
15 directly or indirectly by extraction from substances of natural origin,
16 or independently by means of chemical synthesis, or by a combination of
17 extraction and chemical synthesis, and includes any packaging or
18 repackaging of the substance or labeling or relabeling of its
19 container, except that this term does not include the preparation or
20 compounding of a controlled substance by an individual for his own use
21 or the preparation, compounding, packaging, or labeling of a controlled
22 substance:

23 (1) by a practitioner as an incident to his administering or
24 dispensing of a controlled substance in the course of his professional
25 practice, or

26 (2) by a practitioner, or by his authorized agent under his
27 supervision, for the purpose of, or as an incident to, research,
28 teaching, or chemical analysis and not for sale;

29 (r) "marihuana" means all parts of the plant *Cannabis sativa* L.,

1 whether growing or not; its seeds; the resin extracted from any part
2 of the plant; and a compound, manufacture, salt, derivative, mixture,
3 or preparation of the plant, its seeds or resin; it does not include
4 the mature stalks of the plant, fiber produced from the stalks, oil
5 or cake made from the seeds of the plant, another compound, manufacture,
6 salt, derivative, mixture, or preparation of the mature stalks (except
7 the resin extracted from the stalks), fiber, oil, or cake, or the
8 sterilized seed of the plant which is incapable of germination;

9 (s) "narcotic drug" means any of the following, whether produced
10 directly or indirectly by extraction from substances of vegetable
11 origin, or independently by means of chemical synthesis, or by a
12 combination of extraction and chemical synthesis:

13 (1) opium and opiate, and a salt, compound, derivative, or
14 preparation of opium or opiate;

15 (2) a salt, compound, isomer, derivative, or preparation
16 of these which is chemically equivalent or identical with any of the
17 substances referred to in paragraph (1) of this section, but not
18 including the isoquinoline alkaloids of opium;

19 (3) opium poppy and poppy straw;

20 (4) coca leaves and a salt, compound, derivative, or
21 preparation of coca leaves, and a salt, compound, isomer, derivative,
22 or preparation of these which is chemically equivalent or identical
23 with any of these substances, but not including decocainized coca
24 leaves or extractions of coca leaves which do not contain cocaine
25 or ecgonine;

26 (t) "opiate" means a substance having an addiction-forming or
27 addiction-sustaining liability similar to morphine or being capable of
28 conversion into a drug having addiction-forming or addiction-
29 sustaining liability; it does not include, unless specifically

1 designated as controlled under sec. 10 of this chapter, the dextro-
2 rotatory isomer of 3-methoxy-n-methylmorphinan and its salts
3 (dextromethorphan); it does include its racemic and levorotatory forms;

4 (u) "opium poppy" means the plant of the species *Papaver*
5 *somniferum* L., except its seeds;

6 (v) "poppy straw" means all parts, except the seeds, of the
7 opium poppy, after mowing;

8 (w) "practitioner" means:

9 (1) a physician, dentist, veterinarian, scientific
10 investigator, or other person licensed, registered or otherwise
11 permitted to distribute, dispense, conduct research with respect to
12 or to administer a controlled substance in the course of professional
13 practice or research in the state;

14 (2) a pharmacy, hospital or other institution licensed,
15 registered, or otherwise permitted to distribute, dispense, conduct
16 research with respect to or to administer a controlled substance in
17 the course of professional practice or research in the state;

18 (x) "production" includes the manufacture, planting, cultivation,
19 growing, or harvesting of a controlled substance;

20 (y) "state," when applied to a part of the United States outside
21 the State of Alaska, includes a state, district, commonwealth,
22 territory, insular possession thereof, and any area subject to the
23 legal authority of the United States of America;

24 (z) "ultimate user" means a person who lawfully possesses a
25 controlled substance for his own use or for the use of a member of his
26 household or for administering to an animal owned by him or by a
27 member of his household.

28 * Sec. 2. (a) Civil seizures or forfeitures and injunctive proceedings
29 instituted under AS 11.31 which were commenced prior to the effective date

1 of this Act are not affected by this Act.

2 (b) All administrative proceedings pending under prior laws which are
3 superseded by AS 11.31 shall be continued and brought to a final determina-
4 tion in accord with the laws and rules in effect before the effective
5 date of this Act. A substance controlled under prior law which is not
6 listed within Schedules I through V, is automatically controlled without
7 further proceedings and shall be listed in the appropriate schedule.

8 (c) The commissioner of health and social services shall initially
9 permit persons to register who own or operate an establishment engaged in
10 the manufacture, distribution, or dispensing of a controlled substance
11 before the effective date of this Act and who are registered or licensed
12 by the state.

13 (d) AS 11.31 applies to violation of law; seizures and forfeiture,
14 injunctive proceedings, administrative proceedings and investigations
15 which occur following its effective date.

16 * Sec. 3. Orders, rules and other regulations promulgated under a law
17 affected by AS 11.31 and in effect on the effective date of this Act and
18 not in conflict with it continue in effect until modified, superseded or
19 repealed.

20 * Sec. 4. AS 44.29.020 is amended to read:

21 Sec. 44.29.020. DUTIES OF DEPARTMENT. The Department of Health
22 and Social Services shall administer the state programs of public health
23 and social services, including: (1) maternal and child health services;
24 (2) preventive medical services; (3) public health nursing services;
25 (4) sanitation and engineering services; (5) nutrition services; (6)
26 health education; (7) laboratories; (8) mental health treatment and
27 diagnosis; (9) management of state institutions; (10) medical
28 facilities; (11) old age assistance; (12) aid to dependent children;
29 (13) aid to the blind; (14) child welfare services; (15) general

1 relief; (16) licensing and supervision of child care facilities; [AND]
2 (17) probation and parole supervision; and (18) control of drug abuse in
3 accordance with the provisions of AS 11.31.

4 * Sec. 5. AS 08.64.380(3)(B) is amended to read:

5 (B) habitual overuse of alcoholic beverages or
6 controlled substances as defined in AS 11.31 [DEPRESSANT,
7 HALLUCINOGENIC OR STIMULANT DRUGS, AS DEFINED IN AS 17.12.150(3),
8 OR ADDICTION TO THE USE OF NARCOTIC DRUGS AS DEFINED IN AS
9 17.10.230(13)];

10 * Sec. 6. AS 08.64.380(3)(F) is amended to read:

11 (F) violating the federal Controlled Substances Act
12 (P.L. 91-513) or other federal law pertaining to medical practice
13 and drugs [HARRISON ANTI-NARCOTIC ACT];

14 * Sec. 7. AS 08.80.470 is amended to read:

15 Sec. 08.80.470. CONSTRUCTION. Nothing in this chapter amends,
16 modifies, repeals or otherwise changes any provision of the Uniform
17 Controlled Substances [NARCOTIC DRUG] Act (AS 11.31) [(AS 17.10)] or
18 the Alaska Food, Drug and Cosmetic Act (AS 17.20).

19 * Sec. 8. AS 33.20.010 is amended by adding a new subsection to read:

20 (c) In the case of a prisoner sentenced to an indefinite term
21 in which a minimum sentence is prescribed, the deductions in sentence
22 specified in (a) of this section, are deducted from the minimum and
23 maximum term of imprisonment.

24 * Sec. 9. AS 33.20.020(a) is amended to read:

25 (a) A prisoner may, in the discretion of the commissioner of
26 health and social services or his designee, be allowed a deduction
27 from his definite sentence or in the case of an indefinite sentence,
28 from his minimum and maximum sentence, of not to exceed three days
29 for each month of actual employment in a prison or camp project or

1 activity for the first year or any part of it, and not to exceed
2 five days for each month of any succeeding year or part of it.

3 * Sec. 10. Except as provided in (1), (2) and (3) of this section, this
4 Act does not apply to offenses committed before the effective date of this
5 Act and prosecutions for those offenses are governed by the law in effect
6 at the time the offense was committed. For the purposes of this section, an
7 offense was committed before the effective date of this Act if any of the
8 elements of the offense occurred before it. In a case pending on or after
9 the effective date of this Act, involving an offense committed before the
10 effective date this Act,

11 (1) procedural provisions of this Act shall govern where justly
12 applicable if their application does not cause confusion or delay;

13 (2) provisions of this Act according a defense to an offense or
14 mitigation shall apply, with the consent of the defendant;

15 (3) the court, with the consent of the defendant, may impose
16 appropriate sentence under this Act.

17 * Sec. 11. AS 04.15.020 is amended by adding a new paragraph to read:

18 (h) The sale of intoxicating liquor does not exclude the sale of
19 intoxicating liquor on credit.

20 * Sec. 12. AS 12.15.020 is amended to read:

21 Sec. 12.15.020. ACCESSORIES AFTER THE FACT. All persons who,
22 after the commission of any felony, conceal or aid the offender with
23 knowledge that he has committed a felony and with intent that he may
24 avoid or escape from arrest, trial, conviction, or punishment are
25 accessories. There are no accessories in misdemeanors and petty
26 misdemeanors.

27 * Sec. 13. AS 12.20.050(a) is amended to read:

28 (a) It is a bar to another prosecution for the same crime if the
29 crime is a misdemeanor or petty misdemeanor, but it is not a bar if the

1 crime charged is a felony when a person is

2 (1) held to answer to the grand jury and the court dismisses
3 the charge before the case is presented to the grand jury upon the
4 motion of the prosecuting attorney;

5 (2) held to answer to the grand jury and the court dismisses
6 the charge because the indictment is not found against him at the next
7 session of the grand jury; or

8 (3) indicted for a crime and the indictment is dismissed be-
9 cause the trial is not held within a reasonable period of time, and
10 there is not good cause shown for the delay, and the delay was not upon
11 the application of the defendant or with his consent.

12 * Sec. 14. AS 12.25.035 is amended to read:

13 Sec. 12.25.035. ARREST WITHOUT WARRANT BY STATE TROOPER WHEN
14 JUDICIAL OFFICER IS UNAVAILABLE. A state trooper may arrest a person
15 without a warrant for a misdemeanor or a petty misdemeanor or for the
16 violation of an ordinance when

17 (1) the officer has reasonable grounds to believe that the
18 person to be arrested has committed a misdemeanor or a petty misdemeanor
19 or has violated an ordinance;

20 (2) personal or property damage is likely to be done unless
21 the person is immediately arrested; and

22 (3) there is no known judicial officer empowered to issue a
23 warrant within a radius of 25 miles of the person to be apprehended.

24 * Sec. 15. AS 12.30.060 is amended by adding a new paragraph to read:

25 (4) if he was released in connection with a charge of petty
26 misdemeanor, is guilty of a petty misdemeanor.

27 * Sec. 16. AS 12.45.120 is amended to read:

28 Sec. 12.45.120. AUTHORITY TO COMPROMISE MISDEMEANORS AND PETTY
29 MISDEMEANORS FOR WHICH VICTIM HAS CIVIL ACTION. When a defendant is

1 held to answer on a charge of misdemeanor or petty misdemeanor for
2 which the person injured by the act constituting the crime has a remedy
3 by a civil action, the crime may be compromised except when it was
4 committed

5 (1) by or upon a peace officer, judge or magistrate while
6 in the execution of the duties of his office;

7 (2) riotously;

8 (3) with an intent to commit a felony;

9 (4) larcenously.

10 * Sec. 17. AS 12.45.150 is amended to read:

11 Sec. 12.45.150. ORDER FOR PRIVATE PROSECUTOR TO PAY COSTS FOR
12 MALICIOUS PROSECUTION WITHOUT PROBABLE CAUSE. The name of a person who
13 voluntarily appears before a judge, magistrate or grand jury to
14 prosecute a person in a criminal action, [EITHER] for a misdemeanor,
15 petty misdemeanor, or felony, shall be endorsed upon the complaint,
16 information, or indictment as a private prosecutor. If it is found by
17 a judge, magistrate or court trying the action or hearing the proceed-
18 ing that the prosecution is malicious or without probable cause, those
19 facts shall be entered upon the record in the action or proceeding by
20 the judge, magistrate or court. Upon making the entry, the judge,
21 magistrate or court shall immediately render judgment against the
22 private prosecutor for the costs and disbursements of the action or
23 proceeding, which may be enforced by execution in the same manner as
24 a judgment in a civil action.

25 * Sec. 18. AS 11.05, AS 11.10, AS 11.15, AS 11.20, AS 11.22, AS 11.25,
26 AS 11.30, AS 11.35, AS 11.40 - AS 11.75, AS 12.05.010, AS 12.55.040 -
27 12.55.050, AS 17.10, AS 17.12, and AS 17.15 are repealed.

28 * Sec. 19. AS 18.65 is amended by adding a new section to read:

29 ARTICLE 2. PERMITS FOR THE CARRYING OF

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CONCEALED WEAPONS

Sec. 18.65.120. CONCEALED WEAPONS. The Department of Public Safety shall promulgate regulations establishing a system for the issuance of nontransferable permits for the carrying of concealed weapons under AS 11.29.320.

* Sec. 20. This Act takes effect July 1, 1975.