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TONY KNOWLES
MAYOR

ANCHORAGE POLICE DEPARTMENT

625 C STREET • ANCHORAGE, ALASKA 99501-3599
TELEPHONE (907) 279-1441



BRIAN S. PORTER
CHIEF

January 25, 1985

Senator Patrick M. Rodey
Pouch V
Juneau, Alaska 99811

RE: House Bill No. 17
"An Act Relating to Multiple Convictions for Motor Vehicle Theft
and Joyriding"

Dear Senator Rodey,

Alaska Statute 11.46.484 (a)(2) Criminal Mischief in the Third Degree causes a person who has been previously convicted of this offense, or the old Title 28.35.010 (Driving a vehicle without owner's consent) to be charged with a Class "C" Felony.

Since the enactment of this Statute [11.45.484(a)(2)] in 1982, several problems have been encountered that have severely limited the felony prosecution for this offense. This Statute fails to take into consideration:

1. Convictions for the like offense of "Joyriding" (Driving a vehicle without the owner's consent). Other states and jurisdictions have Statutes or Ordinances for the offense of "Driving a vehicle without the owner's consent"(Joyriding), but with the restrictive language of AS 11.46.484(a)(2) prior convictions in other states and jurisdictions may not be used in determining an upgraded charge(felony).
2. Convictions of AS 11.46.482(a)(4) Criminal Mischief in the Second Degree, involving a stolen motor vehicle. The only difference between Criminal Mischief in the Second Degree [AS 11.46.482(a)(4)](Felony) and Criminal Mischief in the Third Degree [AS 11.46.484(a)(2)](Misdemeanor), is if the owner of the stolen vehicle incurs expenses in the amount of \$500 or more the Criminal Mischief in the Second Degree is charged.
3. Convictions of AS 11.46.100-190 Theft in the First-Third Degree. Not all people charged with stealing a motor vehicle are charged under the Criminal Mischief Statutes, depending on what they ultimately do to or with the vehicle, they can be charged under the Theft Statutes.

The Theft Statutes are utilized when it can be shown that the thief had the intent to permanently deprive the owner of his stolen vehicle, such as altering the vehicle identification numbers or dismantling the vehicle.

Anchorage accounts for 44% of the vehicles registered in Alaska, and 83% of the vehicle thefts.

Registered vehicles (Anchorage)

1982	150,973
1983	172,911
1984	186,744

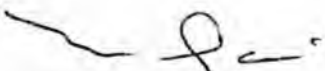
Auto Thefts (Anchorage)

		Dollar Amount
1982	1120 vehicles	\$2,563,800
1983	1433 vehicles (+28%)	3,744,000
1984	1562 vehicles (+ 9%)	4,634,000

In Anchorage, during 1984, your chance of having your vehicle stolen was "1" out of "119". The National average was "1" out of 158 and Seattle only had a rate of "1" out of 335.

I strongly urge your support for House Bill No. 17. I have worked as an auto theft investigator for the past 12 years and I feel that this Bill will help to reduce auto theft in Alaska. House Bill No. 17 is also supported by the Alaska Chiefs of Police, Alaska Peace Officers Association and the Anchorage Police Department Employees Association.

Sincerely,


Investigator Lyle L. Davis
Anchorage Police Department
Auto Theft Unit

LLD:vka
Attachments

Cy No. 465-4750

to Affair - LANE

to: ANCH - Municipal Code

Lt. Carlson: NA of the Code

Municipal Attorney: 264-4545

Sgt. Liba
MUNICIPALITY
OF ANCHORAGE

POLICE
DEPARTMENT

MUNICIPAL CRIMINAL CODE
(ARRESTABLE OFFENSES
FROM TITLE 9 INCLUDED)

JANUARY 1984

receipt issued for and accompanied by the article or articles of merchandise or thing or things of value. (Adapted from GAAB 18.05.040.)

8.05.560 Solicitation to Illegal Act.

It is unlawful to solicit a person for the purpose of committing any illegal act. (GAAB 18.05.010R.)

8.05.580 Switchblade Knives.

It is unlawful for a person to sell, offer for sale, display or carry about his person, a knife which has a blade which can be opened by a spring mechanism, exertion of pressure on the handle, or by gravity. This section does not apply to any officer of the United States, the State of Alaska or the municipality whose carrying or displaying of such a knife is necessary in the course of his official duties. (Adapted from CAC 8.50.010 and new.)

8.05.590 Telephones — Illegal Use of.

It is unlawful for any person to anonymously or repeatedly telephone another person for the purpose of annoying, molesting, or abusing through patently offensive and profane language, or harassing that person or his family. (Adapted from AS 11.45.035, am AO 82-134.)

8.05.600 Theft of Vehicle and Joyriding.

Any person who drives or takes a motor vehicle not his own without the consent of the owner thereof, and with intent to either permanently or temporarily deprive the owner thereof of his possession of the vehicle, whether with or without intent to steal the same, or any person who is a party or accessory to or an accomplice in the driving or unauthorized taking or stealing, is guilty of a misdemeanor. The consent of the owner of a vehicle to its taking or driving shall not in any case be presumed or implied because of such owner's consent on a previous occasion to the taking or driving of the vehicle by the same or a different person. (Adapted from CVC 10851 Calif. Vehicle Code.)

8.05.610 Unauthorized Duplication of Keys.

It is unlawful for any person to make a duplicate of a key bearing the inscription "do not duplicate" or "it is unlawful to duplicate this key," unless authorized to do so by the owner of the lock which the key fits. (CAC 8.32.010.)

8.05.620 Unauthorized Entry.

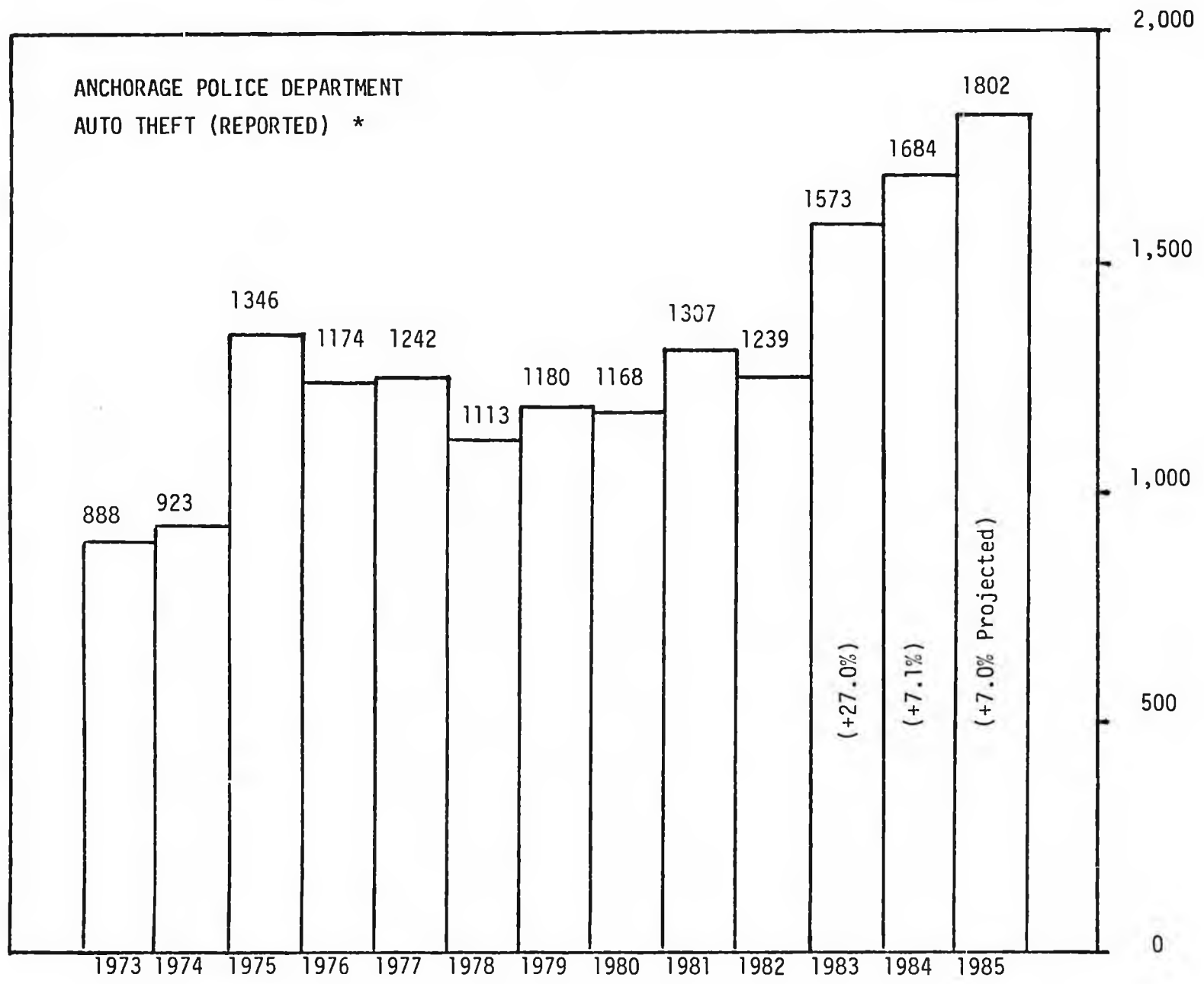
A. It is unlawful for any person to enter, use or occupy any occupied or unoccupied dwelling, house, tent, hotel, office, store, shop, warehouse, barn, factory or other building, boat, ship, railroad car or structure, or apartment, cottage, clubhouse, bathhouse, hunting or fishing lodge, garage or any other structure or use any personal property therein, except with the consent of the owner of the facility or his agent. However, a person may enter, use or occupy an unoccupied structure specified in this section without the consent of the owner if:

1. the entry, use or occupancy of the facility is for an emergency in the case of immediate and dire need; and
2. the person contacts the owner or agent within 15 days after using the facility or, if the owner is unknown, the Anchorage Police Department, and makes a report of the time of entry, use or occupancy of the facility and any damage to the facility or personal property, unless a notice waiving the necessity for such report is posted in the facility by the owner or his agent.

B. In this section, "occupied" means that the premises is being used by one or more persons entitled to its enjoyment and use, and this includes actual as well as constructive occupancy. (Adapted from AS 11.20.135.)

8.05.660 Vehicle — Tampering With.

It is unlawful for any person, either individually or in concert with one or more other persons, willfully to



* (includes reports later found to be false)

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

<u>REQUEST</u> SCSCS HB17 Bill/Resolution No.: (State Affairs) Title: "...vehicle theft and joyriding." Sponsor: <u>Repr. Uehling</u> Requestor: <u>Senate Judiciary</u> Date of Request: <u>3/13/85</u>	<u>FISCAL DETAIL</u> Agency Affected: <u>Department of Law</u> Program Category Affected: <u>Administration of Justice</u> BRU, Program or Subprogram(s) Affected: <u>Prosecution</u>	
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EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

The latest committee substitute adds language to specify and clarify the circumstances whereby prior convictions can be used in determining whether a subsequent conviction will result in a class C felony. These circumstances were included in the original version by statutory reference. Because there have been no substantive changes, the comments contained in our fiscal note of January 29, 1985, remain unchanged.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: 3/15/85
 Approved by Commissioner: Norman C. Gorsuch Date: 3/15/85
 Agency: Department of Law

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SCSCSHB 17(SA)
 Title: "An Act relating to
 multiple convictions...."
 Sponsor: Senate State Affairs
 Requestor: Senate Judiciary
 Date of Request: 3-14-85

FISCAL DETAIL

Agency Affected: Public Safety
 Program Category Affected: Administration of Justice
 BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Paul Conger
 Division: Administrative Services

Phone: 465-4338
 Date: 3-14-85

Approved by Commissioner: *[Signature]*
 Agency: Public Safety

Date: 3/15/85

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

7/1/84

DEPARTMENT OF PUBLIC SAFETY
POSITION PAPER -- SCSHB 17(SA)

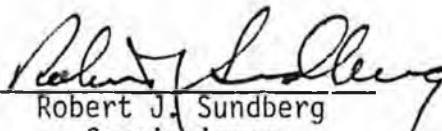
Support

March 28, 1985

SCSHB 17(SA) - "An Act relating to multiple convictions for motor vehicle theft and joyriding."

This legislation broadens the parameters of criminal activity that are to be considered in determining previous convictions involving joyriding.

This wording change will allow more serious charges to be brought against joyriding suspects which should bring the importance of this crime to the public's attention and thus lessen the number of occurrences due to the fear of prosecution as a more serious crime.


Robert J. Sundberg
Commissioner

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: February 15, 1985

REQUEST:

Bill/Resolution No.: H.B. 17
 Title: "An Act relating to multiple convictions for motor vehicle theft and joyriding"
 Sponsor: Representative Uehling
 Requestor: (H) Judiciary
 Date of Request: February 1, 1985

FISCAL DETAIL:

Agency Affected: DEPARTMENT OF CORRECTIONS
 Program Category Affected: _____
 Administration of Justice
 BRU, Program or Subprogram(s) Affected: Offender Confinement, Reformation, and Supervision

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		17.9	18.8	19.7	20.7	21.7
400 SUPPLIES		14.6	15.3	16.1	16.9	17.8
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	32.5	34.1	35.8	37.6	39.5

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	32.5	34.1	35.8	37.6	39.5
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	32.5	34.1	35.8	37.6	39.5

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary.

See attached narrative.

Prepared By: William W. Ladwig *William W. Ladwig*
 Division: Deputy Commissioner for Administration

Phone: 465-3376
 Date: February 15, 1985

Approved by Commissioner: Roger V. Enchell *Roger V. Enchell*
 Agency: DEPARTMENT OF CORRECTIONS

Date: February 15, 1985

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency (ies)

ANALYSIS

I. Assumptions:

Based upon statistics provided by Anchorage Police Officer Davis, the following assumptions have been made:

1. Anchorage accounts for 83% of the annual arrests for auto theft.
2. The arrests have averaged 100 per year.
3. Of all 100 arrests for all types of auto theft, 15 are for joyriding.
4. Of the 15 arrestees, 3 have prior offenses.
5. Projecting the Anchorage area statistics to the statewide level results in 120 arrests per year for all auto theft crimes with 4 people being subject to this legislation.
6. It is assumed that the number of persons incarcerated under this bill would be 4.
7. It is assumed that incarceration of these 4 persons will require no additional bed space.
8. It is assumed that the cost of living will increase by 5% per year.

II. Program Summary:

A. The annual cost of care is computed as follows:

4 X 365 X 22.28	=	32,500
32.5 X 1.05	=	34.1
34.1 X 1.05	=	35.8
35.8 X 1.05	=	37.6
37.6 X 1.05	=	39.5
Total	=	179.5

III. Economic Impact:

Enactment of this bill will not have a significant impact on the State's economy.

IV. Impact on Local Government:

This bill has no apparent impact on local government units.

HB 17 - JOYRIDING

- This is not a new and different concept. Existing law already provides that anyone convicted of joyriding, who has previously been convicted of a joyriding offense under State law, is guilty of a class C felony.
- This bill amends existing law to close a gaping loophole. Existing law would not allow consideration of a previous conviction for joyriding under municipal ordinances or under another state's law. To allow this situation to continue will result in continued inconsistent treatment of similar offenders. E.g., their penalty would depend on whether they were previously convicted under Anchorage municipal law or state law.
- The significant change in the law is the inclusion of previous convictions for related crimes. That is, a previous conviction for theft of a motor vehicle or a previous conviction of joyriding where \$500 or more of property damage was caused will also be counted to incur the class C felony treatment.
- Although the result of the bill will be increased felony convictions, there is no presumptive term for a first time class C felony conviction. The only time the presumptive scheme will come into play is when that person has previous felony convictions (2 years for a second felony conviction and 3 years for a third felony conviction).

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 17
 Title: "An Act relating to multiple convictions...for motor vehicles..."
 Sponsor: Repr. Uehling
 Requestor: House Judiciary
 Date of Request: 1/24/85

FISCAL DETAIL

Agency Affected: Department of Law
 Program Category Affected: Administration of Justice
 BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING			-			
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

This bill amends AS 11.46.484(c) to provide that a person convicted under (a)(2) of that section who has been previously convicted of an offense having similar elements or of an offense involving the theft of a motor vehicle under AS 11.46.100-11.46.190 is guilty of a class C felony. The effect of the amendment is to provide for the inclusion of convictions of similar offenses in other jurisdictions in arriving at the offense level for repeat offenses in Alaska.

(Continued)

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: 1/29/85
 Approved by Commissioner: Norman C. Gorsuch Date: 1/29/85
 Agency: Department of Law

Distribution (by Agency preparing fiscal note):

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST
 Bill/Resolution No.: HB 17
 Title: "...multiple convictions
 for joyriding."
 Sponsor: Rep. Uenling
 Requestor: House Judiciary
 Date of Request: 2-6-85

FISCAL DETAIL Public Safety
 Agency Affected: _____
 Program Category Affected: _____
 Administration of Justice
 BRU, Program or Subprogram(s) Affected: _____
 Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

See attached analysis.

Prepared By: Francis C. Allan ^{G.C.A.} Phone: 269-5691
 Division: Alaska State Troopers Date: 2-1-85
 Approved by Commissioner P. J. Sundberg Date: 2-6-85
 Agency: Department of Public Safety

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

7/1/84

REP. RICK UEHLING
TESTIMONY TO HOUSE JUDICIARY COMMITTEE
REGARDING HOUSE BILL 17

MR. CHAIRMAN,

DURING THE INTERIM, IT WAS BROUGHT TO MY ATTENTION BY MEMBERS OF THE ANCHORAGE POLICE DEPARTMENT THAT CERTAIN DEFICIENCIES EXIST IN THE CURRENT LAWS UNDER WHICH A PERSON IS CHARGED WITH AS 11.46.484(a)(2) CRIMINAL MISCHIEF IN THE THIRD DEGREE (INVOLVING THE THEFT OF A MOTOR VEHICLE.)

UNDER THE CURRENT LAW, FELONY PROSECUTIONS HAVE BEEN LIMITED FOR THIS OFFENSE BY ITS RESTRICTIVE LANGUAGE. THE STATUTE DOES NOT ALLOW OUR POLICE AND PROSECUTORS THE ABILITY TO TAKE INTO CONSIDERATION THE FOLLOWING:

1. VIOLATIONS OF MUNICIPAL ORDINANCES FOR THE CRIME OF "JOYRIDING" (DRIVING A VEHICLE WITHOUT THE OWNER'S CONSENT)
2. CONVICTIONS IN OTHER JURISDICTIONS (OTHER STATES) FOR A LIKE OFFENSE
3. CONVICTIONS OF AS 11.46.482(a)(d) CRIMINAL MISCHIEF IN THE SECOND DEGREE, INVOLVING A STOLEN MOTOR VEHICLE.
4. CONVICTIONS OF AS 11.46.100-190 THEFT IN THE FIRST THROUGH THIRD DEGREE, AS 11.46.100-190 INVOLVING THE THEFT OF A MOTOR VEHICLE.

AUTO THEFT IN ANCHORAGE IS GROWING AT AN INCREASING RATE. IN 1983 THERE WAS A 28% INCREASE IN AUTO THEFTS AND IN 1984, A 9% INCREASE. THE TOTAL VALUE OF ALL CARS STOLEN IN 1984 WAS 4.6 MILLION DOLLARS.

WE NEED TO GIVE OUR POLICE THE TOOLS NECESSARY TO DEAL WITH THIS PROBLEM. I UNDERSTAND THAT THE ATTORNEY GENERAL'S OFFICE MAY HAVE CHANGES THAT THEY WANT TO MAKE. I HAVE NO PROBLEM WITH THAT. I AM WILLING TO WORK WITH MEMBERS OF THE COMMITTEE, THE CHAIRMAN, AND THE ATTORNEY GENERAL'S OFFICE TO SOLVE OUT ANY PROBLEMS. INVESTIGATOR LYLE DAVIS & ANN NEWELL ARE HERE TO TESTIFY AND I AM CERTAIN THAT THEY CAN BETTER ANSWER ANY SPECIFIC QUESTIONS THAT YOU MAY HAVE. THANK YOU.

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - HB 17

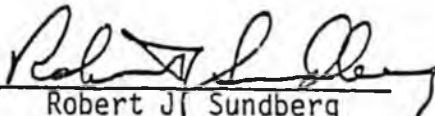
Support

February 1, 1985

HB 17 - "An Act relating to multiple convictions for motor vehicle theft and joyriding."

This legislation broadens the parameters of criminal activity that are to be considered in determining previous convictions involving joyriding.

This wording change will allow more serious charges to be brought against joyriding suspects which should bring the importance of this crime to the public's attention and thus lessen the number of occurrences due to the fear of prosecution as a more serious crime.


Robert J. Sundberg
Commissioner



Alaska State Legislature

House

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

To: Rep. Mike Miller, Chair
House Judiciary

From: Rep. Rick Uehling *RUE*

Subject: HB 17 "An Act relating to multiple convictions
for motor vehicle theft and joyriding."

Date: January 28, 1985

Attached are two letters from Investigator Lyle Davis, of the Anchorage Police Department setting forth specific problems with the current Alaska Statute 11.46.484(a)(2), "Criminal mischief in the third degree, involving a stolen motor vehicle." House Bill 17 "An Act relating to multiple convictions for motor vehicle theft and joyriding," is an attempt to correct the problems that exist in the current law.

In the past two years in Anchorage, auto theft has increased by 31%. I believe that by expanding the statute to allow prosecutors to use previous convictions, of crimes involving the theft of stolen motor vehicles, in order to upgrade what would be Misdemeanor charges to Felony charges that repeat offenders can be stopped. We must seek to end the upward trend in the growth of the number of stolen motor vehicles.

{ Investigator Lyle Davis will be here in Juneau to testify on HB 17 before the House Judiciary Committee on Friday.

I have included additional background information for your consideration.

Taking, and pledging or pawning, another's property as larceny, 82 ALR2d 863.

Stolen money or property as subject of larceny, 89 ALR2d 1435.

Larceny in connection with application for, or receipt of, public relief or welfare payments, 92 ALR2d 429.

Attempts to commit offenses of larceny by trick, confidence game, false pretenses, and the like, 6 ALR3d 241.

Entrapment or consent, 10 ALR3d 1121.

Computer programs as property subject to theft, 18 ALR3d 1121.

Single or separate larceny predicated upon stealing property from different owners at the same time, 37 ALR3d 1407.

Criminal liability in connection with rental of motor vehicles, 38 ALR3d 949.

Purse snatching as robbery or theft, 42 ALR3d 1381.

Criminal prosecution based upon breaking into or taking money or goods from vending machine or other coin operated machine, 45 ALR3d 1286.

Series of takings over a period of time as involving single or separate larcenies, 53 ALR3d 398.

Larceny as within disorderly conduct statute or ordinance, 71 ALR3d 1156.

What constitutes larceny "from a person," 74 ALR3d 271.

Receiver of stolen goods as accomplice of thief for purposes of corroboration, 74 ALR3d 560.

What conduct amounts to an overt act or acts done toward commission of larceny so as to sustain charge of attempt to commit larceny, 76 ALR3d 842.

Retaking of money lost at gambling as robbery or larceny, 77 ALR3d 1363.

Criminal liability for wrongfully obtaining unemployment benefits, 80 ALR3d 1280.

Embezzlement, larceny, false pretenses or allied criminal fraud by a partner, 82 ALR3d 822.

Coercion, compulsion, or duress as defense to charge of robbery, larceny, or related crime, 1 ALR4th 481.

Retailer's failure to pay to government sales or use tax funds as constituting larceny or embezzlement, 8 ALR4th 1068.

Sec. 11.46.100. Theft defined. A person commits theft if

(1) with intent to deprive another of property or to appropriate property of another to oneself or a third person, the person obtains the property of another;

(2) the person commits theft of lost or mislaid property under AS 11.46.160;

(3) the person commits theft by deception under AS 11.46.180;

(4) the person commits theft by receiving under AS 11.46.190;

(5) the person commits theft of services under AS 11.46.200;

(6) the person commits theft by failure to make required disposition of funds received or held under AS 11.46.210. (§ 4 ch 166 SLA 1978)

Cross references. — For definitions, see AS 11.46.990.

NOTES TO DECISIONS

- I. General Consideration.
- II. Larceny.

I. GENERAL CONSIDERATION.

Indictment sufficient. — Indictment charging defendant with theft adequately informed him of offense with which he was charged, although it did not allege a specific theory of theft. *Williams v. State*,

Ct. App. Op. No. 106 (File No. 5993), 648 P.2d 603 (1982).

Receiving stolen property. — It was not error to instruct on offense of receiving stolen property, even though evidence tended to show that he was the thief and

Disorderly conduct
ALR3d 1156.
Penalty "from a per-

As an accomplice
corroboration, 74

As to an overt act or
commission of larceny so
attempt to commit

As to gambling as
ALR3d 1363.

Wrongfully obtain-
benefits, 80 ALR3d

By, false pretenses
by a partner, 82

By or duress as
larceny, or
481.

By to government
constituting lar-
ALR4th 1068.

Left if
Appropriate prop-
erty obtains the

Property under AS

1.46.180;

1.46.190;

16.200;

and disposition

6 SLA 1978)

No. 5993), 648

erty. — It was
use of receiving
ough evidence
is the thief and

had not received the property from anyone.
Williams v. State, Ct. App. Op. No. 106
(File No. 5993), 648 P.2d 603 (1982). *Gant*
v. State, Ct. App. Op. No. 171 (File No.
6161), 654 P.2d 1325 (1982).

Applied in *Andrew v. State*, Ct. App.
Op. No. 164 (File No. 6468), 653 P.2d 1063
(1982).

Quoted in *Frankson v. State*, Ct. App.
Op. No. 92 (File No. 6029), 645 P.2d 225
(1982).

Cited in *Law v. State*, Sup. Ct. Op. No.
2301 (File No. 4552), 624 P.2d 284 (1981);
Leuch v. State, Sup. Ct. Op. No. 2419 (File
No. 5255), 633 P.2d 1006 (1981); *Namen v.*
State, Ct. App. Op. No. 264 (File No. 5662),
665 P.2d 557 (1983).

II. LARCENY.

Editor's notes. — The cases cited in the
notes below were primarily decided under
former AS 11.20.140.

The "property of another" phrase in
larceny statutes ordinarily refers to pos-
session, not title, because the gravamen of
the offense is the interference with an-
other's possession of property. *Pulakis v.*
State, Sup. Ct. Op. No. 649 (File No. 1108),
476 P.2d 474 (1970).

Proof of ownership not required. —
The state need not prove, as an essential
element of the crime of larceny, ownership
of the property allegedly stolen. *Pulakis v.*
State, Sup. Ct. Op. No. 649 (File No. 1108),
476 P.2d 474 (1970).

The property in question must
belong to another person. *Howard v.*
State, Sup. Ct. Op. No. 1707 (File No.
3089), 583 P.2d 827 (1978).

Effect of owner's consent. — Proof of
the owner's or possessor's consent to the
taking would render the taking
nontrespassory, and there could be no lar-
ceny conviction. Nevertheless, proof of
nonconsent need not be by direct evidence
only. *Randall v. State*, Sup. Ct. Op. No.
1691 (File No. 3260), 583 P.2d 196 (1978).

Establishing nonconsent. — Non-
consent of the owner or possessor of the
item taken may be established by circum-
stantial evidence. *Randall v. State*, Sup.
Ct. Op. No. 1691 (File No. 3260), 583 P.2d
196 (1978).

**Definition of "goods" under former
larceny statute.** — Natural gas was
included within the meaning of the word
"goods." *Selman v. State*, Sup. Ct. Op. No.
302 (File No. 527), 406 P.2d 181 (1965),
overruled on other grounds in *Whitton v.*
State, Sup. Ct. Op. No. 661 (File No. 1153),
479 P.2d 302 (1970).

Electricity is included within the
meaning of the word "goods." *Selman v.*
State, Sup. Ct. Op. No. 302 (File No. 527),
406 P.2d 181 (1965), overruled on other
grounds in *Whitton v. State*, Sup. Ct. Op.
No. (File No. 1153), 479 P.2d 302 (1970).

Electricity can be the subject of larceny.
Selman v. State, Sup. Ct. Op. No. 302 (File
No. 527), 406 P.2d 181 (1965), overruled on
other grounds in *Whitton v. State*, Sup. Ct.
Op. No. (File No. 1153), 479 P.2d 302
(1978).

Former section required felonious
intent on which to base a conviction.
Bowlby v. Daniels, 17 Alaska 768 (1958).

Grand larceny was a specific intent
crime. *Howard v. State*, Sup. Ct. Op. No.
1707 (File No. 3089), 583 P.2d 827 (1978).

A necessary element of the crime of
grand larceny was that defendant have the
specific intent to deprive the owner of his
property at the time the taking and
carrying away takes place, and unless
such intent so exists, the crime of larceny
is not committed. *Howard v. State*, Sup.
Ct. Op. No. 1707 (File No. 3089), 583 P.2d
827 (1978).

**Property stolen need not be for use
of thief.** — Nothing on the face of the
former larceny section stated that the
stolen property had to have been stolen for
the use of the thief. *Perkins v. United*
States, 16 Alaska 471, 237 F.2d 857 (9th
Cir. 1956).

The wrongful taking of property of an-
other constituted larceny although not
shown to be conversion for the use of the
thief. *Perkins v. United States*, 16 Alaska
471, 237 F.2d 857 (9th Cir. 1956).

**Larceny of electricity and diversion
of electricity not the same.** — A count
charging larceny of electricity under the
former larceny section was not a duplica-
tion of a charge contained in a count of
unauthorized use or diversion of electricity
under AS 42.20.030. *Selman v. State*, Sup.
Ct. Op. No. 302 (File No. 527), 406 P.2d
181 (1965), overruled on other grounds in
Whitton v. State, Sup. Ct. Op. No. 661
(File No. 1153), 479 P.2d 302 (1970).

**As the former required proof of
intent.** — Where a count charged larceny
of electricity, the state was obligated to
prove a taking of electric current with the
intent to permanently deprive the owner
thereof. *Selman v. State*, Sup. Ct. Op. No.
302 (File No. 527), 406 P.2d 181 (1965),
overruled on other grounds in *Whitton v.*
State, Sup. Ct. Op. No. (File No. 1153), 479
P.2d 302 (1970).

Conviction for grand larceny and
removal of aircraft parts did not

constitute double jeopardy. — See *Catlett v. State*, Sup. Ct. Op. No. 1752 (File No. 3213), 585 P.2d 553 (1978).

Larceny of salmon from fish trap. — In a prosecution for larceny of salmon from a fish trap the question of whether there was ownership in the fish depended upon proofs at the trial since the fish when reduced to possession were subject to ownership. *Klemm v. United States*, 22 F.2d 977 (9th Cir. 1927).

Sufficiency of evidence. — The prosecution's evidence, which sufficiently established that the ring in question was taken without the consent of its possessor, was sufficient under Alaska's larceny statute. *Pulakis v. State*, Sup. Ct. Op. No. 649 (File No. 1108), 476 P.2d 474 (1970). See *Howard v. State*, Sup. Ct. Op. No. 1707 (File No. 3089), 583 P.2d 827 (1978).

There was ample circumstantial evidence to support a finding by the jury that defendant took the item stolen from a truck without consent of the possessor where the evidence showed the stealthful manner of the taking, defendant's leaving the box containing the item at an elevator upon his discovery by a security guard, defendant's flight, and the terms upon which the owner of the truck loaned his truck to the possessor. *Randall v. State*, Sup. Ct. Op. No. 1691 (File No. 3260), 583 P.2d 196 (1978).

Sentence upheld. — See *Morgan v. State*, Sup. Ct. Op. No. 1664 (File No. 3179), 582 P.2d 1030 (1978); *Gottschalk v. State*, Sup. Ct. Op. No. 1961 (File No. 3721), 602 P.2d 448 (1979), cert. denied, 447 U.S. 920, 100 S. Ct. 3010, 65 L. Ed. 2d 1114 (1980); *Larson v. State*, Sup. Ct. Op.

No. 2122 (File No. 4473), 613 P.2d 1251 (1980); *Smith v. State*, Sup. Ct. Op. No. 2314 (File No. 5227), 625 P.2d 310 (1981); *Hicks v. State*, Ct. App. Op. No. 29 (File No. 5303), 636 P.2d 81 (1981).

Sentence for grand larceny upheld. — See *Williams v. State*, Sup. Ct. Op. No. 2147 (File No. 3901), 614 P.2d 1384 (1980); *Sundberg v. State*, Ct. App. Op. No. 142 (File No. 6322), 652 P.2d 113 (1982).

Sentence reversed. — See *Law v. State*, Sup. Ct. Op. No. 2301 (File No. 4552), 624 P.2d 284 (1981).

For cases construing former AS 11.20.150, relating to larceny in building or vessel, see *Widermyre v. State*, Sup. Ct. Op. No. 122 (File No. 243), 377 P.2d 536 (1963); *Mahle v. State*, Sup. Ct. Op. No. 218 (File No. 433), 392 P.2d 19 (1964); *Stewart v. State*, Sup. Ct. Op. No. 457 (File No. 826), 438 P.2d 387 (1968); *Sidney v. State*, Sup. Ct. Op. No. 607 (File No. 1146), 468 P.2d 960 (1970); *Pulakis v. State*, Sup. Ct. Op. No. 649 (File No. 1108), 476 P.2d 474 (1970); *Mead v. State*, Sup. Ct. Op. No. 731 (File Nos. 1225, 1281), 489 P.2d 738 (1971); *State v. Wortham*, Sup. Ct. Op. No. 1171 (File No. 2452), 537 P.2d 1117 (1975); *State v. Taylor*, Sup. Ct. Op. No. 1457 (File No. 3119), 566 P.2d 1016 (1977); *Hansen v. State*, Sup. Ct. Op. No. 1689 (File No. 3412), 582 P.2d 1041 (1978); *Hunter v. State*, Sup. Ct. Op. No. 1800 (File No. 3557), 590 P.2d 888 (1979); *Gant v. State*, Ct. App. Op. No. 171 (File No. 6161), 654 P.2d 1325 (1982).

Applied in *Andrew v. State*, Ct. App. Op. No. 164 (File No. 6468), 653 P.2d 1063 (1982).

Sec. 11.46.110. Consolidation of theft offenses: Pleading and proof. (a) Each instance of conduct defined as theft under AS 11.46.100 constitutes theft in the first, second, third, or fourth degree.

(b) An accusation of theft is sufficient if it alleges that the defendant committed theft of property or services of the nature or value required for the commission of the crime charged without designating the particular way or manner in which the theft was committed.

(c) Proof that the defendant engaged in conduct constituting theft as defined in AS 11.46.100 is sufficient to support a conviction based upon any indictment, information, or complaint for theft. (§ 4 ch 166 SLA 1978)

NOTES TO DECISIONS

Editor's notes. — Most of the cases cited in the notes below were decided under former AS 11.20.140.

Aiding and abetting conviction precludes receiving stolen property conviction. — Defendant who was convicted strictly on a theory of aiding or abetting a theft offense could not also be convicted of receiving or concealing the same stolen property. *Sundberg v. State*, Ct. App. Op. No. 22 (File No. 5270), 636 P.2d 619 (1981).

Efficiency of indictment. — Indictment charging defendant with theft adequately informed him of offense with which he was charged, although it did not allege a specific theory of theft. *Williams v. State*, Ct. App. Op. No. 106 (File No. 5993), 648 P.2d 603 (1982).

An indictment under the former larceny section was held sufficient if as a practical matter it stated the elements of the offense clearly enough to enable the defense to prepare for trial and to plead a judgment in bar of a future prosecution for the same offense. Prejudice to the defendant was a controlling consideration. *Stapleton v. United States*, 17 Alaska 713, 260 F.2d 415 (9th Cir. 1958).

An indictment charging violation of the former section was not required to set out all those elements of the offense which must be found by the jury before they may find the accused guilty. It was sufficient that the necessary facts appear in any form, or by fair construction could be found within the terms of the indictment. *Stapleton v. United States*, 17 Alaska 713, 260 F.2d 415 (9th Cir. 1958).

Where indictment alleged a willful taking with intent permanently to deprive the owner of the property, lack of consent was implicit in the language. *Stapleton v. United States*, 17 Alaska 713, 260 F.2d 415 (9th Cir. 1958).

Burden of proof. — The burden was not on a defendant under the former larceny section to prove his innocence since the burden rested upon the prosecution to establish every element of the crime of larceny to a moral certainty and beyond reasonable doubt. *Karn v. United States*, 11 Alaska 225, 158 F.2d 568 (9th Cir. 1946).

Under the former larceny section, it was essential that the prosecution prove beyond a reasonable doubt, as an essential element of its case, that defendant took the property with the intent permanently to deprive the owner of its possession, and

furthermore, once sufficient evidence had been adduced either by defendant(s) concerning the owner's purported abandonment of the property, it then became incumbent upon the prosecution as part of its overall burden of proof to demonstrate beyond a reasonable doubt that the property was not abandoned at the time the alleged larceny was perpetrated. If the property was in fact abandoned, then it was neither owned by nor in the possession of another person or entity and thus could not be the subject of a larceny. *Howard v. State*, Sup. Ct. Op. No. 1707 (File No. 3089), 583 P.2d 827 (1978).

Possession of stolen property merely a circumstance tending to show guilt. — Where the accused was unable to explain his possession of recently stolen property, such possession was merely a circumstance tending to show guilt, and to instruct a jury that such evidence was prima facie proof of guilt, and, unless satisfactorily explained, may be of controlling weight, was clearly erroneous under the law of Alaska, which prohibits a judge from instructing a jury with reference to the facts. *Fosse v. United States*, 44 F.2d 915 (9th Cir. 1930).

Identity of property had to be shown. — It was true that actual possession of stolen property could be shown under the former larceny section, but it was equally true that the prosecution must also prove, beyond a reasonable doubt, that the property found in possession of the accused was, in truth and in fact, the identical property which was stolen. A bare assertion that property in the hands of accused was similar property or property that looked like it, was not sufficient to establish such property as the stolen property. *Karn v. United States*, 11 Alaska 225, 158 F.2d 568 (9th Cir. 1946).

Requirements as to circumstantial evidence. — Where prosecution relied entirely upon circumstantial evidence for a conviction under the former larceny section, under such circumstances the evidence must not only be consistent with guilt, but inconsistent with every reasonable hypothesis of innocence. The evidence should be required to point so surely and unerringly to the guilt of the accused as to exclude every reasonable hypothesis but that of guilt. *Karn v. United States*, 11 Alaska 225, 158 F.2d 568 (9th Cir. 1946).

In a prosecution under the former larceny section the evidence, while circum-

stantial, was clearly adequate and measured up to the standards which the court of appeals has laid down in such cases. *Yoho v. United States*, 14 Alaska 174, 202 F.2d 241 (9th Cir. 1953).

Prosecution could waive felony and prosecute for misdemeanor. — If on trial a misdemeanor (e.g., larceny) turned

out to be a felony (e.g., robbery), then the prosecution could in such cases waive the felony, and prosecute only for the constituent misdemeanor, supposing the misdemeanor be proved. *Perkins v. United States*, 16 Alaska 471, 237 F.2d 557 (9th Cir. 1956).

Sec. 11.46.120. Theft in the first degree. (a) A person commits the crime of theft in the first degree if the person commits theft as defined in AS 11.46.100 and the value of the property or services is \$25,000 or more.

(b) Theft in the first degree is a class B felony. (§ 4 ch 166 SLA 1978)

NOTES TO DECISIONS

Sentence upheld. — Trial court did not err in sentencing defendant to 10 years imprisonment with five years suspended and ordering her to pay \$300,000 restitution upon her conviction of embezzlement by an employee for money taken prior to January 1, 1950, and of theft in the first degree for money taken after January 1, 1950, the effective date for the revised criminal code. *Karr v. State*, Ct. App. Op. No. 230 (File No. 7011), 660 P.2d 450 (1983).

While no violence was involved, trial court properly found that appellant's

embezzlement of \$140,000 from her employer over a one-year period was among the most serious conduct prescribed by the statute and served to distinguish it from prior cases in which substantial sentences for embezzlement were disapproved, and eight-year sentence with four years suspended was not excessive. *Brezenoff v. State*, Ct. App. Op. No. 226 (File No. 7117), 653 P.2d 1359 (1983).

Cited in *Putnam v. State*, Sup. Ct. Op. No. 2251 (File No. 3475), 629 P.2d 35 (1980).

Sec. 11.46.130. Theft in the second degree. (a) A person commits the crime of theft in the second degree if the person commits theft as defined in AS 11.46.100 and

(1) the value of the property or services is \$500 or more but less than \$25,000;

(2) the property is a firearm or explosive; or

(3) the property is taken from the person of another.

(b) Theft in the second degree is a class C felony. (§ 4 ch 166 SLA 1978)

NOTES TO DECISIONS

Failure to preserve evidence. — Convictions for second-degree theft were reduced to convictions for third-degree theft where the state failed to preserve the scrap copper which was the object of the theft. *Hatfield v. State*, Ct. App. Op. No. 257 (File Nos. 6371, 6732), 663 P.2d 987 (1983).

Applied in *Nell v. State*, Ct. App. Op.

No. 77 (File No. 5565), 642 P.2d 1361 (1982); *Williams v. State*, Ct. App. Op. No. 106 (File No. 5993), 648 P.2d 603 (1982).

Quoted in *Frankson v. State*, Ct. App. Op. No. 92 (File No. 6029), 645 P.2d 225 (1982).

Stated in *Leuch v. State*, Sup. Ct. Op. No. 2419 (File No. 5255), 633 P.2d 1006 (1981).

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Cited in Williams v. State, Sup. Ct. Op. (File No. 6870), 655 P.2d 1319 (1982);
No. 2147 (File No. 3901), 614 P.2d 1384 (1980); Namen v. State, Ct. App. Op. No. 264 (File
P.S. v. State, Ct. App. Op. No. 194 No. 5662), 665 P.2d 557 (1983).

Sec. 11.46.140. Theft in the third degree. (a) A person commits the crime of theft in the third degree if the person commits theft as defined in AS 11.46.100 and

(1) the value of the property or services is \$50 or more but less than \$500; or

(2) the property is a credit card.

(b) Theft in the third degree is a class A misdemeanor. (§ 4 ch 166 SLA 1978)

NOTES TO DECISIONS

Failure to preserve evidence. — Convictions for second-degree theft were reduced to convictions for third-degree theft where the state failed to preserve the scrap copper which was the object of the theft. Hatfield v. State, Ct. App. Op. No. 257 (File Nos. 6371, 6732), 663 P.2d 937 (1983).

Remand for vacation of sentence. — Where defendant appealed from convictions and sentences simultaneously entered for the offenses of first-degree robbery and theft by taking in the third degree on the ground that all of the elements involved in his conviction of theft by taking in the third degree were necessarily included in his conviction for the of-

fense of first-degree robbery and thus, the imposition of separate sentences on the theft and robbery charges was precluded by double jeopardy, and on appeal the state confessed error as to this issue and requested that the judgment and commitment entered as to the lesser offense of theft be vacated upon remand to the superior court, the court remanded for that purpose. Dunn v. State, Ct. App. Op. No. 158 (File Nos. 5567, 5697), 653 P.2d 1071 (1982).

Cited in Law v. State, Sup. Ct. Op. No. 2301 (File No. 4552), 624 P.2d 284 (1981); Wasson v. State, Ct. App. Op. No. 141 (File No. 6072), 652 P.2d 117 (1982).

Sec. 11.46.150. Theft in the fourth degree. (a) A person commits the crime of theft in the fourth degree if the person commits theft as defined in AS 11.46.100 and the value of the property or services is less than \$50.

(b) Theft in the fourth degree is a class B misdemeanor. (§ 4 ch 166 SLA 1978)

Sec. 11.46.160. Theft of lost or mislaid property. (a) A person commits theft of lost or mislaid property if the person obtains property of another knowing that the property was lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient and the person fails to take reasonable measures to restore the property to the owner with intent to deprive the owner of the property.

(b) As used in this section "reasonable measures" includes notifying the identified owner or a peace officer. (§ 4 ch 166 SLA 1978)

(b) Failure to control or report a dangerous fire is a class A misdemeanor. (§ 4 ch 166 SLA 1978)

Sec. 11.46.480. Criminal mischief in the first degree. (a) A person commits the crime of criminal mischief in the first degree if, having no right to do so or any reasonable ground to believe the person has such a right,

(1) with intent to cause a substantial interruption or impairment of a service rendered to the public by a utility or by an organization which deals with emergencies involving danger to life or property, the person damages or tampers with property of that utility or organization and causes substantial interruption or impairment of service to the public;

(2) with intent to damage property of another by the use of widely dangerous means, the person damages property of another in an amount exceeding \$100,000 by the use of widely dangerous means; or

(3) the person intentionally damages an oil or gas pipeline or supporting facility.

(b) Criminal mischief in the first degree is a class B felony. (§ 4 ch 166 SLA 1978)

Cross references. — For liability for destruction of property by minors, see AS 34.50.020.

NOTES TO DECISIONS

Stated in *Wertz v. State*, Sup. Ct. Op. No. 2069 (File No. 4653), 611 P.2d 3 (1980).

Collateral references. — 52 Am. r. 2d, Malicious Mischief, § 1 et seq.

Sec. 11.46.482. Criminal mischief in the second degree. (a) A person commits the crime of criminal mischief in the second degree if, having no right to do so or any reasonable ground to believe the person has such a right,

(1) with intent to damage property of another, the person damages property of another in an amount of \$500 or more;

(2) the person tampers with an oil or gas pipeline or supporting facility or an airplane or helicopter with reckless disregard for the risk of harm to or loss of the property;

(3) the person recklessly creates a risk of damage in an amount exceeding \$100,000 to property of another by the use of widely dangerous means; or

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(4) the person drives, tows away, or takes the propelled vehicle of another and the vehicle or any other property of another is damaged or the owner incurs reasonable expenses as a result of the loss of use of the vehicle in a total amount of \$500 or more.

(b) Criminal mischief in the second degree is a class C felony. (§ 4 ch 166 SLA 1978; am § 13 ch 102 SLA 1980)

Cross references. — For liability for destruction of property by minors, see AS 34.50.020.

Effect of amendments. — The 1980 amendment rewrote paragraph (4) in subsection (a).

Legislative history reports. — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 29, 1980.

NOTES TO DECISIONS

For case construing former AS 11.20.520, making malicious destruction of property a crime, see *Hensel v. State*, Sup. Ct. Op. No. 1983 (File No. 2432), 604 P.2d 222 (1979).

For case construing former AS 11.20.525, making stealing, removing or damaging parts of an aircraft a crime, see *Catlett v. State*, Sup. Ct. Op. No. 1752 (File No. 3213), 555 P.2d 553 (1978).

Sentence upheld. — See *Austin v. State*, Ct. App. Op. No. 18 (File No. 5341), 627 P.2d 657 (1981).

Applied in *Deal v. State*, Ct. App. Op. No. 209 (File No. 6812), 657 P.2d 404 (1983).

Stated in *Wertz v. State*, Sup. Ct. Op. No. 2069 (File No. 4683), 611 P.2d 8 (1980).

Cited in *State v. Grozan*, Sup. Ct. Op. No. 2356 (File No. 5199), 625 P.2d 570 (1981); *Tritt v. State*, Ct. App. Op. No. 009 (File No. 4983), 625 P.2d 832 (1981); *Deal v. State*, Ct. App. Op. No. 225 (File No. 6776), 659 P.2d 625 (1983).

Collateral references. — 52 Am. Jur. 2d, Malicious Mischief, § 1 et seq.

Sec. 11.46.484. Criminal mischief in the third degree. (a) A person commits the crime of criminal mischief in the third degree if, having no right to do so or any reasonable ground to believe the person has such a right

(1) with intent to damage property of another, the person damages property of another in an amount of \$50 or more but less than \$500;

(2) the person drives, tows away, or takes the propelled vehicle of another;

(3) having custody of a propelled vehicle under a written agreement with the owner of the vehicle which includes an agreement to return the vehicle to the owner at a specified time, the person knowingly retains or withholds possession of the vehicle without the consent of the owner for so long a period beyond the time specified as to render the retention or possession of the vehicle an unreasonable deviation from the agreement; or

(4) the person tampers with a fire protection device in a building which is a public place.

(b) Except as provided in (c) of this section, criminal mischief in the third degree is a class A misdemeanor.

(c) A person convicted under (a)(2) of this section who has been previously convicted under that paragraph or under former AS 28.35.010 is guilty of a class C felony. (§ 4 ch 166 SLA 1978; am § 1 ch 18 SLA 1979; am §§ 7, 8 ch 143 SLA 1982)

Cross references. — For liability for destruction of property by minors, see AS 34.50.020.

Effect of amendments. — The 1979 amendment added paragraph (4) to subsection (a).

The 1982 amendment added "Except as provided in (c) of this section, criminal" to the beginning of subsection (b) and added subsection (c).

NOTES TO DECISIONS

Restitution in excess of \$500. — A person pleading guilty to criminal mischief in the third degree can be required, pursuant to AS 12.55.045 and AS 12.55.100(a), to pay an amount of restitution in excess of \$500 so long as the payment is made to an aggrieved party and the amount does not exceed the actual damages or loss caused by the crime for which conviction was had. *Fee v. State*, Ct. App. Op. No. 187 (File No. 6951), 656 P.2d 1202 (1982).

Separate punishment where defendant fired at cabin and truck. — Separate punishment upon conviction of two counts of misconduct involving weapons in the second degree, and two counts of criminal mischief in the third degree, where the evidence established that defendant had fired a rifle at a cabin and a pickup truck did not violate the double jeopardy provisions of this section since there were sufficient and significant differences between the intent and the two firings.

Leonard v. State, Ct. App. Op. No. 168 (File No. 5989), 655 P.2d 766 (1982).

For case construing former AS 11.20.525, making stealing, removing or damaging parts of an aircraft a crime, see *Catlett v. State*, Sup. Ct. Op. No. 1752 (File No. 3213), 585 P.2d 553 (1979).

For case construing former AS 28.35.010, prohibiting driving a vehicle without owner's consent, see *State v. G.L.P.*, Sup. Ct. Op. No. 1786 (File No. 3213), 585 P.2d 65 (1979); *Bell v. State*, Ct. App. Op. No. 1855 (File No. 3612), 598 P.2d 66 (1979); *Sheakley v. State*, Ct. App. Op. No. 87 (File No. 4936), 644 P.2d 864 (1982).

Applied in *Blackmon v. State*, Ct. App. Op. No. 160 (File No. 6141), 653 P.2d 669 (1982).

Quoted in *Frankson v. State*, Ct. App. Op. No. 92 (File No. 6029), 645 P.2d 225 (1982).

Collateral references. — 52 Am. Jur. 2d, Malicious Mischief, § 1 et seq.

Sec. 11.46.486. Criminal mischief in the fourth degree. (a) A person commits the crime of criminal mischief in the fourth degree if, having no right to do so or any reasonable ground to believe the person has such a right,

(1) with reckless disregard for the risk of harm to or loss of the property or with intent to cause substantial inconvenience to another, the person tampers with property of another;