

HB

461

**HOUSE COMMITTEE REPORT**

(11)

Date referred: 4/5/88

FURTHER REFERRALS:

DATE: 4/12/88

The Finance Committee has considered HB 461

"An Act increasing the penalties for repeat convictions for the crimes of theft and concealment of merchandise."

**RECOMMENDS:**

- replace with: CS HB 461 (Judic.)  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(S):**

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

**SIGNING DO PASS:**

**SIGNING OTHER RECOMMENDATIONS:**

ADAMS Al Adams

SWACK Charles

BOYER Mark Boyer

RIEGER Steve Rieger

FRANK Frank

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

POURCHOT Pat Pourchot No Ref

LARSON Donald J. Larson No Rec.

GOLL John Goll <sup>100 Rec</sup> ~~no rec~~

WALLIS Kay Wallis

BROWN Jack Brown

DAVIS Mike Davis

Al Adams  
Chairman's signature

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act increasing the penalties for repeat convictions for the crimes..."  
Sponsor: Judiciary Committee  
Requestor: \_\_\_\_\_

Agency Affected: Department of Corrections  
BRU: Statewide Operations

Components: Statewide Programs

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	-0-	848.5	848.6	848.6	848.5	848.6
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	848.6	848.6	848.6	848.6	848.6
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	848.6	848.6	848.6	848.6	848.6
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	848.6	848.6	848.6	848.6	848.6

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

See Attached

*Susan E. Knighton*

Prepared by: Susan E. Knighton, Director

Division: Administrative Services

Phone: 465-3376

Date: 4-5-88 4-6-88

Approved by Commissioner: Susan Humphrey-Barnett

Agency: Department of Corrections

Date: 4-5-88

Distribution (by preparer):

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

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 461

## ANALYSIS

This proposed legislation would increase the penalties imposed on persons who are repeatedly convicted for the crimes of theft. It would have a fiscal impact on the Department of Corrections.

To determine the effect, we have analyzed recidivism data for the State of Alaska, the number of offenders in the theft categories who are being placed in the custody of the Department, the amount of jail time currently being served and the amount of jail time proposed in this legislation.

The recidivism rates are as follows:

Theft II	33%
Theft III	39%
Theft IV	74%
Concealment	68%

This fiscal note is based upon the yearly incarceration of repeat theft offenders in Restitution Centers or Community Residential Centers. They would serve 77.5 man-years more than is currently served.

Using the Anchorage daily soft bed cost of \$30.00 per day, the estimated yearly fiscal impact is \$848,625. Using the statewide average cost of \$15.00 per day, the estimated yearly fiscal impact is \$1,272,937.

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act increasing the penalties  
for repeat convictions ... theft ..."  
Sponsor: House Judiciary  
Requestor: House Finance

Agency Affected: Department of Law  
BRU: Prosecution  
Components: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
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)

Please see the attached analysis.

*Richard I. Pegues*

Prepared by: Richard I. Pegues, Director  
Division: Administrative Services

Phone: 465-3672  
Date: April 6, 1988

Approved by Commissioner: Grace Berg Schupp  
Agency: Department of Law

Date: April 6, 1988

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

**RECEIVED**

APR 8 1988

LEGISLATIVE FINANCE

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 461 . . .

The committee substitute for HB 461 amends AS 11.46 to provide stiffer penalties for third-time theft offenders. For instance, a person convicted of theft of property or services with a value of \$500 or more but less than \$25,000, normally theft in the second degree, would be guilty of theft in the first degree if the person had been convicted and sentenced on two or more separate occasions within the preceding five years for the crime of theft in the second degree. Likewise, a third conviction for a crime normally constituting theft in the third degree or a third conviction for a crime normally constituting theft in the fourth degree would result in conviction at the next higher level. As a consequence, the penalty for a third conviction normally resulting in a class C felony would be raised to a class B felony. A third conviction normally resulting in a class A misdemeanor would be raised to a class C felony. A third conviction normally resulting in a class B misdemeanor would be raised to a class A misdemeanor. Repeat offenses for the crime of concealment of merchandise would be treated in a similar manner.

Because this legislation is primarily a sentencing bill it is not expected to have a fiscal impact on the Department of Law sufficient enough to warrant fiscal note costs. Some additional prosecutor time may be required to prove the repeat status of some offenders. And because of the increased penalties, prosecutors may face a more spirited defense in some cases. For the most part, however, these are cases that the department is already handling, and an appreciable additional expense is not anticipated.

Original sponsor: Cotten

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE  
2 CS FOR HOUSE BILL NO. 461 (Judiciary)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act increasing the penalties for repeat con-  
7 victions for the crimes of theft and concealment of  
8 merchandise."

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

10 \* Section 1. AS 11.46.120(a) is amended to read:

11 (a) A person commits the crime of theft in the first degree if  
12 the person commits theft as defined in AS 11.46.100 and

13 (1) the value of the property or services is \$25,000 or  
14 more; or

15 (2) the value of the property or services is \$500 or more  
16 but less than \$25,000 and within the preceding five years the person  
17 has been convicted and sentenced on two or more separate occasions in  
18 this or another jurisdiction of a crime set out in (1) of this sub-  
19 section or AS 11.46.130(a)(1) - (3) or an offense under another law or  
20 ordinance with similar elements.

21 \* Sec. 2. AS 11.46.130(a) is amended to read:

22 (a) A person commits the crime of theft in the second degree if  
23 the person commits theft as defined in AS 11.46.100 and

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

26 (2) the property is a firearm or explosive; [OR]

27 (3) the property is taken from the person of another; or

28 (4) the value of the property is \$50 or more but less than  
29 \$500 and within the preceding five years the person has been convicted

1 and sentenced on two or more separate occasions in this or another  
2 jurisdiction of a crime set out in (1) - (3) of this subsection or  
3 AS 11.46.140(a)(1) or (2) or an offense under another law or ordinance  
4 with similar elements.

5 \* Sec. 3. AS 11.46.140(a) is amended to read:

6 (a) A person commits the crime of theft in the third degree if  
7 the person commits theft as defined in AS 11.46.100 and

8 (1) the value of the property or services is \$50 or more  
9 but less than \$500; [OR]

10 (2) the property is a credit card; or

11 (3) the value of the property is less than \$50 and within  
12 the past five years the person has been convicted and sentenced on two  
13 or more separate occasions in this or another jurisdiction of theft or  
14 an offense under another law or ordinance with similar elements.

15 \* Sec. 4. AS 11.46.220(c) is amended to read:

16 (c) Concealment of merchandise is

17 (1) a class C felony if

18 (A) the merchandise is a firearm;

19 (B) [OR] the value of the merchandise is \$500 or more;

20 or

21 (C) the value of the merchandise is \$50 or more but  
22 less than \$500 and within the preceding five years the person has  
23 been convicted and sentenced on two or more separate occasions in  
24 this or another jurisdiction of the offense of concealment of  
25 merchandise that has a value of \$50 or more or an offense under  
26 another law or ordinance with similar elements;

27 (2) a class A misdemeanor if

28 (A) the value of the merchandise is \$50 or more but  
29 less than \$500; or

1                   (B) the value of the merchandise is less than \$50 and  
2                   within the preceding five years the person has been convicted and  
3                   sentenced on two or more separate occasions of the offense of  
4                   concealment of merchandise in any degree or an offense under  
5                   another law or ordinance with similar elements;

6                   (3) a class B misdemeanor if the value of the merchandise  
7                   is less than \$50.

8                   \* Sec. 5. AS 11.46 is amended by adding a new section to article 1 to  
9                   read:

10                   Sec. 11.46.295. PRIOR CONVICTIONS. For purposes of considering  
11                   prior convictions in prosecuting a crime of theft under AS 11.46.-  
12                   120(a)(2), 11.46.130(a)(4), or 11.46.140(a)(3), or in prosecuting the  
13                   crime of concealment of merchandise under AS 11.46.220(c), a convic-  
14                   tion for an offense under another law or ordinance with similar ele-  
15                   ments is a conviction of an offense having elements similar to those  
16                   of an offense defined as such under Alaska law at the time the offense  
17                   was committed.

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act increasing the penalties for repeat convictions for the crimes..."  
Sponsor: Judiciary Committee  
Requestor: \_\_\_\_\_

Agency Affected: Department of Corrections  
BRU: Statewide Operations  
Components: Statewide Programs

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	-0-	635.1	635.1	635.1	635.1	635.1
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	635.1	635.1	635.1	635.1	635.1

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	635.1	635.1	635.1	635.1	635.1
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	635.1	635.1	635.1	635.1	635.1

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

See Attached

*Susan E. Knighton*

Susan E. Knighton, Director

Prepared by: \_\_\_\_\_  
Division: Administrative Services

Phone: 465-3376

Date: 4-11-88

Approved by Commissioner: *Susan Humphrey Barlett*  
Agency: Department of Corrections

Date: 4-11-88

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

**RECEIVED**

APR 12 1988

page 1 of 2

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CS(FIN) HB 461

### ANALYSIS

This proposed legislation would increase the penalties imposed on persons who are repeatedly convicted for the crimes of theft. It would have a fiscal impact on the Department of Corrections.

To determine the effect, we have analyzed recidivism data for the State of Alaska, the number of offenders in the theft categories who are being placed in the custody of the Department, the amount of jail time currently being served and the amount of jail time proposed in this legislation.

The recidivism rates are as follows:

Theft II	33%
Theft III	39%
Theft IV	74%
Concealment	68%

This fiscal note is based upon the yearly incarceration of repeat theft offenders in Restitution Centers or Community Residential Centers. They would serve 58 man-years more than is currently served.

Using the Anchorage daily soft bed cost of \$30.00 per day, the estimated yearly fiscal impact is \$635,100. Using the statewide average cost of \$45.00 per day, the estimated yearly fiscal impact is \$952,650.

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: "An Act increasing the penalties for repeat convictions for the crimes..." for Agency Affected: Department of Corrections  
 Sponsor: Judiciary Committee BRU: Statewide Operations  
 Requestor: \_\_\_\_\_ Components: Statewide Programs

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL SUPPLIES	848.6	848.6	848.6	848.6	848.6	848.6
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>848.6</b>	<b>848.6</b>	<b>848.6</b>	<b>848.6</b>	<b>848.6</b>	<b>848.6</b>
<b>CAPITAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
<b>REVENUE</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

**FUNDING:** (Thousands of Dollars)

GENERAL FUND	848.6	848.6	848.6	848.6	848.6	848.6
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>848.6</b>	<b>848.6</b>	<b>848.6</b>	<b>848.6</b>	<b>848.6</b>	<b>848.6</b>

**POSITIONS:**

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

**ANALYSIS :** (Attach a separate page if necessary)

See Attached

*Susan E. Knighton*

Prepared by: Susan E. Knighton, Director Phone: 465-3376  
 Division: Administrative Services Date: 4-5-88  
 Approved by Commissioner: Susan Humphrey-Barnett Date: 4-5-88  
 Agency: Department of Corrections

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

**RECEIVED**

APR 6 1988

page 1 of 2

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 461

## ANALYSIS

This proposed legislation would increase the penalties imposed on persons who are repeatedly convicted for the crimes of theft. It would have a fiscal impact on the Department of Corrections.

To determine the effect, we have analyzed recidivism data for the State of Alaska, the number of offenders in the theft categories who are being placed in the custody of the Department, the amount of jail time currently being served and the amount of jail time proposed in this legislation.

The recidivism rates are as follows:

Theft II	33%
Theft III	39%
Theft IV	74%
Concealment	68%

This fiscal note is based upon the yearly incarceration of repeat theft offenders in Restitution Centers or Community Residential Centers. They would serve 77.5 man-years more than is currently served.

Using the Anchorage daily soft bed cost of \$30.00 per day, the estimated yearly fiscal impact is \$848,625. Using the statewide average cost of \$45.00 per day, the estimated yearly fiscal impact is \$1,272,937.

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act increasing the penalties for repeat convictions ... theft ..."  
Sponsor: House Judiciary  
Requestor: House Finance

Agency Affected: Department of Law  
BRU: Prosecution  
Components: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
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)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672  
Division: Administrative Services Date: April 6, 1988  
Approved by Commissioner: Richard A. Pegues Date: April 6, 1988  
Agency: Department of Law

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

**RECEIVED**

APR 8 1988

LEGISLATIVE FINANCE

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 461 (1977)

The committee substitute for HB 461 amends AS 11.46 to provide stiffer penalties for third-time theft offenders. For instance, a person convicted of theft of property or services with a value of \$500 or more but less than \$25,000, normally theft in the second degree, would be guilty of theft in the first degree if the person had been convicted and sentenced on two or more separate occasions within the preceding five years for the crime of theft in the second degree. Likewise, a third conviction for a crime normally constituting theft in the third degree or a third conviction for a crime normally constituting theft in the fourth degree would result in conviction at the next higher level. As a consequence, the penalty for a third conviction normally resulting in a class C felony would be raised to a class B felony. A third conviction normally resulting in a class A misdemeanor would be raised to a class C felony. A third conviction normally resulting in a class B misdemeanor would be raised to a class A misdemeanor. Repeat offenses for the crime of concealment of merchandise would be treated in a similar manner.

Because this legislation is primarily a sentencing bill it is not expected to have a fiscal impact on the Department of Law sufficient enough to warrant fiscal note costs. Some additional prosecutor time may be required to prove the repeat status of some offenders. And because of the increased penalties, prosecutors may face a more spirited defense in some cases. For the most part, however, these are cases that the department is already handling, and an appreciable additional expense is not anticipated.

	<u>Fine</u>	(and/or)	<u>Jail Term</u>
1st degree theft = Class B felony	\$50,000		0-10 years
2nd degree theft = Class C felony	50,000		0-5 years
3rd degree theft = Class A misdemeanor	5,000		0-1 years
4th degree theft = Class B misdemeanor	1,000		0-90 days

THEFT

B felony if value of property or services is \$25,000 or more	
C felony	\$500 - 25,000
A misdemeanor	\$50 - 500
B misdemeanor	less than \$50

CONCEALMENT

C felony if the:	merchandise is a firearm
	value of the merchandise is \$500 or more
A misdemeanor if the value of the merchandise is	\$50 - 500
B misdemeanor if the value of the merchandise is	less than \$50

# MEMORANDUM

# State of Alaska

TO: Lisa Weissler  
Legislative Aide  
Representative Sam Cotten


DATE: March 7, 1988

FILE NO.:

THRU:

TELEPHONE NO.:

SUBJECT: CS HB 461

FROM:   
Dana Fabe  
Public Defender

Attached please find suggested language for a Committee Substitute for HB 461. I am also enclosing a chart which will delineate the ramifications of this language. I attempted a diagram of the original language of HB 461 but it involved so many possible permutations that I found it difficult to design a clear schematic diagram.

DF:sh

Attachments

✓ cc: John Hartle, Legislative Aide  
Office of Representative John Sund

RECOMMENDED CHANGE TO HB 461

PRIOR CONVICTIONS	NEW OFFENSE AND SENTENCE	ELEVATED OFFENSE AND SENTENCE
3 theft/concealment C felonies or above	C felony involving theft/ concealment	B felony
	3-year presumptive for third offense/maximum 5 years	6-year presumptive for third offense/ maximum 10 years
3 theft/concealment A misdemeanors or above	A misdemeanor involving theft/concealment	C felony
	0 - 1 year	0 - 2 years first offense 2 years presumptive second offense 3 years presumptive third offense maximum 5 years
3 theft/concealment B misdemeanors or above	B misdemeanor involving theft/concealment	A misdemeanor
	0 - 90 days	0 - 1 year

*Abdulbaqui v. State*, Ct. App. Op. No. 659 (File Nos. A-1297, A-1379), 728 P.2d 1211 (1986).

Where a jury instruction directed the jury to consider and decide the issue of insanity after a threshold determination of actus reus only, before any consideration of culpable mental state, the instruction diluted the state's burden of proving culpable mental state. This error in instruction required reversal of a jury finding of guilty but mentally ill and a remand for new trial. *Patterson v. State*, Ct. App. Op. No. 544 (File No. A-573), 708 P.2d 712 (1985).

**Sentence upheld.** — See *Kuvas v. State*, Ct. App. Op. No. 615 (File No. A-1244), 717 P.2d 855 (1986).

In at least two instances involving multiple crimes of violence committed by offenders with prior felony convictions, the court of appeals approved consecutive sentences totaling 40 years of imprisonment, while holding that imposition of additional, consecutive terms for probation violations was not warranted; for offenders convicted of multiple class A felonies, an unsuspended sentence of 40 years' imprisonment should serve as an appropriate upper limit in all but the rarest and most aggravated situations. *Davis v. State*, Ct. App. Op. No. 532 (File Nos. A-523, A-528), 706 P.2d 1198 (1985).

**Lesser included offense.** — Under the cognate approach, joyriding was a lesser included offense of robbery, since an element of robbery is the unauthorized taking or attempted taking of property; and joyriding is the unauthorized taking of a vehicle. *Minano v. State*, Ct. App. Op. No. 420 (File Nos. 7812, 7868), 690 P.2d 28 (1984), rev'd on other grounds, Sup. Ct. Op. No. 3006 (File No. S-736), 710 P.2d 1013 (1985).

Applied in *Dunbar v. State*, Ct. App. Op. No. 347 (File No. 7049), 677 P.2d 1275 (1984).

Cited in *Lloyd v. State*, Ct. App. Op. No. 307 (File No. 7393), 672 P.2d 152 (1983); *Dailey v. State*, Ct. App. Op. No. 329 (File No. 7128), 675 P.2d 657 (1984); *State v. Burdine*, Ct. App. Op. No. 462 (File No. A-678), 698 P.2d 1216 (1985); *Coney v. State*, Ct. App. Op. No. 471 (File Nos. 7456, 7471), 699 P.2d 899 (1985).

#### II. FORMER LAW.

##### Gravity of crime.

In prosecution for both robbery and as-

sault, failure to give an instruction on a lesser included offense of joyriding was not harmless error and the court of appeals therefore reversed defendants' convictions for first-degree robbery and remanded for a new trial. *Minano v. State*, Ct. App. Op. No. 420 (File Nos. 7812, 7868), 690 P.2d 28 (1984), rev'd on other grounds, Sup. Ct. Op. No. 3006 (File No. S-736), 710 P.2d 1013 (1985).

No instruction regarding second-degree robbery was required where the fact that a deadly weapon was used was not disputed. The only issue was whether the defendant had participated in the robbery. *Abdulbaqui v. State*, Ct. App. Op. No. 659 (File Nos. A-1297, A-1379), 728 P.2d 1211 (1986).

Conviction and sentence for kidnapping, assault in the first degree, misconduct involving weapons in the first degree and robbery in the first degree were affirmed. See *Wortham v. State*, Sup. Ct. Op. No. 414 (File No. 7353), 689 P.2d 1133 (1984).

**Conviction and sentence upheld.** — See *Contreras v. State*, Ct. App. Op. No. 328 (File Nos. 6797-6799), 675 P.2d 654 (1984).

**Conviction reversed.** — Defendant's inability to question codefendant fully as to bias constituted a deprivation of defendant's right to confrontation, requiring reversal of the conviction. *Jackson v. State*, Ct. App. Op. No. 442 (File No. 7214), 695 P.2d 227 (1985).

**Sentence for burglary, robbery and assault held excessive.** — See *Larson v. State*, Ct. App. Op. No. 403 (File No. 6179), 688 P.2d 592 (1984).

**Remand for resentencing.** — The sentencing judge erred in applying AS 12.55.155(c)(20) as an aggravating factor in setting the defendant's sentence where the defendant was on probation for offenses that were felonies in Oregon but were not felonies under Alaska law. *Kuvas v. State*, Ct. App. Op. No. 450 (File No. A-547), 698 P.2d 684 (1985).

Trial judge did not err in allowing admission of evidence of flight and in instructing jury that flight may be considered as evidence of consciousness of guilt. *Lipscomb v. State*, Ct. App. Op. No. 477 (File Nos. A-67/68), 700 P.2d 1298 (1985).

**Sentence upheld.** — See *Lipscomb v. State*, Ct. App. Op. No. 477 (File Nos. A-67/68), 700 P.2d 1298 (1985).

## Sec. 11.41.510. Robbery in the second degree.

### NOTES TO DECISIONS

**Sentence affirmed.** — See *Solomon v. State*, Ct. App. Op. No. 670 (File No. A-1689), 730 P.2d 809 (1987).

**Conviction and sentence affirmed.** — See *Roberts v. State*, Ct. App. Op. No. 355 (File No. 7350), 680 P.2d 503 (1984).

Conviction reversed where assault in the fourth degree was a lesser offense necessarily included in the offense charged, robbery in the second degree; since there was at least some evidence presented at trial to justify a finding that the defendant was guilty of assault but not of rob-

bery, a lesser included offense instruction on assault was required. *Marker v. State*, Ct. App. Op. No. 432 (File No. 7681), 692 P.2d 977 (1984).

Applied in *Abdulbaqui v. State*, Ct. App. Op. No. 659 (File Nos. A-1297, A-1379), 728 P.2d 1211 (1986).  
Quoted in *Minano v. State*, Ct. App. Op. No. 420 (File Nos. 7812, 7868), 690 P.2d 28 (1984).

Cited in *Nighawong v. State*, Ct. App. Op. No. 362 (File No. A-369), 680 P.2d 105 (1984).

## Chapter 46. Offenses Against Property.

### Article 1. Theft and Related Offenses.

#### Section

200. Theft of services

## Sec. 11.46.100. Theft defined.

### NOTES TO DECISIONS

#### I. General Consideration.

#### I. GENERAL CONSIDERATION.

Applied in *Corbin v. State*, Ct. App. Op. No. 310 (File No. 7010), 672 P.2d 156 (1983).

Cited in *Harris v. State*, Ct. App. Op. No. 346 (File No. 8580), 678 P.2d 397 (1984); *Garroutte v. State*, Ct. App. Op.

No. 372 (File No. 7457), 683 P.2d 282 (1984); *Ridgely v. State*, Ct. App. Op. No. 503 (File Nos. A-30, A-43, A-56), 705 P.2d 924 (1985); *Jones v. State*, Ct. App. Op. No. 622 (File No. A-985), 719 P.2d 265 (1986); *Hads v. State*, Ct. App. Op. No. 650 (File No. A-1613), 727 P.2d 11 (1986).

## Sec. 11.46.120. Theft in the first degree.

**Cross references.** — For additional penalty when theft is of commercial fishing gear, see AS 16.05.710(b).

### NOTES TO DECISIONS

#### Sentence upheld.

The evidence was sufficient to uphold the sentence. *Short v. State*, Ct. App. Op. No. 342 (File No. A-14), 676 P.2d 612 (1984).

Sentence of 10 years' imprisonment with five years suspended imposed upon a

defendant employee convicted of embezzlement for money taken before and after January 1, 1980, the effective date for the revised criminal code, was upheld because of the exceptional magnitude and manner of the theft where a trusted employee embezzled over \$358,000 in more than 60

**Sec. 11.46.200. Theft of services.** (a) A person commits theft of services if

(1) the person obtains services, known by that person to be available only for compensation, by deception, force, threat, or other means to avoid payment for the services;

(2) having control over the disposition of services of others to which the person is not entitled, the person knowingly diverts those services to the person's own benefit or to the benefit of another not entitled to them; or

(3) the person obtains the use of computer time, a computer system, a computer program, a computer network, or any part of a computer system or network, with reckless disregard that the use by that person is unauthorized.

(b) Absconding without paying for hotel, restaurant, or other services for which compensation is customarily paid immediately upon the receiving of them is prima facie evidence that the services were obtained by deception.

(c) A person may not be prosecuted under this section for theft of cable, microwave, subscription, or pay television or other telecommunications service if the service was obtained through the use of a device designed and used to intercept electromagnetic signals directly from a satellite, including a device commonly referred to as a home earth station. (§ 4 ch 166 SLA 1978; am § 1 ch 79 SLA 1984; am § 1 ch 114 SLA 1984)

**Effect of amendments.** — The first technical changes in paragraphs (1) and 1984 amendment, in subsection (a), added (2). The second 1984 amendment added subsection (c) and made a series of related

**Sec. 11.46.270. Unlawful possession.**

**NOTES TO DECISIONS**

Cited in *Christianson v. State*, Ct. App. Op. No. 696 (File No. A-1570), P.2d (1987).

**Sec. 11.46.280. Issuing a bad check.**

**NOTES TO DECISIONS**

Sentence upheld. See *Gant v. State*, Ct. App. Op. No. 576 (File No. A-1059), 712 P.2d 908 (1986). Cited in *Winfrey v. State*, Ct. App. Op. No. 378 (File No. A-156), 883 P.2d 284 (1984).

**Article 2. Burglary and Criminal Trespass.**

**Sec. 11.46.300. Burglary in the first degree.**

**NOTES TO DECISIONS.**

**I. General Consideration.**

**I. GENERAL CONSIDERATION.**

**Fishing vessel, as "dwelling."** — A jury could properly find beyond any reasonable doubt that a fishing vessel is a "dwelling." *Shoemaker v. State*, Ct. App. Op. No. 605 (File No. A-1011), 715 P.2d 391 (1986).

**The offense of burglary does not merge with the offense of theft.** *Reynolds v. State*, Ct. App. Op. No. 534 (File No. A-811), 706 P.2d 708 (1985).

**Conviction reversed where evidence of defendant's silence was not harmless beyond a reasonable doubt.** — See *Reynolds v. State*, Ct. App. Op. No. 534 (File No. A-811), 706 P.2d 708 (1985).

**Similarities between a defendant's former burglaries and the offense at hand were not substantial enough to overcome the presumption against admissibility established in *Okoktaruk*; the trial judge erred in allowing the state to show the defendant's prior burglary admissions.** *Beekman v. State*, Ct. App. Op. No. 531 (File No. A-500), 706 P.2d 704 (1985).

**Conviction and sentence upheld.** — See *Contreras v. State*, Ct. App. Op. No. 328 (File Nos. 6797-6799), 675 P.2d 654 (1984).

**Sentence upheld.** Where the defendant committed the nighttime burglary of an occupied home and the occupant suffered severe emotional trauma, a sentence of five years' imprisonment, with two and one-half year suspended, a five-year period of probation and an order to make restitution was upheld. *Parker v. State*, Ct. App. Op. No. 579 (File Nos. A-1138, A-1181), 714 P.2d 802 (1986).

Though the defendant committed the nighttime burglary of an occupied home and the occupant suffered severe emo-

tional trauma, a suspended sentence of five years, with probation for five years and requiring successful completion of a residential substance abuse treatment program, was approved where the defendant was making substantial progress in a residential substance abuse treatment program. *Parker v. State*, Ct. App. Op. No. 579 (File Nos. A-1138, A-1181), 714 P.2d 802 (1986).

**Concurrent six-year terms with two years suspended for two burglaries and a consecutive two-year term for weapons misconduct were not excessive.** *Ecklund v. State*, Ct. App. Op. No. 663 (File No. A-1416), 730 P.2d 161 (1986).

**Sentence held excessive.** — See *Maal v. State*, Ct. App. Op. No. 295 (File No. 7076), 670 P.2d 708 (1983); *Wood v. State*, Ct. App. Op. No. 574 (File No. A-747), 712 P.2d 420 (1986); *West v. State*, Ct. App. Op. No. 663 (File No. A-1461), P.2d (1986).

**Sentence for burglary, robbery and assault held excessive.** — See *Larson v. State*, Ct. App. Op. No. 403 (File No. 6179), 688 P.2d 592 (1984); *Hansen v. State*, Ct. App. Op. No. 218 (File No. 6965), 657 P.2d 862 (1983).

**Applied in *Huitt v. State*, Ct. App. Op. No. 348 (File No. 7141), 678 P.2d 415 (1984).**

**Quoted in *Roberts v. State*, Ct. App. Op. No. 355 (File No. 7350), 680 P.2d 603 (1984).**

**Cited in *Dexter v. State*, Ct. App. Op. No. 302 (File No. 6741), 672 P.2d 144 (1983); *Dodd v. State*, Ct. App. Op. No. 398 (File No. A-271), 686 P.2d 737 (1984); *Ridgely v. State*, Ct. App. Op. No. 503 (File No. A-30, A-43, A-56), 705 P.2d 924 (1985); *Crouse v. State*, Ct. App. Op. No. 704 (File No. A-1800), P.2d (1987).**

thefts over a two-year period; the sentence facilitated reaffirmation of societal norms and deterrence. *Karr v. State*, Sup. Ct. Op. No. 2848 (File No. 7011), 686 P.2d 1192 (1984).

**Sentence held too lenient.** — Where an office manager stole approximately \$115,000 between January, 1979 and April, 1982, a sentence of five years, all suspended, for a period of ten years was held too lenient despite the fact that the defendant had no prior criminal record, was apparently very repentant, had made

### Sec. 11.46.130. Theft in the second degree.

**Cross references.** — For additional penalty when theft is of commercial fishing gear, see AS 16.05.710(b).

#### NOTES TO DECISIONS

**For effect of failure to explain statutory definition of recklessness on plea of nolo contendere to theft by receiving in second degree,** see *Bratcher v. State*, Ct. App. Op. No. 368 (File No. 7113), 681 P.2d 358 (1984).

**Lesser included offense of robbery.** — For discussion of theft as a lesser included offense of robbery, see *Minano v. State*, Ct. App. Op. No. 420 (File Nos. 7812, 7868), 696 P.2d 28 (1984), rev'd on other grounds, Sup. Ct. Op. No. 3006 (File No. 9-736), 710 P.2d 1013 (1985).

**Conviction reversed.** — See *Ace v. State*, Ct. App. Op. No. 311 (File No. 7077), 672 P.2d 159 (1983).

**Sentence clearly mistaken.** — First felony offender convicted of four counts of theft in the second degree for numerous thefts of crab pots should not have received a sentence greater than five years with two years suspended, even though the trial judge could find that the theft offenses were particularly serious and that the defendant was convicted for failure to appear for trial and had prior misdemeanor convictions. *Thomas v. State*, Ct. App. Op. No. 549 (File No. A-721), 710 P.2d 1017 (1985).

**Special condition of probation unjustified.** — Condition of probation prohibiting felon convicted of numerous thefts of crab pots from engaging in any aspect of commercial fishing was far too broad where commercial fishing was his primary means of livelihood. *Thomas v. State*, Ct. App. Op. No. 549 (File No. A-721), 710 P.2d 1017 (1985).

substantial efforts toward restitution, had lost his insurance licenses and was faced with a substantial fine. *State v. Karnos*, Ct. App. Op. No. 449 (File No. A-364), 696 P.2d 685 (1985).

**Cited in** *Lindsay v. State*, Ct. App. Op. No. 458 (File No. A-212), 698 P.2d 659 (1985); *Christianson v. State*, Ct. App. Op. No. 698 (File No. A-1670), P.2d (1987); *Kramer v. State*, Ct. App. Op. No. 698 (File No. A-1788), 735 P.2d 754 (1987).

**Sentence upheld.** — See *Montes v. State*, Ct. App. Op. No. 289 (File No. 6403), 669 P.2d 981 (1983); *Ewell v. State*, Ct. App. Op. No. 662 (File No. A-1349), 730 P.2d 164 (1988).

**Imposition of two three-year concurrent sentences with one year suspended for forging fraudulent permanent fund applications and fraudulently obtaining fund checks was affirmed where the trial judge found that the crimes were easy to commit, difficult to detect and generated a substantial income; if the defendant had been subject to presumptive sentencing, the defendant's multiple acts of theft, which extended over a substantial period of time and required numerous separate intents to steal, coupled with generally fraudulent behavior, might have warranted referral of the case to a three-judge sentencing panel for consideration of a more severe sentence; and the defendant's consistent pattern of deceptive behavior in dealing with former employers and with the state probation officer strongly militated against her potential for rehabilitation.** *Hads v. State*, Ct. App. Op. No. 650 (File No. A-1613), 727 P.2d 11 (1986).

**Applied in** *Carbin v. State*, Ct. App. Op. No. 310 (File No. 7010), 672 P.2d 156 (1983); *Elerson v. State*, Ct. App. Op. No. 679 (File No. A-1425), P.2d (1987).

**Cited in** *Walsh v. State*, Ct. App. Op. No. 338 (File No. 7887), 677 P.2d 912 (1984); *Garroutte v. State*, Ct. App. Op. No. 372 (File No. 7457), 683 P.2d 262 (1984); *Winfree v. State*, Ct. App. Op. No. 378 (File No. A-156), 683 P.2d 284 (1984);

*Brown v. State*, Ct. App. Op. No. 380 (File No. 7358), 684 P.2d 874 (1984); *Ridgely v. State*, Ct. App. Op. No. 503 (File No. A-30, A-43, A-56), 705 P.2d 924 (1985); *Trudeau*

*v. State*, Ct. App. Op. No. 581 (File No. A-730), 714 P.2d 362 (1986); *Jones v. State*, Ct. App. Op. No. 622 (File No. A-965), 719 P.2d 265 (1988).

### Sec. 11.46.140. Theft in the third degree.

#### NOTES TO DECISIONS

**Conviction reversed.** — See *Ace v. State*, Ct. App. Op. No. 311 (File No. 7077), 672 P.2d 159 (1983).

### Sec. 11.46.150. Theft in the fourth degree.

#### NOTES TO DECISIONS

**Cited in** *Arabie v. State*, Ct. App. Op. No. 472 (File No. A-139), 699 P.2d 890 (1985).

### Sec. 11.46.180. Theft by deception.

#### NOTES TO DECISIONS

**Conviction reversed because of prosecutorial misconduct.** — See *Fritchard v. State*, Ct. App. Op. No. 319 (File No. 6934), 673 P.2d 291 (1983).

**Applied in** *Linne v. State*, Ct. App. Op. No. 324 (File No. 6632), 674 P.2d 1345 (1983).

### Sec. 11.46.190. Theft by receiving.

#### NOTES TO DECISIONS

#### I. General Consideration.

#### I. GENERAL CONSIDERATION.

##### Intent to deprive owner of property.

The secondary intent requirement for theft by receiving should properly focus on the intent of the accused toward the stolen property, and not on his intent toward the owner of that property. *Ace v. State*, Ct. App. Op. No. 311 (File No. 7077), 672 P.2d 159 (1983).

**For effect of failure to explain statutory definition of recklessness on plea of nolo contendere to theft by receiving in second degree,** see *Bratcher v. State*, Ct. App. Op. No. 368 (File No. 7113), 678 P.2d 897 (1984).

**Evidence held relevant.** — Evidence that two loaded handguns were found under the seat of the pickup truck that defendant was driving on the night of the

offense was held relevant since it tended to undercut defendant's defense based on lack of knowledge by indicating that he was not simply a casual occupant of the truck and the guns further supported the state's theory that defendant and co-defendant were using the truck to commit the theft. *Garroutte v. State*, Ct. App. Op. No. 372 (File No. 7457), 683 P.2d 262 (1984).

**Sentence upheld.** — See *Garroutte v. State*, Ct. App. Op. No. 372 (File No. 7457), 683 P.2d 262 (1984).

**Quoted in** *Harris v. State*, Ct. App. Op. No. 346 (File No. 6580), 678 P.2d 397 (1984).

**Cited in** *Brown v. State*, Ct. App. Op. No. 380 (File No. 7358), 684 P.2d 874 (1984); *Lindsay v. State*, Ct. App. Op. No. 458 (File No. A-212), 698 P.2d 659 (1985).

**Sec. 11.41.530. Coercion.** (a) A person commits the crime of coercion if the person compels another to engage in conduct from which there is a legal right to abstain or abstain from conduct in which there is a legal right to engage, by means of instilling in the person who is compelled a fear that, if the demand is not complied with, the person who makes the demand or another may

(1) inflict physical injury on anyone, except under circumstances constituting robbery in any degree, or commit any other crime;

(2) accuse anyone of a crime;

(3) expose confidential information or a secret, whether true or false, tending to subject a person to hatred, contempt, or ridicule or to impair the person's credit or business repute;

(4) take or withhold action as a public servant or cause a public servant to take or withhold action;

(5) bring about or continue a strike, boycott, or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the person making the threat or suggestion purports to act;

(6) testify or provide information or withhold testimony or information with respect to a person's legal claim or defense.

(b) It is a defense to a prosecution under (a)(2), (3), or (4) of this section that the defendant reasonably believed that the accusation or exposure was true or that the lawsuit or other invocation of official action was justified and that the defendant's sole intent was to compel the victim to take reasonable action to correct the wrong that is the subject of the accusation, exposure, lawsuit, or invocation of official action or to refrain from committing an offense.

(c) Coercion is a class C felony. (§ 3 ch 166 SLA 1978)

**Collateral references.** — 13 Am. Jur. 4, Extortion, Blackmail, and Threats, §§ 8-13; 52 Am. Jur. 2d, Malicious Mischief, § 1 et seq.

86 C.J.S., Threats and Unlawful Communications, §§ 1-26.

Innocence of the person threatened as

affecting rights or remedies in respect to contracts made or money paid to prevent or suppress a criminal prosecution, 17 ALR 325.

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

## Chapter 45. Offenses Against the Public Peace.

*Repealed, § 21 ch 166 SLA 1978. For similar law, see AS 11.61.100 — 11.61.160 and 11.66.270.]*

## Chapter 46. Offenses Against Property.

Article

Theft and Related Offenses (§§ 11.46.100 — 11.46.290)

Burglary and Criminal Trespass (§§ 11.46.300 — 11.46.350)

Article

3. Arson, Criminal Mischief, and Related Offenses (§§ 11.46.400 — 11.46.490)

4. Forgery and Related Offenses (§§ 11.46.500 — 11.46.580)

5. Business and Commercial Offenses (§§ 11.46.600 — 11.46.780)

6. General Provisions (§§ 11.46.880 — 11.46.990)

## Article 1. Theft and Related Offenses

Section

100. Theft defined

110. Consolidation of theft offenses: Pleading and proof

120. Theft in the first degree

130. Theft in the second degree

140. Theft in the third degree

150. Theft in the fourth degree

160. Theft of lost or mislaid property

180. Theft by deception

190. Theft by receiving

200. Theft of services

**Collateral references.** — 50 Am. Jur. 2d, Larceny, § 1 et seq.

52 C.J.S., Larceny, § 1 et seq.

Outlawed liquors as subject of larceny or kindred offenses, 11 ALR 1032; 75 ALR 1479.

Intent to convert property to one's own use or to the use of third person as element of larceny, 12 ALR 804.

Larceny or embezzlement as affected by purpose to take or retain property in payment of, or as security for, a claim, 13 ALR 142; 116 ALR 997.

Larceny or embezzlement by appropriating money or proceeds of paper mistakenly delivered in excess of the amount due or intended, 14 ALR 894.

Effect of participation by spouse of owner in, or consent to, taking of property, 14 ALR 1271.

What amounts to asportation which will support charge of larceny, 19 ALR 724; 144 ALR 1383.

Duty of depositor to report loss or theft of unsigned check, 26 ALR 613.

Assisting in transportation or disposal of property known to have been stolen as rendering one guilty of larceny, 29 ALR 1031.

Purchase of property on credit without intending to pay for it as larceny, 35 ALR 1336.

Retaking of money lost at gambling as robbery or larceny, 35 ALR 1461; 42 ALR 741; 116 ALR 997.

Larceny by finder of property, 38 ALR 372.

Section

210. Theft by failure to make required disposition of funds received or held

220. Concealment of merchandise

230. Reasonable detention as defense

260. Removal of identification marks

270. Unlawful possession

280. Issuing a bad check

285. Fraudulent use of a credit card

290. Obtaining a credit card by fraudulent means

Acceptance of defendant's note or other contractual obligation as affecting charge of embezzlement or larceny, 70 ALR 208.

Dogs as subject of larceny, 92 ALR 212.

Electrical energy, gas, water, heat, power, etc., as subject of larceny, 118 ALR 1282.

Larceny as affected by distinction between custody and possession, 125 ALR 367.

Larceny of real property or things favoring of real property, 131 ALR 148.

Single or separate larceny predicated upon a series of acts over a period of time, 136 ALR 948.

Distinction between larceny and embezzlement, 146 ALR 582.

Knowledge imputed to reasonable man as test of knowledge of defendant in prosecution for larceny or receiving stolen property, 147 ALR 1058.

Charge of larceny or receiving stolen goods predicated upon taking or appropriation of waste paper or other articles deposited in street with intention to donate to patriotic or other cause, 156 ALR 631.

Rights of owner of stolen money as against one who won it in gambling transaction from thief, 44 ALR2d 1242.

Gambling or lottery paraphernalia as subject of larceny, 51 ALR2d 1396.

Cat as subject of larceny, 73 ALR2d 1039.

Stealing carcass as within statute making it larceny to steal cattle or livestock, 78 ALR2d 1100.

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, 82 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 1281.

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 1166.

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.

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), 646 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 possession, not title, because the gravamen of the offense is the interference with another'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 larceny 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.** — Nonconsent of the owner or possessor of the item taken may be established by circumstantial 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 another 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 duplication 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

### 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

opportunity double jeopardy. — See *Collett v. State*, Sup. Ct. Op. No. 1752 (File No. 8213), 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 statutes. *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 198 (1978).

**Sentence upheld.** — See *Morgan v. State*, Sup. Ct. Op. No. 1684 (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), 825 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** *Widemyre 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. 825), 438 P.2d 387 (1968); *Sidney v. State*, Sup. Ct. Op. No. 607 (File No. 1146), 488 P.2d 980 (1979); *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. 11.4.110. 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)

**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).

**Sufficiency 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. 108 (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, 269 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 857 (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, 1980, and of theft in the first degree for money taken after January 1, 1980, 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), 658 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. 108* (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 *Leach v. State, Sup. Ct. Op. No. 2419* (File No. 5255), 633 P.2d 1006 (1981).

Cited in *Williams v. State, Sup. Ct. Op. No. 2147* (File No. 8901), 614 P.2d 1384 (1980); *P.S. v. State, Ct. App. Op. No. 194*

(File No. 6870), 655 P.2d 1319 (1982); *Namen v. State, Ct. App. Op. No. 244* (File 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 987 (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)

Opinions of attorney general. — Section would apply to the disposition of a nondomestic animal found wandering loose and not endangering human life.

August 29, 1979, Op. Att'y Gen., rendered under former AS 11.20.260.

Collateral references. — Lost property as subject of larceny, 36 ALR 373.

**Sec. 11.46.180. Theft by deception.** (a) A person commits theft by deception if, 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 by deception.

(b) In a prosecution based on theft by deception, if the state seeks to prove that the defendant used deception by promising performance which the defendant did not intend to perform or knew would not be performed, that intent or knowledge may not be established solely by or inferred solely from the fact that the promise was not performed.

(c) As used in this section, "deception" has the meaning ascribed to it in AS 11.81.900 but does not include falsity as to matters having no pecuniary significance or "puffing" by statements unlikely to deceive reasonable persons in the group addressed. (§ 4 ch 166 SLA 1978)

Cross references. — For provisions establishing the making of a false or misleading statement for the purpose of

obtaining or denying a workers' compensation benefit or payment as theft by deception, see AS 23.30.250.

#### NOTES TO DECISIONS

For cases construing former AS 11.20.260, relating to obtaining money or property by false pretenses, see *Griggs v. United States*, 158 F. 572 (9th Cir. 1908); *United States v. Pearce*, 7 Alaska 248 (1924); *Tempe v. United States*, 14 Alaska 587, 211 F.2d 73 (9th Cir.), cert. denied, 347 U.S. 1013, 74 S. Ct. 866, 98 L. Ed. 1136 (1954); *Bonney v. United States*, 17 Alaska 542, 254 F.2d 392 (9th Cir. 1958); *Ria-r v. State*, Sup. Ct. Op. No. 1053 (File No. 2074), 623 P.2d

421 (1974); *Black v. State*, Sup. Ct. Op. No. 1506 (File No. 3327), 569 P.2d 804 (1977); *Dayton v. State*, Sup. Ct. Op. No. 1882 (File No. 3945), 598 P.2d 87 (1979); *Robertson v. State*, Sup. Ct. Op. No. 2019 (File No. 4728), 606 P.2d 393 (1980).

For case construing former AS 12.45.030, relating the necessary evidence for false pretenses, see *Lanier v. State*, Sup. Ct. Op. No. 514 (File No. 932), 448 P.2d 587 (1968).

Collateral references. — Obtaining money for goods not intended to be delivered as false pretenses, 17 ALR 199.

Appropriation of property after obtaining possession by fraud as larceny, 26 ALR 381.

Larceny by appropriation of property, possession of which was obtained by impersonating owner thereof, 26 ALR 389.

Purchase of property on credit without intent to pay for it as larceny, 35 ALR 1336.

Criminal offense of obtaining money

under false pretenses predicated upon receipt or claim of benefits under insurance policy, 135 ALR 1167.

Criminal charge predicated upon fraudulent obtaining of check, note, etc., or signature thereon, from a person executing the same, 141 ALR 210.

Use of fictitious or assumed name, 49 ALR2d 852.

Changing the price tags by patron in self-service store as criminal offense, 60 ALR3d 1293.

**Sec. 11.46.190. Theft by receiving.** (a) A person commits theft by receiving if the person buys, receives, retains, conceals, or disposes of stolen property with reckless disregard that the property was stolen.

(b) As used in this section, "receives" includes acquiring possession, control, or title, or lending on the security of the property. (AS 11.46.190, 166 SLA 1978)

Cross references. — For definition of "stolen property," see AS 11.46.990(7).

#### NOTES TO DECISIONS

I. General Consideration.

II. Former Law.

#### I. GENERAL CONSIDERATION.

Interpretation of "reckless disregard". — The term "reckless disregard" in subsection (a) of this section must be interpreted in light of the statutory definition of recklessness found in AS 11.81.900(a)(3). *Andrew v. State*, Ct. App. Op. No. 164 (File No. 6468), 653 P.2d 1063 (1982).

Standard of "reckless disregard" is constitutional. — The standard of "reckless disregard" specified in this section suffices to meet the due process requirement of criminal intent. *Andrew v. State*, Ct. App. Op. No. 164 (File No. 6468), 653 P.2d 1063 (1982).

This section is not impermissibly vague since the two-fold standard of recklessness set out in AS 11.81.900(a)(3) is sufficiently precise to be understood and applied by persons of ordinary intelligence. *Andrew v. State*, Ct. App. Op. No. 164 (File No. 6468), 653 P.2d 1063 (1982).

Intent to deprive owner of property. — The requirement of an intent by the accused to deprive the owner of property which has been stolen must be implied as an element of criminal intent under this section. *Andrew v. State*, Ct. App. Op. No. 164 (File No. 6468), 653 P.2d 1063 (1982).

The implicit requirement of an intent to deprive under this section should be identical to the intent specified for the offense of theft by taking, as set forth in AS 11.46.100(1). *Andrew v. State*, Ct. App. Op. No. 164 (File No. 6468), 653 P.2d 1063 (1982).

Cited in *Namen v. State*, Ct. App. Op. No. 264 (File No. 5662), 665 P.2d 557 (1983).

Editor's note: Many of the cases in the notes below were decided under former AS 11.20.350.

Former section did not define "receiving" or "concealing." *Beavers v. State*, Sup. Ct. Op. No. 765 (File No. 1387), 492 P.2d 88 (1971).

Elements of offense. — There are three essential components of a charge of receiving and concealing: (1) the property was stolen; (2) the defendants were in possession; (3) and, while in possession, they knew the property was stolen. *Nelson v. State*, Sup. Ct. Op. No. 2350 (File No. 4773, 4774), 628 P.2d 884 (1981).

Constructive possession is sufficient for the possession element of the offense of receiving and concealing stolen property. *Nelson v. State*, Sup. Ct. Op. No. 2350 (File Nos. 4773, 4774), 628 P.2d 884 (1981).

It was only necessary that constructive possession be present. *Beavers v. State*, Sup. Ct. Op. No. 765 (File No. 1387), 492 P.2d 88 (1971).

There need only have been shown such a nexus or relationship between the defendant and the goods that it was reasonable to treat the extent of the defendant's dominion and control as if it had been actual possession. *Beavers v. State*, Sup. Ct. Op. No. 765 (File No. 1387), 492 P.2d 88 (1971).

It was unnecessary to prove actual, manual possession of the property if the requisite intent was shown under former AS 11.20.350. *Beavers v. State*, Sup. Ct. Op. No. 765 (File No. 1387), 492 P.2d 88 (1971).

Determining mens rea. — When the act is that of receiving stolen property or aiding and abetting property-related crimes, the same significance cannot be

attached to the defendant's capacity to reflect maturely and meaningfully as when determining the requisite mens rea for a particular degree of homicide. *Hensel v. State*, Sup. Ct. Op. No. 1983 (File No. 2432), 604 P.2d 222 (1979).

**"Negation of mens rea element.** — Mens rea element of crime of receiving and concealing stolen property could be negated by evidence of diminished capacity. *Hensel v. State*, Sup. Ct. Op. No. 1983 (File No. 2432), 604 P.2d 222 (1979).

**Subsection (a) of former section, in cases of concealment, did not require that someone other than the defendant had stolen the property in question.** *Hayes v. State*, Sup. Ct. Op. No. 1662 (File No. 2814), 581 P.2d 221 (1978).

**Evidence of other crimes.** — See *Howard v. State*, Sup. Ct. Op. No. 754 (File No. 1210), 491 P.2d 154 (1971).

**Sufficiency of evidence.** — See *Beavers v. State*, Sup. Ct. Op. No. 765 (File No. 1387), 492 P.2d 88 (1971); *Nelson v. State*, Sup. Ct. Op. No. 2350 (File Nos. 4773, 4774), 628 P.2d 884 (1981).

**Instructions.** — See *Howard v. State*, Sup. Ct. Op. No. 754 (File No. 1210), 491 P.2d 154 (1971).

**Collateral references.** — 66 Am. Jur. 2d, Receiving and Transporting Stolen Property, §§ 1 — 34.

76 C.J.S., Receiving Stolen Goods, §§ 1 — 23.

**Entrapment to commit crime of receiving stolen property,** 18 ALR 187; 66 ALR 478; 86 ALR 263.

**Sec. 11.46.200. Theft of services.** (a) A person commits theft of services if

(1) the person obtains services, known by that person to be available only for compensation, by deception, force, threat, or other means to avoid payment for the services; or

(2) having control over the disposition of services of others to which the person is not entitled, the person knowingly diverts those services to the person's own benefit or to the benefit of another not entitled to them.

(b) Absconding without paying for hotel, restaurant, or other services for which compensation is customarily paid immediately upon the receiving of them is prima facie evidence that the services were obtained by deception. (§ 4 ch 166 SLA 1978)

**Sec. 11.48.210. Theft by failure to make required disposition of funds received or held.** (a) A person commits theft by failure to make required disposition of funds received or held if the person

Multiple convictions. — It was improper for the court to enter convictions against defendant for both receiving and concealing stolen property and armed robbery. *Pierce v. State*, Ct. App. Op. No. 017 (File No. 4675), 627 P.2d 211 (1981).

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. 6270), 636 P.2d 610 (1981).

**Sentences upheld.** — See *Horton v. State*, Sup. Ct. Op. No. 1515 (File No. 3359), 570 P.2d 482 (1977); *Klenke v. State*, Sup. Ct. Op. No. 1688 (File No. 3203), 581 P.2d 1119 (1978); *Preston v. State*, Sup. Ct. Op. No. 1717 (File No. 3833), 583 P.2d 787 (1978); *Saganna v. State*, Sup. Ct. Op. No. 1841 (File No. 4019), 594 P.2d 69 (1979); *Reynolds v. State*, Sup. Ct. Op. No. 1849 (File No. 4024), 595 P.2d 21 (1979).

**Sentence too lenient.** — See *Davenport v. State*, Sup. Ct. Op. No. 1479 (File No. 2885), 568 P.2d 939 (1977).

**Possession of recently stolen goods by one charged with receiving them as evidence on question of guilty knowledge,** 68 ALR 187.

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

(1) obtains property from anyone or personal services from an employee upon an agreement or subject to a known legal obligation to make specified payment or other disposition to a third person, whether from that property or its proceeds or from the person's own property to be reserved in equivalent amount; and

(2) exercises control over the property or services as the person's own and fails to make the required payment or disposition.

(b) It is not a defense to a prosecution based on theft by failure to make required disposition of funds received or held that it may be impossible to identify particular property as belonging to the victim at the time of the defendant's failure to make the required payment or disposition.

(c) In a prosecution based on theft by failure to make required disposition of funds received or held, the fact that the defendant was a fiduciary or an officer or employee of a government or a financial institution is prima facie evidence

(1) that the defendant exercised control over property or services as the defendant's own if the defendant failed to pay or account upon lawful demand or if an audit reveals a shortage or falsification of accounts; and

(2) that the defendant knew any legal obligation relevant under (a)(1) of this section. (§ 4 ch 166 SLA 1978; am § 10 ch 102 SLA 1980)

**Cross references.** — For definition of "financial institution," see AS 11.46.990(3).

**Effect of amendments.** — The 1980 amendment substituted "based on theft by failure to make required disposition of funds received or held" for "under this sec-

tion" near the beginning of subsection (b).  
**Legislative history reports.** — For 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

**Former embezzlement statutes construed.** — See *United States v. Clark*, 76 F. 560 (D. Alaska 1896); *Lindgren v. United States*, 260 F. 772 (9th Cir. 1919); *Allred v. United States*, 10 Alaska 460, 146 F.2d 193 (9th Cir. 1944); *Coughlan v. United States*, 15 Alaska 153, 216 F.2d 324 (9th Cir. 1954); *Empire Printing Co. v. Roden*, 17 Alaska 209, 247 F.2d 8 (9th Cir. 1957); *United States v. Maulding*, 16 Alaska 666, 147 F. Supp. 693 (D. Alaska

1956), rev'd on other grounds, 17 Alaska 592, 257 F.2d 58 (9th Cir. 1958); *Dickens v. State*, Sup. Ct. Op. No. 283 (File No. 486), 398 P.2d 1008 (1965); *Amidon v. State*, Sup. Ct. Op. No. 1434 (File Nos. 2511, 2512), 565 P.2d 1248 (1977); *Mullins v. State*, Sup. Ct. Op. No. 1549 (File No. 3284), 573 P.2d 860 (1978); *Smith v. State*, Ct. App. Op. No. 128 (File No. 5211), 651 P.2d 7 (1982).

**Collateral references.** — 26 Am. Jur. 2d, Embezzlement, §§ 1 et seq.; 63 Am. Jur. 2d, Public Officers and Employees, §§ 324, 443.

29 C.J.S., Embezzlement, § 1 et seq.  
**Criminal responsibility of one cooperating in offense of embezzlement which he is incapable of committing**

personally, 5 ALR 784; 74 ALR 1110; 131 ALR 1322.

Embezzlement by appropriating money or proceeds of paper mistakenly delivered in excess of the amount due or intended, 14 ALR 899.

Partner's action against copartner for embezzlement of firm money, 21 ALR 124; 168 ALR 1117.

Embezzlement as "infamous offense" within constitutional or statutory provision in relation to presentment or indictment by grand jury, 24 ALR 1009.

Who are within statutes relating to embezzlement by trustees or other persons acting in "fiduciary capacity," 41 ALR 474.

Misappropriation of executor, administrator, guardian or trustee as embezzlement, 75 ALR 299.

Receivers, assignees in insolvency or trustees in bankruptcy within classes of persons described by statute denouncing defense of embezzlement, 113 ALR 744.

Misappropriation of public money by one not in possession, 128 ALR 1373.

Statutes relating to embezzlement of public money by officer in charge thereof as applicable to employee or subordinate, 144 ALR 590.

Distinction between embezzlement and larceny, 146 ALR 532.

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

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

**Sec. 11.46.220. Concealment of merchandise.** (a) A person commits the crime of concealment of merchandise if without authority the person knowingly conceals on or about the person the merchandise of a commercial establishment, not purchased by the person, while still upon the premises of the commercial establishment, with intent to deprive the owner of the merchandise or with intent to appropriate the merchandise.

(b) Merchandise found concealed upon or about the person which has not been purchased by the person is prima facie evidence of a knowing concealment.

(c) Concealment of merchandise is

(1) a class C felony if the merchandise is a firearm or the value of the merchandise is \$500 or more;

(2) a class A misdemeanor if the value of the merchandise is \$50 or more but less than \$500;

(3) a class B misdemeanor if the value of the merchandise is less than \$50. (§ 4 ch 166 SLA 1978; am § 11 ch 102 SLA 1980)

**Effect of amendments.** — The 1980 amendment added "or with intent to appropriate the merchandise" at the end of subsection (a), and inserted "merchandise

is a firearm or the" preceding "value of the" near the middle of paragraph (1) in subsection (c).

#### NOTES TO DECISIONS

An arrest and subsequent search by a store security guard of a suspected shoplifter in which nondeadly force was used was legal and reasonable and

therefore permissible under state and federal constitutions. Jackson v. State, Ct. App. Op. No. 211 (File No. 6664), 657 P.2d 405 (1983).

**Collateral references.** — 50 Am. Jur. 2d, Larceny, §§ 49, 50, 143.  
52A C.J.S., Larceny, § 1(5).

**Validity, construction, and effect of statutes establishing shoplifting as specific criminal offense,** 80 ALR2d 811.

**Sec. 11.46.230. Reasonable detention as defense.** (a) In a civil or criminal action upon the complaint of a person who has been detained in or in the immediate vicinity of a commercial establishment for the purpose of investigation or questioning as to the ownership of merchandise, it is a defense that

(1) the person was detained in a reasonable manner and for not more than a reasonable time to permit investigation or questioning by a peace officer or by the owner of the commercial establishment or the owner's agent; and

(2) the peace officer, owner, or owner's agent had probable cause to believe that the person detained was committing or attempting to commit concealment of merchandise.

(b) As used in this section, "reasonable time" means the time necessary to permit the person detained to make a statement, or refuse to make a statement, and any additional time necessary to examine employees and records of the commercial establishment relative to the ownership of the merchandise. (§ 4 ch 166 SLA 1978)

#### NOTES TO DECISIONS

Statute is consistent with the supreme court's view of the common law. Malvo v. J.C. Penney Co., Sup. Ct. Op. No. 901 (File No. 1630), 512 P.2d 575 (1973), decided under former AS

11.20.277, which was similar to this section.

Stated in Jackson v. State, Ct. App. Op. No. 211 (File No. 6664), 657 P.2d 405 (1983).

**Collateral references.** — Construction and effect, in false imprisonment action, of statute providing for detention of suspected shoplifters, 47 ALR3d 998.

**Liability of storekeeper for injury to customer arising out of pursuit of shoplifter,** 14 ALR4th 950.

**Sec. 11.46.260. Removal of identification marks.** (a) A person commits the crime of removal of identification marks if, with intent to cause interruption to the ownership of another, the person defaces, erases, or otherwise alters or attempts to deface, erase, or otherwise alter any serial number or identification mark placed or inscribed on a propelled vehicle, bicycle, firearm, movable or immovable construction tool or equipment, appliance, merchandise, or other article or its component parts.

DATE: December 8, 1987

TO: Sgt. John Grohol, Anchorage Police Department

FROM: Officer L. T. Johnson, Anchorage Police Department

SUBJECT: Request for a criminal statute establishing a class "C" felony penalty on any subsequent misdemeanor theft within five (5) years of an initial theft conviction.

#### AMATEUR versus PROFESSIONAL

Thieves or shoplifters can be divided into two basic groups; amateurs and professionals. This paper is specifically directed toward the professional adult thief.

The amateur thief is considered to be the rational, responsible individual who in a moment of weakness will give in to temptation. Once caught, the shame and remorse felt by the amateur thief is usually a sufficient deterrent against further similar activity. Very few, if any, can claim in total honesty that they have never taken anything that did not belong to them, but the majority can claim the common sense to have learned from our mistakes.

The professional adult thief is considered to be the rational, irresponsible individual who will continue to steal following a conviction for theft and fail to make any attempt at reformation.

It is the professional or habitual adult thief that must be considered a worse offender than the amateur with no previous theft convictions.

#### THE PROBLEM

Over the past year I have been specifically assigned to investigate reports of shoplifts and other misdemeanor thefts committed in the Anchorage area. During this time I have become increasingly aware of approximately 400 people that have been caught stealing subsequent to misdemeanor theft convictions.

Interviews conducted with some of these individuals provided me with insight as to their motive. The primary motive for continuing to commit thefts was to support drug habits. Several of the interviewed individuals added that, "It was an easy way to make a living".

Wallets or purses, stolen from vehicles or buildings, provide the thief with easy access to the victim's credit cards or bank account through the use of a stolen automated teller machine (ATM) card. Items such as; cartons of cigarettes, compact disks, liquor, etc., are routinely sold for approximately 50% of the initial retail price, and with cartons of cigarettes providing the adult thief with a \$5 return per carton, a case of cigarettes provides a substantial return of over \$100 for a minimal amount of effort.

December 8, 1987  
Habitual theft offender statute

### APATHY BREEDS CONTEMPT

During an interview with one habitual theft offender, he readily admitted that he and his friends stole items to sell to support their cocaine habits. He also stated that he was glad that he was in jail so that he could be forced into attending drug rehabilitation because he did not possess the will power necessary to stop on his own. The charges against this individual were subsequently dropped and he is back with his friends, stealing to support their drug habits.

Petty theft, for the most part, is as common place as motorists exceeding the posted speed limits. It has no age, economic, social, racial or religious barriers. The impact of shoplifting alone is demonstrated by the annual \$2,000,000,000 loss attributed to shoplifting reported by our nation's retailers. The loss is naturally passed on to the law abiding consumer in higher product costs.

Most retail stores usually have a minimal amount of sales people on their floors and their merchandise is mass-displayed for customer ease in shopping. Given this opportunity, it is far less dangerous to; shoplift, steal a radio from a vehicle, or take a purse from an unattended desk, than to steal a car or hold up a liquor store, and the penalties are much less severe. The minimal penalties imposed on misdemeanor thefts is not a deterrent to the professional adult thief and does not encourage him or her to reform.

### TYPICAL SENTENCES

Standard judicial practice on first time theft offenders is to apply a suspended imposition of sentence. This provides the first time offender an opportunity to have the guilty sentence for his theft removed from his criminal record after he or she has satisfactorily completed the judicially imposed probationary period. The standard probationary period, on suspended imposition of sentences, is six months to one year. Most defendants (amateur thieves) take full advantage of suspended imposition of sentences and are never involved in another theft. However, as previously mentioned this document is specifically directed toward the career or habitual criminal.

Members of the Judicial branch of government are not ignorant concerning the professional adult thief. With the majority of the thefts committed by these individuals being misdemeanor crimes, Judge's sentences are limited by the maximum penalty allowable for misdemeanor crimes.

December 8, 1987  
Habitual theft offender statute

STATE AND LOCAL LAWS

Current state statutes provide the following maximum penalties for theft and theft related crimes.

<u>Classification</u>	<u>Fine (and/or)</u>	<u>Jail Term</u>
B Misdemeanor.....	..\$1,000.....	0-90 days
A Misdemeanor.....	..\$5,000.....	0- 1 year
C Felony.....	..\$50,000.....	0- 5 years
B Felony.....	..\$50,000.....	0-10 years
A Felony.....	..\$50,000.....	0-20 years

Briefly, a theft involving property or services under \$50 is classified as a B Misdemeanor. Between \$50 and \$499, the theft is classified as an A Misdemeanor. Between \$500 and \$24,999, the theft is classified as a C Felony. A theft involving \$25,000 or more is considered a B Felony. Robbery, a violent theft, appropriately carries the classification of a class A Felony.

Theft ordinances for the Municipality of Anchorage impose a maximum penalty of no more than six months imprisonment and/or a fine of not more than \$1,000.

Painfully evident is the fact that there is no serious potential deterrent against the professional adult thief if he limits his thefts to items under \$500. The habitual adult thief usually concentrates on stealing items that he can quickly sell for between \$5 and \$100 so that he can use the money to support his personal habit which can cost approximately \$150 per day to support. With most people not having immediate access to amounts over \$500, the thief usually takes items that he knows that he can sell for approximately 50% of the retail price. Because of this, the professional thief generally steals items costing under \$500, thereby avoiding the penalties imposed by the felony statutes.

APPREHENSION TO CONVICTION

The cost in apprehending and prosecuting a thief is not a factor in determining the classification of the criminal charge, but is naturally passed on to the consumer/taxpayer in higher costs.

How much does it cost? Anchorage Municipal Prosecutor Jim Wolf estimates that the total cost is approximately \$2,500 per defendant. Why does it cost so much money to prosecute a single person for a "minor" misdemeanor theft? Let me explain.

From the moment of initial observation of a thief, a clock begins ticking. This clock represents the hourly wage paid to all of the people who become involved in the disposition of the thief.

A typical apprehension takes the following form and involves the following people.

December 8, 1987  
Habitual theft offender statute

### TYPICAL THEFT SCENARIO

A store security officer initiates his observations of a suspected thief. The clock begins ticking. He establishes sufficient probable cause that a theft has been committed and arrests the suspect. Following the arrest, he conducts his interview with the suspect to complete his required documentation of the incident. He then phones a police dispatcher who radios a police officer to respond to the store.

The police officer drives to the store and contacts the store security officer who relates the circumstances of the arrest. That officer then interviews the suspect and witnesses so that he can document the incident in his report to the prosecutor's office.

The police officer leaves the store with the arrested suspect and any evidence, driving the suspect to the Magistrate's office for a bail hearing. The Magistrate establishes the Defendant's bail and the officer drives the Defendant to the jail for booking.

At the jail the Defendant is turned over to a Corrections officer who completes the required documentation concerning the detention.

The police officer returns to the Police Department and completes his report. He then gives his report to a records clerk who distributes the copies of the report for filing and forwards a copy to the Prosecutor's office. Any evidence seized by the officer is given to the Property and Evidence personnel for safeguarding.

At arraignment, the Defendant pleads not guilty before a Judge or Magistrate. A public defender is provided by the Municipality and a trial date is established.

A Municipal Prosecutor reviews the case and determines who will be required to testify in court. Subpoenas are completed and given to an officer to serve on the Complainant and witnesses.

The trial begins and lasts for approximately two days during which the following people are present; the Judge, court recorder, Municipal Prosecutor, Public Defender, six jury members, the reporting police officer, the Complainant and any witnesses.

Completion of the trial essentially stops the clock representing the wages paid to the people involved in the incident.

The estimated \$2,500 cost in processing an apprehended thief is readily apparent and may in fact be higher, given the time and number of people involved to bring an adult thief to justice.

How prevalent is the crime of petty theft? The following statistical data clearly demonstrates the impact of this crime, but keep in mind that the statistics do not reflect the hidden costs of theft offenders.

December 8, 1987  
 Habitual theft offender statute

NATIONAL THEFT STATISTICS

The following information was obtained from the U.S. Department of Commerce, Bureau of the Census and represents the most current reported 1985 national statistical information available.

Type of Theft (*)	NUMBER OF OFFENSES IN 1985	PERCENTAGE OF TOTAL	AVERAGE DOLLAR LOSS PER INCIDENT
Total			
Larceny/theft.....	6,453,000.....	100%.....	\$393.00
Pocket picking.....	73,000.....	1.1%.....	\$257.00
Purse snatching.....	78,000.....	1.2%.....	\$206.00
Shoplifting.....	901,000.....	14.0%.....	\$ 85.00
From vehicles.....	1,275,000.....	19.8%.....	\$428.00
Vehicle accessories...	1,079,000.....	16.7%.....	\$283.00
Bicycles.....	528,000.....	8.2%.....	\$159.00
From buildings.....	1,005,000.....	15.6%.....	\$615.00
From coin machines.....	55,000.....	9%.....	\$130.00
All other.....	1,459,000.....	22.6%.....	\$ unkn

(\*)Does not include statistical data for robbery or burglary

MUNICIPALITY OF ANCHORAGE STATISTICS

The following statistical information was compiled from the records of the Anchorage Police Department and represents the reported thefts from January 1986, through August 1987.

Type of Theft (*)	NUMBER OF OFFENSES Jan '86-Aug '87	PERCENTAGE OF TOTAL	AVERAGE DOLLAR LOSS PER INCIDENT
Total			
Larceny/theft.....	17,752.....	100.0%.....	\$346.00
Pocket picking.....	66.....	0.4%.....	\$577.00
Purse snatching.....	54.....	0.3%.....	\$122.00
Shoplifting.....	5,488.....	30.9%.....	\$ 54.00
From vehicles.....	3,011.....	16.9%.....	\$441.00
Vehicle accessories...	1,701.....	9.6%.....	\$381.00
Bicycles.....	1,418.....	8.0%.....	\$222.00
From buildings.....	1,667.....	9.4%.....	\$343.00
From coin machines.....	126.....	0.7%.....	\$ 32.00
All other.....	4,251.....	23.9%.....	\$690.00

(\*)Does not include statistical data for robbery or burglary

In Anchorage the total reported dollar loss attributed to thefts other than robbery or burglary, between January 1986 and August 1987, was \$6,139,425.

December 8, 1987  
Habitual theft offender statute

EXAMPLES OF CRIMINAL ACTIVITY AND RELATED SENTENCING

Attached to this document are copies of computer printouts pertaining to several professional thieves. For reasons of privacy their names and AKA's (also known as) have been obliterated. Data from states in the lower 48 is not included.

SUBJECT #1:

<u>Arrest date</u>	<u>Crime</u>	<u>Sentencing Date</u>	<u>Jail Term</u>
8-09-84	Shoplifting	12-11-85	3 days
8-27-84	Fail to Appear	12-11-85	3 days
9-03-85	Shoplifting	12-11-85	5 days
6-11-86	Shoplifting	10-08-86	2 days
8-30-86	Trespass	08-31-86	2 days
8-30-86	Resisting	08-31-86	2 days
9-18-86	Larceny	10-08-86	5 days
12-10-86	DWI	01-08-87	3 days
1-07-87	Driving w/lic Susp.	01-08-87	10 days
1-08-87	Shoplifting	05-06-87	10 days
1-25-87	Larceny	05-06-87	30 days
2-11-87	Obstruct Police	05-06-87	10 days
4-02-87	Shoplifting	05-06-87	40 days
4-20-87	Larceny	05-01-87	15 days
8-20-87	Robbery	(awaiting sentencing)	
8-20-87	Driving w/lic Susp.	(awaiting sentencing)	
8-20-87	Larceny	(awaiting sentencing)	
8-20-87	Obstruct Police	(awaiting sentencing)	

Subject #1 is well documented within the Anchorage Police Department as a person who participates in thefts by distracting store clerks in conversation about products or employment, while his accomplice removes cases of cigarettes or liquor.

With most small convenience stores manned by a single employee, it is a simple matter to escape detection and more often than not, the employee is not aware of the theft until Subject #1 has driven away along with his accomplice.

On 8-20-87, Subject #1 was arrested for robbery in which he drove a reported stolen vehicle while his associate, another repetitive theft offender, utilized a gun to take money from someone who had stopped to help them with their disabled vehicle.

During an interview with Subject #1, he laughed about his cocaine addiction causing him to continually steal and showed no intention to reform. He also bragged about how easy it was to sell what he had stolen to other businesses and "after-hours" houses.

December 8, 1987  
Habitual theft offender statute

SUBJECT #2:

<u>Arrest date</u>	<u>Crime</u>	<u>Sentencing Date</u>	<u>Jail Term</u>
5-20-81	Shoplifting	06-02-81	1 day
11-06-82	Cocaine Possession	04-07-83	(no jail term)
2-07-83	Shoplifting	03-22-83	15 days
10-07-83	Conceal Merchandise	08-03-84	30 days
6-18-84	Conceal Merchandise	09-20-84	30 days
8-03-84	Probation Violation	08-03-84	(Prob. extended)
7-14-84	Shoplifting	08-03-84	30 days
12-26-84	Shoplifting	04-04-85	90 days
6-05-86	Drive w/o License	11-08-86	(no jail term)
7-07-86	Fail to Appear	11-08-86	5 days
7-12-86	Conceal Merchandise	11-08-86	12 days
9-08-86	Shoplifting	11-08-86	25 days
11-07-86	Shoplifting	03-04-87	60 days
1-26-87	Larceny	03-25-87	60 days
6-23-87	Reckless Driving	08-31-87	10 days
6-23-87	Drive w/o License	08-31-87	5 days
7-01-87	Conceal Merchandise	08-31-87	70 days
7-10-87	Shoplifting	08-31-87	110 days
7-13-87	Shoplifting	08-31-87	90 days

Subject #2 is well documented within the Anchorage Police Department as a person who has entered stores with plastic bags and boldly proceeded to fill the bag with items such as; lamps, \$150 jogging suits, and other articles of clothing.

Subject #2 has also been known to participate in thefts as a driver while his associates steal; liquor, cigarettes, or clothing. The vehicles driven by Subject #2 are routinely shared by other repetitive theft offenders and quite often the license plates are from other vehicles which inhibits attempts at suspect identification.

My attempts to interview Subject #2 and determine the reason behind his continued thefts have met with negative results with his refusal to talk with me.

Based upon his past cocaine conviction and his known association with persons addicted to cocaine, it is assumed that he is still addicted. Because of this assumption, I believe that his need to support his habit causes him to continually steal.

December 8, 1987  
Habitual theft offender statute

SUBJECT #3:

<u>Arrest date</u>	<u>Crime</u>	<u>Sentencing Date</u>	<u>Jail Term</u>
8-04-62	Drunk in Public	08-04-62	(no jail term)
8-10-62	Disorderly Conduct	08-10-62	120 days
4-04-64	Disorderly Conduct	04-04-64	90 days
9-03-74	Disorderly Conduct	09-03-74	(no jail term)
9-03-74	Drinking in Public	09-03-74	(no jail term)
9-17-75	Larceny	09-22-75	5 days
7-16-76	Larceny	07-17-76	15 days
11-13-76	Disorderly Conduct	11-14-76	1 day
5-08-79	Open Container	05-09-79	(no jail term)
8-26-79	Disorderly Conduct	08-29-79	(no jail term)
9-27-81	Larceny	09-28-81	2 days
12-23-82	Shoplifting	02-07-83	5 days
3-17-84	Conceal Merchandise	03-18-84	5 days
4-23-84	Shoplifting	04-24-84	2 days
4-23-84	Probation Violation	04-09-85	8 days
2-03-85	Shoplifting	04-15-85	5 days
2-22-85	Disorderly Conduct	02-23-85	2 days
9-21-86	Trespass	09-22-86	5 days
9-21-86	Shoplifting	09-22-86	10 days
1-25-87	Disorderly Conduct	01-25-87	2 days
5-07-87	Shoplifting	05-08-87	5 days
5-07-87	Trespass	05-07-87	5 days
7-07-87	Shoplifting	08-26-87	15 days
7-07-87	Trespass	08-26-87	15 days

Subject #3 is documented within the Anchorage Police Department as an indigent or "Street Person" who has his food and shelter provided by the Municipality of Anchorage and other welfare agencies.

Apparently not satisfied with the free welfare provided to him, he is known to steal clothing, food, cigarettes, and liquor for his personal consumption.

His method of operation has been well established for over ten years and shows no attempt at reformation.

ADDITIONAL EXAMPLES

In addition to the previously mentioned subjects, I have personal knowledge of the following examples of known repetitive theft offenders.

One suspect repeatedly stole unattended purses from desks in office buildings for the money that they contained. This suspect was very careful to not be seen taking the purses and he was not charged with numerous thefts because there was insufficient evidence. On the first three convictions for theft, the judge ordered that he make restitution to the victims. Within days, following the judicial order, he was luckily caught stealing another purse for money to pay the court ordered restitution.

Another suspect is known to me to have posed as a hospital employee in order to gain access to offices in the hospital so that she can steal from the unattended purses of the hospital staff and patients. She is extremely competent in her craft and rarely gets caught.

December 8, 1987  
Habitual theft offender statute

#### FORGOTTEN THEFTS

Not reflected in the above criminal histories are the theft charges subsequently dropped by the Prosecutor's or DA's office. Often a charge of theft will be dismissed because the Complainant cannot be located to serve with a subpoena to provide testimony against the Defendant.

Another discouraging aspect is the number of cases that I have investigated in which the Complainant has requested to have the matter dropped. All too frequently, I have heard the statement from Complainant's, "It's only a misdemeanor and they (the Judges) won't do anything with them anyway". From personal experience, I know of numerous cases, against habitual adult offenders, that were never presented to the Prosecutor's office because of the preceding statement made by Complainants.

It is obvious that something must be done to overcome the apathy surrounding misdemeanor thefts committed by the professional adult thief. A glimmer of hope must be given to the citizens of Alaska that corrective action will be taken against repetitive theft offenders that will encourage them to reform.

#### UNDETECTED THEFTS

As previously mentioned there was a reported loss of \$6,139,425 between January 1986 and August 1987, attributed to petty thefts within the Municipality of Anchorage. But, what about the thefts that go undetected? None of us can be naive enough to believe that a thief would be so gullible as to wear a sign saying, "Watch me, I'm going to steal from you".

The professional adult thief is clever and careful while performing his or her's self appointed employment. From interviews with professional thieves, I have been told on several occasions that, "It is an easy way to make a living". Most often these same thieves laugh at the consequences of a misdemeanor conviction.

Proof that a large number of thefts go undetected is obtained from the boasting statements of apprehended professional thieves and supported by inventory accounting conducted by retailers. Stores know how much they spend on their merchandise and following an inventory, the retailer can account for his merchandise on hand or sold. The unaccountable loss (shrinkage) of merchandise is attributed in large part to undetected thefts.

December 8, 1987  
Habitual theft offender statute

#### A PLEA FOR HELP

Attached to this report are letters from the Loss Prevention Managers of; Sears, Pay'n Save, Lamonts, and Carrs. Each letter documents their suspected loss to undetected thefts. All of the letters document concern about the professional adult thief.

Fred Becker Sr., Loss Prevention Manager for Sears in Anchorage, documents that in 1986, Sears lost approximately \$104,040 to undetected thefts (based upon the suspicion that five thefts are committed for every thief apprehended). He also documents the following statements that he has heard thieves make; "What do I have to lose, nothing happens anyway?", "The case will be dismissed.", "I have to play the odds, how often do you think I get away for each time I get caught?", "The money is good." (some talk of \$50,000 to \$100,000 per year).

Betty Wills, Director of Loss Prevention for Lamonts, documents that 50% of their shrinkage is due to undetected thefts (based upon the opinion of Loss Prevention experts). Utilizing the preceding percentage, Fred Becker Jr., Loss Prevention Manager for Lamonts in Anchorage, documents that Lamonts lost \$912,000 to undetected thieves in 1986.

Bill Hughes, Loss Prevention Manager for Pay'n Save, documented that he suspects that the Pay'n Save stores in Alaska lose \$200,000 annually to undetected thieves.

Peter Johnson, Director of Loss Prevention for Carrs, documented that the Carrs stores attribute an annual loss of \$1,000,000 per year from thefts.

#### PRIOR HABITUAL CRIMINAL STATUTES

Habitual criminal statutes are not new to Alaska. Prior to the 1980 revision of our State's criminal code, two statutes were in existence. One of the statutes, AS12.55.040, titled; "Increased punishment for habitual criminal after conviction of petty larceny or misdemeanor involving fraud", mandated a punishment of imprisonment for not less than one year nor more than ten years which would be considered a felony by the State's current criminal code. A copy of that code is attached to this report.

Following the 1980 revision, the criminal code adopted presumptive sentencing for repetitive felony offenders. No where was there mentioned action against the habitual adult theft offender of misdemeanor level thefts.

December 8, 1987  
Habitual theft offender statute

CONCLUSION

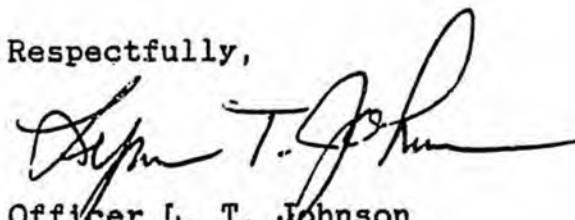
Currently under the criminal code, a person who "borrows" another persons car without permission is sentenced at a misdemeanor level on the first conviction. If that same person is foolish enough to commit the same act after the first conviction, the penalty for the second offense increases to the level of a C felony.

Why then can't the same reasoning behind repetitive vehicle theft be applied to the habitual adult theft offender? I believe that it can and must.

The problem of the professional adult thief is well documented and the conclusion must necessarily address the question, "What can be done?". I am of the opinion that a statute must be enacted that would specifically address harsher action against the habitual adult theft offender.

Without inhibiting the District Attorney's office from exercising established case review procedures, I suggest that following a conviction for theft of any degree, any adult committing a second theft offense (defined by current Title 11 code) within five years of the first conviction should be subject to the penalties of a class C felony.

Respectfully,



Officer L. T. Johnson  
Misdemeanor Crimes Investigation Unit  
Anchorage Police Department

**Attachments**

- #1. Copy of prior habitual petty theft statute
- #2. Copies of letters from Loss Prevention Managers
- #3. Copies of criminal histories

for the nonpayment of the fine, the defendant may make application in writing to a judge or magistrate in the district where he is imprisoned, setting out his inability to pay the fine, and, after notice to the district attorney, the judge or magistrate shall proceed to hear and determine the matter. If on examination it appears to him that the defendant is unable to pay the fine and that he has no property exceeding \$50 in value, except property which is by law exempt from being taken on execution for debt, the judge or magistrate shall administer to him the following oath: "I do solemnly swear that I do not have any property, real or personal, to the amount of \$50, except property which is by law exempt from being taken on civil process for debt, and that I have no property in any way conveyed or concealed or any way disposed of for my future use or benefit. So help me God." The judge or magistrate shall discharge the defendant after he takes the oath. (§ 8.03 ch 34 SLA 1962; am § 17 ch 8 SLA 1971)

**Effect of amendment.** — The 1971 amendment inserted "judge or" twice in the first sentence, once in the second sentence, and once in the last sentence.

**Legislative committee report.**—For report on ch. 8, SLA 1971 (HB 15), see 1971 House Journal, p. 52.

**Constitutionality.**—This section, which, upon proof of indigency, limits the sentence in lieu of payment of a fine to 30 days, is unconstitutional. *Hood v. Smedley*, Sup. Ct. Op. No. 800 (File No. 1406), 498 P.2d 120 (1972).

The injustice under this section that is to be remedied is not the imposition of the fine itself, but the requirement that it be satisfied immediately or be

automatically converted into a jail term. *Hood v. Smedley*, Sup. Ct. Op. No. 800 (File No. 1406), 498 P.2d 120 (1972).

This section applies to all poor convicts imprisoned solely for nonpayment of fines. *United States v. Stromberger*, 9 Alaska 689 (1940).

Valid methods for enforcing payment of fines.—For methods which the State of Alaska may employ to serve its valid interest in enforcing the payment of fines, see *Hood v. Smedley*, Sup. Ct. Op. No. 800 (File No. 1406), 498 P.2d 120 (1972).

Quoted in *Williams v. Illinois*, 399 U.S. 235, 90 S. Ct. 2018, 26 L. Ed. 2d 586 (1970).

**Sec. 12.55.040. Increased punishment for habitual criminal after conviction of petty larceny or misdemeanor involving fraud.** A person convicted of petty larceny or a misdemeanor in which fraud or intent to defraud is an element who, subsequent to March 9, 1939, has been three times convicted in this state or elsewhere of a crime which would constitute burglary, larceny except changing brands, embezzlement, or obtaining money or property by false pretenses under Alaska law shall be adjudged an habitual criminal, and is punishable by imprisonment for not less than one year nor more than 10 years. (§ 8.04 ch 34 SLA 1962; am § 38 ch 43 SLA 1964)

**Effect of amendment.** — The 1964 amendment substituted "less than one year nor more than 10 years" for "more than 10 years" at the end of the section.

Section inapplicable to offense committed before October 1, 1964.— See 1964 Op. Att'y Gen., No. 8.

SEARS

October 17, 1987

Officer L.T. Johnson  
Anchorage Police Department  
4501 South Bragaw  
Anchorage, AK 99507

Dear L.T.:

While we both realize that losses suffered by retail merchants can be very hard to evaluate, there are a number of accepted formulas that can be utilized to reach a reasonable conclusion.

Statistics tell us that security departments apprehend anywhere from 1 in 30 to 1 in 10 thieves. I feel that my department ranks a little better and estimate that we may even be as good as 1 in 5. My chart will compare those three figures against my actual apprehensions and dollar recovery for 1985, 1986, and 1987 through August.

	<u>1985</u>	<u>1986</u>	<u>1987</u>
Shoplift Apprehensions	491	609	259
Escaped Detection 1 in 5	1,964	2,436	1,036
Escaped Detection 1 in 10	4,419	5,481	2,331
Escaped Detection 1 in 30	14,239	17,661	7,511
Dollar Recovery	\$29,154	\$26,010	\$23,595
Dollars Lost to Shoplifters 1 in 5	\$116,616	\$104,040	\$94,380
Dollars Lost to Shoplifters 1 in 10	\$262,386	\$234,090	\$212,355
Dollars Lost to Shoplifters 1 in 30	\$845,466	\$754,290	\$684,255

As you can see, the losses that I suffer from shoplifters are considerable. My company has spent well over \$100,000.00 in the same years in shoplifting deterrents. That figure does not include the security department's payroll.

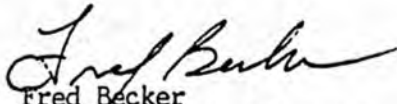
A problem that I consider significant is the "professional" shoplifter or "refund artist". I have personally been involved in, or arrested a number of repeat offenders, some as many as five times; yet each APD officer issues a citation and the suspect is released. The suspects have been quite talkative at times and have said:

- a. "What do I have to loose, nothing happens anyway."
- b. "The case will be dismissed."
- c. " I have to play the odds - how often do you think I get away for each time I get caught."
- d. "The money is good." (Some talk of \$50,000. to \$100,000. a year.)

Officer L.T. Johnson  
Page 2  
October 17, 1987

I feel that when a person is arrested the third time for shoplifting he should be charged with a Class C Felony. Certainly this will have a significant effect on the professional thieves. Perhaps if they see jail time in front of them, shoplifting will loose some of its' allure. Maybe Alaska will become less comfortable as well, and they will leave the state.

Sincerely,

  
Fred Becker  
Loss Prevention Manager

ml

# Lamonts

THE FAMILY CLOTHING STORE

3150 Richards Rd. Bellevue, WA 98005  
(206) 644-5700

November 4, 1987

To Whom It May Concern:

Our overall shrinkage company-wide was .3 lower than our Alaskan stores.

In the opinion of Loss Prevention experts, 50% of store shrinkage can be attributed to external theft. The further breakdown being 25% paper error and 25% due to employee theft.

We find we have several repeat offenders in the Anchorage area. Sometimes the same individuals are arrested at all three stores.

Any legislation to help combat repeat offenders would be of benefit to the entire community.

Sincerely,



Betty Wills  
Director of Loss Prevention  
Lamonts Apparel

BW:sk

# Lamonts

THE FAMILY CLOTHING STORE

OFFICER L. T. JOHNSON  
ANCHORAGE POLICE DEPT.  
4501 SOUTH BRAGAW  
ANCH. AK. 99507

SIR:

LAMONTS AS A CORPORATION HAS SUSTAINED SUCH GREAT LOSSES TO EXTERNAL THEFT THAT ONLY THIS YEAR HAVE WE HAD TO GO FROM A CUSTOMER ORIENTED DETECT SYSTEM (TAGGED CLOTHING) TO A IN HOUSE LOSS PREVENTION DEPARTMENT. AS NOTED IN THE LETTER FROM THE DIRECTOR OF LOSS PREVENTION FOR LAMONTS LAST YEAR LAMONTS ATTRIBUTED 50% OF ALL SHRINDAGE TO EXTERNAL THEFT, SHOPLIFTERS. FOR THE ANCHORAGE AREA ONLYSHRINKAGE FIGURES ARE AS SHOWN:

1986 ALONE

UNIVERSITY CENTER	SHRINKAGE LOSSES AMOUNTED TO	\$ 583,952
NORTHWAY MALL	SHRINKAGE LOSSES AMOUNTED TO	\$ 697,204
DIAMOND MALL	SHRINKAGE LOSSES AMOUNTED TO	\$ 542, 930
	ANCHORAGE BOWL LOSSES TOTALED	\$ 1,824,086

TO ATTRIBUTE ONLY 50% OF THOSE LOSSES TO EXTERNAL LOSS WOULD GIVE YOU A FIGURE OF OVER \$912,000 LAMONTS LOSS TO SHOPLIFTERS IN 1986 ALONE, IN THE ANCHORAGE BOWL AREA.

AS LOSS PREVENTION MANAGER FOR THE UNIVERSITY CENTERFOR THE LAST NINE MONTHS AND HAVING WORKED LOCALLY FOR THE PAST FOUR YEARS, I DO NOT SEE THE PROBLEM STEMMING FROM THE FIRST TIME OFFENDERS, OR THE ONES WHO JUST MADE A BAD JUDGEMENT DECISION, THE LOSSES FROM WHAT I HAVE SEEN AND FROM THOSE I HAVE ARRESTED ARE TAKING PLACE BY THE REPEAT OFFENDERS. THOSE ARE THE ONES WHO HAVE BEEN PLAYING THE ODDS OR HAVE BEEN THROUGH THE SYSTEM AND SEEN THAT THEY CAN HAVE THE SYSTEM WORK IN THIER FAVOR. SO OFTEN I HAVE HEARD SOMEONE I HAVE ARRESTED STATE "THIS WILL JUST GET DISSESSED, JUST LIKE . . . LAST TIME" OR "I AM JUST DOING IT FOR THE MONEY, BECAUSE IT IS SO GOOD." I FEEL THAT ACTION NEEDS TO BE DIRECTED TO THESE REPEAT OFFENDERS, I ALSO BELIEVE THAT BY MAKING THE THIRD TIME OFFENSE A CLASS C FELONY THIS WOULD AFFECT AND IN FACT DETTER THIER ACTIVITY. SOMEONE WHO IS ARRESTED FOR THIER THIRD OFFENSE WOULD BE IN FACT ON THIER SIXTYWITH SHOPLIFT ATTEMPT (FIGURES

# Lamonts

THE FAMILY CLOTHING STORE

---

SHOW THAT YOU WILL ARREST SOMEONE ONLY ONE IN TWENTY SHOPLIFT ATTEMPTS). THAT I THINK WOULD CONSITUTE A PROBLEM SHOPLIFTER, AND MAYBE BY SEEING SOME TYPE OF REAL DETERNT IN FRONT OF THEM SUCH AS YOUR INTENT ON MAKING THE THIRD TIME OFFENSE A CLASS C FELONY, WE AS MERCHANTS MIGHT SEE OUR SHRINKAGE FIGURES SHRINK.

SINCERELY

A handwritten signature in cursive script that reads "Frederick C. Becker". The signature is written in dark ink and is positioned above the typed name.

FREDERICK C. BECKER V  
LOSS PREVENTION MANAGFR  
LAMONTS CLOTHING APPAREL



**PAY 'n SAVE STORES INC.**

A Subsidiary of PAY 'n SAVE INC.

Alaska Regional Offices: Woodland Business Park

3710 Woodland Drive • Suite 2100

ANCHORAGE, ALASKA 99517-2564

Phone (907) 243-4498

October 23, 1987

Anchorage Police Department  
Officer LT. Johnson  
4501 S. Bragaw  
Anchorage, Alaska 99507

Dear Officer Johnson,

Pay'n Save Stores Incorporated, like any other retailer has felt the adverse impact on profitability that shoplifting has. By nature of our volume and numerous locations throughout the state, we probably have felt it worse than most.

Especially damaging are those adults who are repeat shoplifters. The adult men and women who have been repeatedly caught are the same adults who are repeatedly successful at causing losses. Although the actual percentage of adult repeat offenders is low, this single group is, in my opinion, the most damaging. This group does not seem to be attracted toward small dollar items, rather these folks seem to be attracted toward TV's, VCR's and shopping bags full of compact disc recordings. Additionally, there appears to be a tendency for repeat offenders to be more violent. Although I can not site an exact figure which Pay'n Save loses due to undetected shoplifters, however, based upon my experiences I would estimate a figure in excess of \$200,000.00 annually.

Pay'n Save gives full support to your effects to amend the criminal code to make it a felony offence for shoplifting based upon repeat convictions.

Should you need additional information, have questions or require additional support, please feel free to contact me.

Best wishes for your success.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Hughes", is written over a horizontal line.

Bill Hughes  
Loss Prevention Manager  
Pay'n Save/Alaska

# CARRS

## QUALITY CENTERS

1341 Fairbanks Street

Anchorage, Alaska 99501

(907) 277-6639

November 25, 1987

Officer L. T. Johnson  
Misdemeanor Follow-Up  
Anchorage Police Department  
4501 South Bragaw  
Anchorage, Alaska 99507

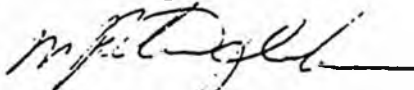
Dear Sir:

It is my understanding that a proposal has been made to draft legislation making third-time shoplift offenses a felony. We at Carrs wholeheartedly support such a proposal.

We have arrested over 1,000 shoplifters so far this year. Literally dozens of these people are repeat offenders back on the street after receiving relatively minor sentences. It is our belief that third time and greater offenders should receive stiffer sentences.

Our estimated shoplifting losses are in the neighborhood of a million dollars a year. Repeat offenders comprise a disproportionate share of that dollar loss. Consumers should not be made to bear the burden. Let's send the message that shoplifting is a serious property crime offense and repeaters will face serious sanctions.

Sincerely,



M. Peter Johnson, Jr.  
Director of Loss Prevention

MPJ/tb

TO: REP. JOHN SUND  
 FROM: PETE TOMLINSON - CARDS QUALITY CENTER'S  
 DATE: MARCH 1, 1988  
 SUBJ: SHOPLIFT DOLLAR LOSS

ESTIMATED \$1,000,000 ANNUAL LOSS

① STORE DETECTIVES SPENT 5165 HOURS ON DUTY IN CARDS STORES IN 1987. 75% OF THAT TIME OR 3874 HOURS (APPROX) WERE SPENT ON THE FLOOR.

WE HAVE 13 CARDS STORES OPEN 24 HRS PER DAY 364 DAYS A YEAR. THIS EQUALS 113,568 STORE HOURS/YR.

ASSUMING OUR SUCCESS RATE IS AVERAGE FOR ALL STORE HOURS AND STORE DETECTIVES APPREHEND 50% OFF ALL SHOPLIFTERS WHILE WORKING ON THE FLOOR THEN,

3874 HOURS = 3.4% OF STORE OPEN HOURS

3.4% = 1/29

29 x 2 (50% SUCCESS RATE) x 10,576.50 (1987 LOSS) = \$961,437

② ESTIMATED MINIMUM OF 15 SHOPLIFTERS PER DAY PER STORE.

AVERAGE ARREST = \$15.42

15 x \$15.42 x 13 STORES x 364 DAYS = \$1,094,511

③ THIS METHOD GIVES REAL CREDENCE TO 1 AND 2 ABOVE. I AM SOMEWHAT LIMITED IN DIVULGING INFORMATION WITHOUT AUTHORIZATION FROM A CORPORATE OFFICER HOWEVER, IN THAT PROPRIETARY INFORMATION INVOLVING GROSS SALES AND SHRINK PERCENTAGE ARE COMPONENTS OF THE CALCULATION.

SUFFICE IT TO SAY THAT SUPERMARKETS OPERATE ON A 1 TO 3% PROFIT MARGIN. SHRINK PERCENTAGES OF 1 TO 2% ARE COMMONPLACE.

WE AT CARRS KNOW WHAT OUR SHRINK PERCENTAGE AMOUNTS TO IN DOLLAR LOSS. SHRINK IS ATTRIBUTED TO INTERNAL THEFT, EXTERNAL THEFT (SHOPLIFT) AND PAPERWORK AND INVENTORY ERRORS. COMMONLY ATTRIBUTED PERCENTAGES ARE:

- 50% - PAPERWORK / INV. ERRORS
- 25% - INTERNAL THEFT
- 25% - EXTERNAL THEFT

USING THOSE PERCENTAGES, CARRS LOSSES DUE TO SHOPLIFT ARE IN EXCESS OF ONE MILLION DOLLARS.

Original sponsor: Cotten

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 461 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act increasing the penalties for repeat con-  
7 victions for the crimes of theft and concealment of  
8 merchandise."

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

10 \* Section 1. AS 11.46.120(a) is amended to read:

11 (a) A person commits the crime of theft in the first degree if  
12 the person commits theft as defined in AS 11.46.100 and

13 (1) the value of the property or services is \$25,000 or  
14 more; or

15 (2) the value of the property or services is \$500 or more  
16 but less than \$25,000 and within the preceding five years the person  
17 has been convicted and sentenced on two or more separate occasions in  
18 this or another jurisdiction of a crime set out in (1) of this sub-  
19 section or AS 11.46.130(a)(1) - (3) or an offense under another law or  
20 ordinance with similar elements.

21 \* Sec. 2. AS 11.46.130(a) is amended to read:

22 (a) A person commits the crime of theft in the second degree if  
23 the person commits theft as defined in AS 11.46.100 and

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

26 (2) the property is a firearm or explosive; [OR]

27 (3) the property is taken from the person of another; or

28 (4) the value of the property is \$50 or more but less than  
29 \$500 and within the preceding five years the person has been convicted

1 and sentenced on two or more separate occasions in this or another  
2 jurisdiction of a crime set out in (1) - (3) of this subsection or  
3 AS 11.46.140(a)(1) or (2) or an offense under another law or ordinance  
4 with similar elements.

5 \* Sec. 3. AS 11.46.140(a) is amended to read:

6 (a) A person commits the crime of theft in the third degree if  
7 the person commits theft as defined in AS 11.46.100 and

8 (1) the value of the property or services is \$50 or more  
9 but less than \$500; [OR]

10 (2) the property is a credit card; or

11 (3) the value of the property is less than \$50 and within  
12 the past five years the person has been convicted and sentenced on two  
13 or more separate occasions in this or another jurisdiction of theft or  
14 an offense under another law or ordinance with similar elements.

15 \* Sec. 4. AS 11.46.220(c) is amended to read:

16 (c) Concealment of merchandise is

17 (1) a class C felony if

18 (A) the merchandise is a firearm;

19 (B) [OR] the value of the merchandise is \$500 or more;

20 or

21 (C) the value of the merchandise is \$50 or more but  
22 less than \$500 and within the preceding five years the person has  
23 been convicted and sentenced on two or more separate occasions in  
24 this or another jurisdiction of the offense of concealment of  
25 merchandise that has a value of \$50 or more or an offense under  
26 another law or ordinance with similar elements;

27 (2) a class A misdemeanor if

28 (A) the value of the merchandise is \$50 or more but  
29 less than \$500; or

1                   (B) the value of the merchandise is less than \$50 and  
2                   within the preceding five years the person has been convicted and  
3                   sentenced on two or more separate occasions of the offense of  
4                   concealment of merchandise in any degree or an offense under  
5                   another law or ordinance with similar elements;

6                   (3) a class B misdemeanor if the value of the merchandise  
7                   is less than \$50.

8                   \* Sec. 5. AS 11.46 is amended by adding a new section to article 1 to  
9                   read:

10                   Sec. 11.46.295. PRIOR CONVICTIONS. For purposes of considering  
11                   prior convictions in prosecuting a crime of theft under AS 11.46.-  
12                   120(a)(2), 11.46.130(a)(4), or 11.46.140(a)(3), or in prosecuting the  
13                   crime of concealment of merchandise under AS 11.46.22C(c), a convic-  
14                   tion for an offense under another law or ordinance with similar ele-  
15                   ments is a conviction of an offense having elements similar to those  
16                   of an offense defined as such under Alaska law at the time the offense  
17                   was committed.

1 IN THE HOUSE

BY COTTEN

2

HOUSE BILL NO. 461

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act increasing the penalties for repeat con-  
7 victions for the crimes of theft and concealment of  
8 merchandise."

9

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

10

\* Section 1. AS 11.46.120(a) is amended to read:

11

(a) A person commits the crime of theft in the first degree if  
12 the person commits theft as defined in AS 11.46.100 and

13

(1) the value of the property or services is \$25,000 or  
14 more; or

15

(2) within the preceding five years.

16

(A) the person has been convicted three or more times  
17 in this or another jurisdiction of a crime set out in AS 11.46.-  
18 120 - 11.46.210 or an offense under another law or ordinance with  
19 substantially similar elements; and

20

(B) at least one of the convictions under (A) of this  
21 paragraph was for theft as defined in (1) of this subsection, or  
22 for theft as defined in AS 11.46.130(a)(1) - (3), or an offense  
23 under another law or ordinance with substantially similar ele-  
24 ments.

25

\* Sec. 2. AS 11.46.130(a) is amended to read:

26

(a) A person commits the crime of theft in the second degree if  
27 the person commits theft as defined in AS 11.46.100 and

28

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

- 1 (2) the property is a firearm or explosive; [OR]  
2 (3) the property is taken from the person of another; or  
3 (4) within the preceding five years,

4 (A) the person has been convicted three or more times  
5 in this or another jurisdiction of a crime set out in AS 11.46.-  
6 120 - 11.46.210 or an offense under another law or ordinance with  
7 substantially similar elements; and

8 (B) none of the convictions under (A) of this para-  
9 graph was for theft as defined in AS 11.46.120(a)(1), or for  
10 theft as defined in (1) - (3) of this subsection, or an offense  
11 under another law or ordinance with substantially similar ele-  
12 ments.

13 \* Sec. 3. AS 11.46.220(c) is amended to read:

14 (c) Concealment of merchandise is

15 (1) a class C felony if

16 (A) the merchandise is a firearm;

17 (B) [OR] the value of the merchandise is \$500 or more;

18 or

19 -(C) within the preceding five years, the person has  
20 been convicted three or more times in this or another jurisdic-  
21 tion of the offense of concealment of merchandise or an offense  
22 under another law or ordinance with substantially similar ele-  
23 ments;

24 (2) a class A misdemeanor if the value of the merchandise  
25 is \$50 or more but less than \$500;

26 (3) a class B misdemeanor if the value of the merchandise  
27 is less than \$50.