

HB

102

22-LS0347J
Luckhaupt
2/20/01

CS FOR HOUSE BILL NO. 102(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE KOTT

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the theft of propelled vehicles."**

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

3 *** Section 1.** AS 11.46.360(a) is amended to read:

4 (a) A person commits the crime of vehicle theft in the first degree if, having
5 no right to do so or any reasonable ground to believe the person has such a right, the
6 person drives, tows away, or takes

7 (1) the car, truck, motorcycle, motor home, bus, aircraft, or watercraft
8 of another;

9 (2) the propelled vehicle of another and

10 (A) the vehicle or any other property of another is damaged in
11 a total amount of \$500 or more; ^{\$1000}

12 (B) [, OR] the owner incurs ^{reasonable} expenses as a result of
13 the loss of use of the vehicle, in a total amount of \$500 or more; or ^{\$1000}

14 (C) the owner is deprived of the use of the vehicle for seven
15 days or more;

1 (3) the propelled vehicle of another and the vehicle is marked as a
2 police or emergency vehicle; or

3 (4) the propelled vehicle of another and, within the preceding seven
4 years, the person was convicted under

5 (A) this section or AS 11.46.365;

6 (B) former AS 11.46.482(a)(4) or (5);

7 (C) former AS 11.46.484(a)(2);

8 (D) AS 11.46.120 - 11.46.140 of an offense involving the theft
9 of a propelled vehicle; or

10 (E) a law or ordinance of this or another jurisdiction with
11 elements substantially similar to those of an offense described in (A) - (D) of
12 this paragraph.

13 * Sec. 2. AS 11.46.360(b)(2) is amended to read:

14 (2) "all-terrain vehicle" means a [THREE-WHEELED] propelled
15 vehicle that has three or more wheels or two or more tracks or treads, is less than
16 75 inches in width, has [AND HAVING] a dry weight of 800 pounds or less, is
17 equipped with low pressure tires or rubberized or metal tracks or treads, and is
18 designed primarily for travel over unimproved terrain;

19 * Sec. 3. AS 11.46.360(b)(4) is amended to read:

20 (4) "watercraft" means a propelled vehicle used or capable of being
21 used as a means of transportation, for recreational or commercial purposes, on water;
22 in this paragraph, "watercraft" does not include a shallow draft propelled
23 vehicle not more than 12 feet in length with an inboard motor powering a water
24 jet pump as its primary means of propulsion that is designed to carry not more
25 than two persons who sit, stand, or kneel on the vehicle.

Alaska State Legislature

House of Representatives

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EAGLE RIVER, AK 99577

SESSION:
ALASKA STATE CAPITOL
JUNEAU, AK 99801

Sponsor Statement

HB 102

This legislation focuses on the crime of vehicle theft and equal penalties associated with the taking of propelled vehicles without the owners' permission.

All terrain vehicles and snow machines are used in many parts of Alaska as the sole means of transportation for some Alaskans, and therefore, are more than merely recreational vehicles for those owners. Equal protection under the law demands that the theft of such vehicles be accorded the same treatment as provided for the principle transportation vehicles of other Alaskans.

HB 102 provides a new element in the commission of taking the propelled vehicle of another when the owner is deprived of the use of the vehicle for a specific period of time and incurs expenses as a result of the loss of use of the vehicle. It amends the definition for "all terrain vehicles", as well as, the definition for "watercraft".

I urge your support.

Representative Pete Kott

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LEGAL SERVICES

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MEMORANDUM

February 5, 2001

SUBJECT: Sectional Summary of HB 102

TO: Representative Pete Kott
Attn: Roger

FROM: Gerald P. Luckhaupt 
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill amends AS 11.46.360(a) by adding a new element for the commission of this crime. Currently a person commits auto theft in the first degree if a person takes

- the car, truck, motorcycle, motor home, bus, aircraft, or watercraft of another;
- a police or emergency vehicle;
- the propelled vehicle of another when the offender has a previous conviction for theft of an auto or joyriding; or
- the propelled vehicle of another and the vehicle or other property is damaged in the amount of \$500 or more or the owner of the vehicle incurs expenses as a result of loss of use of the vehicle in the amount of \$500 or more.

This section adds that a person commits by taking the propelled vehicle of another and the owner is deprived of the use of the vehicle for seven days.

Sections 2 of the bill amends the definition of "all-terrain vehicle" for the purpose of this section. Even though "all-terrain vehicle" is not explicitly found in this section the term is a part of this section through the definition of "propelled vehicle" found in AS 11.81.900(b)(49).

Section 3 of the bill amends the definition of "watercraft" to exclude "personal water craft" such as jet skis, ski-doods, and the like from that definition. This will place these propelled vehicles on the same footing as snow machines and all-terrain vehicles with regard to the vehicle theft laws. In that the theft of a personal water craft, snow machine, or all-terrain vehicle is only a felony if there is \$500 damage to the vehicle or other property, the vehicle is a police or emergency vehicle, the owner incurs \$500 or more in expenses for loss of use, or the owner is deprived of the use of the vehicle for seven days or more.

GPL:glc
01-098.glc

distinguished. — "Vehicle theft" as defined in subsection (a) of this section is not the same thing as "theft" of a motor vehicle as defined in AS 11.46.100. The former is the crime of taking a vehicle without permission, but not necessarily with an intent to permanently deprive the owner or permanently appropriate the vehicle for oneself, while theft, on the other hand, requires proof of one or both of these culpable mental states - the intent to "appropriate" as defined in AS 11.46.990(2), or an intent to "deprive" as defined in AS 11.46.990(8). *Allridge v. State*, 969 P.2d 644 (Alaska Ct. App. 1998).

Knowledge of value of damage not necessary. — A person who intentionally damages the property of another is strictly liable for the value of the property damaged and is not required to know that the damage exceeds \$500 in value in order to be liable under this section. (Decided under former provisions of AS 11.46.482).

Cost of repair. — Because damage can be determined by cost of repair and, in turn, cost of repair can be established without determining the value of the damaged property, AS 11.46.980(a), requiring use of market value, does not apply when the prosecution relies on evidence of cost of repair to prove the amount of damage in a criminal mischief case. *Willett v. State*, 826 P.2d 1142 (Alaska Ct. App. 1992) (Decided under former provisions of AS 11.46.482).

For case construing former AS 11.20.525, making stealing, removing or damaging parts of an aircraft a crime, see *Catlett v. State*, 585 P.2d 553 (Alaska 1978) (Decided under former provisions of AS 11.46.482).

Lesser included offense of robbery. — Under the cognate approach, joyriding was a lesser included offense of robbery, since an element of robbery is the

Sec. 11.46.365. Vehicle theft in the second degree. (a) A person commits the crime of vehicle theft in the second degree if, having no right to do so or a reasonable ground to believe the person has such a right,

(1) the person drives, tows away, or takes the propelled vehicle of another, other than a vehicle described in AS 11.46.360(a)(1); or

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

(b) Vehicle theft in the second degree is a class A misdemeanor. (§ 1 ch 71 SLA 1996)

NOTES TO DECISIONS

Quoted in *Eppenger v. State*, 966 P.2d 995 (Alaska Ct. App. 1998).

Article 4. Arson, Criminal Mischief, and Related Offenses.

- Section 400. Arson in the first degree
- 410. Arson in the second degree
- 430. Criminally negligent burning
- 450. Failure to control or report a dangerous fire
- 460. Disregard of a highway obstruction
- 462. Unlawful possession of official traffic control device

unauthorized taking or attempted taking of property; and joyriding is the unauthorized taking of a vehicle. *Minano v. State*, 690 P.2d 28 (Alaska Ct. App. 1984), rev'd on other grounds, 710 P.2d 1013 (Alaska 1985) (Decided under former provisions of AS 11.46.484(a)(2)).

Felony after previous conviction of joyriding. — To convict a defendant of a felony under this section the state must prove as an element of the offense that the defendant has a previous conviction for joy riding. *Harlow v. State*, 820 P.2d 307 (Alaska Ct. App. 1991) (Decided under former provisions of AS 11.46.484(a)(2)).

Joyrider characterized as worst offender. — The district court judge was not clearly mistaken in characterizing a defendant as a worst offender, and in imposing the maximum sentence of one year for third-degree criminal mischief (joyriding). Despite the limited period of time in which defendant committed the offenses, the defendant's record, coupled with the especially serious nature of the particular joyriding offense, i.e., that it was committed in order to perpetrate a felony, justified the sentence imposed. *Plant v. State*, 724 P.2d 536 (Alaska Ct. App. 1986) (Decided under former provisions of AS 11.46.484(a)(2)).

Defense of necessity in prosecution for reckless destruction of personal property and joyriding. — See *Nelson v. State*, 597 P.2d 977 (Alaska 1979) (Decided under former provisions of AS 11.46.484(a)(2)).

Applied in *Blackmon v. State*, 653 P.2d 669 (Alaska Ct. App. 1982).

Quoted in *Frankson v. State*, 645 P.2d 225 (Alaska Ct. App. 1982).

Stated in *Shoemaker v. State*, 716 P.2d 391 (Alaska Ct. App. 1986).

- Section 480. Criminal mischief in the first degree
- 482. Criminal mischief in the second degree
- 484. Criminal mischief in the third degree
- 486. Criminal mischief in the fourth degree
- 487. Forfeiture of property upon conviction
- 490. Definitions

Collateral references. — Related Offenses, § 1 et seq. Criminal Mischief, § 1 et seq.

6A C.J.S., Arson, § 1 et seq. Criminal Mischief, § 1 et seq.

Sufficiency of evidence on action for spread of fire punished, 24 ALR2d 241.

Vacancy or nonoccupancy character as "dwelling" as 1456.

Sec. 11.46.400. Arson in the first degree if the defendant causes an explosion or physical injury. For purposes of fire and police services, regardless of rank.
(b) Arson in the first degree 1983)

Legislative history report of intent relating to ch. 39, § 1, Journal, pp. 106 and 171; for

For cases construing former statute, see *Salinas v. United States*, 9th Cir. 1960; *Rank v. State*, 456 P.2d 466 (Alaska 1969); *W. 1384* (Alaska 1980); *Mossb* (Alaska Ct. App. 1987).

Double jeopardy. — The attempted murder, possession of a firearm, and multiple offenses do not violate double jeopardy. *State*, 797 P.2d 677 (Alaska Ct. App. 1990).

Where defendant committed offenses placed other persons in danger of injury, double jeopardy did not apply for both arson in the first

Sec. 11.46.410. Arson in the second degree if the defendant causes an explosion or physical injury.
(b) In a prosecution for

(1) that no person has a financial interest in the building destroyed by the defendant's conduct; or

(2) that the sole purpose of the defendant's act was for a lawful purpose.

(c) Arson in the second degree

Article 3. Vehicle Theft.

Section

360. Vehicle theft in the first degree
365. Vehicle theft in the second degree

Effective dates. — Section 13, ch. 71, SLA 1996, makes this article effective June 20, 1996, in accordance with AS 01.10.070(c).

Sec. 11.46.360. Vehicle theft in the first degree. (a) A person commits the crime of vehicle theft in the first degree if, having no right to do so or any reasonable ground to believe the person has such a right, the person drives, tows away, or takes

- (1) the car, truck, motorcycle, motor home, bus, aircraft, or watercraft of another;
- (2) the propelled vehicle of another and the vehicle or any other property of another is damaged, or the owner incurs reasonable expenses as a result of the loss of use of the vehicle, in a total amount of \$500 or more;
- (3) the propelled vehicle of another and the vehicle is marked as a police or emergency vehicle; or
- (4) the propelled vehicle of another and, within the preceding seven years, the person was convicted under
 - (A) this section or AS 11.46.365;
 - (B) former AS 11.46.482(a)(4) or (5);
 - (C) former AS 11.46.484(a)(2);
 - (D) AS 11.46.120 — 11.46.140 of an offense involving the theft of a propelled vehicle;

or

(E) a law or ordinance of this or another jurisdiction with elements substantially similar to those of an offense described in (A) — (D) of this paragraph.

(b) In this section,

- (1) "aircraft" has the meaning given in AS 02.15.260;
- (2) "all-terrain vehicle" means a three-wheeled propelled vehicle less than 75 inches in width and having a dry weight of 800 pounds or less, equipped with low pressure tires, and designed primarily for travel over unimproved terrain;
- (3) "motorcycle" means a vehicle having a seat or saddle for the use of the rider, designed to travel on not more than three wheels in contact with the ground, and having an engine with more than 50 cubic centimeters of displacement; "motorcycle" does not include a tractor or an "all-terrain vehicle";
- (4) "watercraft" means a propelled vehicle used or capable of being used as a means of transportation, for recreational or commercial purposes, on water.

(c) Vehicle theft in the first degree is a class C felony. (§ 1 ch 71 SLA 1996)

Editor's notes. — Section 12, ch. 71, SLA 1996 provides that (a)(1) of this section "applies to an act committed on or after June 20, 1996."

NOTES TO DECISIONS

Annotator's notes. — The cases below were decided under former provisions of AS 11.46.482, AS 11.46.484, and AS 11.46.486.

For case construing former AS 11.20.520, making malicious destruction of property a crime, see Hensel v. State, 604 P.2d 222 (Alaska 1979) (Decided under former provisions of AS 11.46.482).

Oral permission of vehicle owner. — A defen-

dant cannot be convicted of vehicle theft in the first degree if he obtains the vehicle with oral permission of the owner; although the wording of the statute would seem to support such a conviction, the legislative history of the statute indicates that the legislature did not intend this result. Eppenger v. State, 966 P.2d 995 (Alaska Ct. App. 1998).

"Vehicle theft" and "theft" of motor vehicle

when the premises or to the public and when

the public after being

violation of a provision used under former AS

commit a crime on the land, which is neither users, is privileged to

person by the owner of

conspicuous manner

authority the property and to grant permission

property that is known

a cardinal point of the

against, such as "no prohibitions. (§ 4 ch 166 § 4 ch 64 SLA 1996)

effective July 1, 1996, in "or filed" and "or issued" section references.

prohibited activities on the of, make the person's continual remaining." Turney v. Ct. App. 1996).

osed to public. — Under must be closed to the public try or remaining to occur. 890 (Alaska Ct. App. 1985). oes not include entry into ng which is otherwise open te, 699 P.2d 890 (Alaska Ct.

een public and private al trespass statute does not ic and private property; the r the "person in charge" has erson from entering or re- hus making it "unlawful" for ey v. State, 936 P.2d 533

te, 724 P.2d 536 (Alaska Ct. ate, 780 P.2d 1044 (Alaska

(27) "government" means the United States, any state or any municipality or other political subdivision within the United States or its territories; any department, agency, or subdivision of any of the foregoing; an agency carrying out the functions of government; or any corporation or agency formed under interstate compact or international treaty;

(28) "highway" means a public road, road right-of-way, street, alley, bridge, walk, trail, tunnel, path, or similar or related facility, as well as ferries and similar or related facilities;

(29) "identification document" means a paper, instrument, or other article used to establish the identity of a person; "identification document" includes a social security card, driver's license, non-driver's identification, birth certificate, passport, employee identification, or hunting or fishing license;

(30) "includes" means "includes but is not limited to";

(31) "incompetent person" means a person who is impaired by reason of mental illness or mental deficiency to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning that person;

(32) "intoxicated" means intoxicated from the use of a drug or alcohol;

(33) "law" includes statutes and regulations;

(34) "leased" includes "rented";

(35) "metal knuckles" means a device that consists of finger rings or guards made of a hard substance and designed, made, or adapted for inflicting serious physical injury or death by striking a person;

(36) "misdemeanor" means a crime for which a sentence of imprisonment for a term of more than one year may not be imposed;

(37) "nondeadly force" means force other than deadly force;

(38) "offense" means conduct for which a sentence of imprisonment or fine is authorized; an offense is either a crime or a violation;

(39) "official detention" means custody, arrest, surrender in lieu of arrest, or actual or constructive restraint under an order of a court in a criminal or juvenile proceeding, other than an order of conditional bail release;

(40) "official proceeding" means a proceeding heard before a legislative, judicial, administrative, or other governmental body or official authorized to hear evidence under oath;

(41) "omission" means a failure to perform an act for which a duty of performance is imposed by law;

(42) "organization" means a legal entity, including a corporation, company, association, firm, partnership, joint stock company, foundation, institution, government, society, union, club, church, or any other group of persons organized for any purpose;

(43) "peace officer" means a public servant vested by law with a duty to maintain public order or to make arrests, whether the duty extends to all offenses or is limited to a specific class of offenses or offenders;

(44) "person" means a natural person and, when appropriate, an organization, government, or governmental instrumentality;

(45) "physical injury" means a physical pain or an impairment of physical condition;

(46) "police dog" means a dog used in police work under the control of a peace officer;

(47) "possess" means having physical possession or the exercise of dominion or control over property;

(48) "premises" means real property and any building;

(49) "propelled vehicle" means a device upon which or by which a person or property is or may be transported, and which is self-propelled, including automobiles, vessels, airplanes, motorcycles, snow machines, all-terrain vehicles, sailboats, and construction equipment;

(50) "property" means an article, substance, or thing of value, including money, tangible and intangible personal property including data or information stored in a

ALASKA STATE LEGISLATURE

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Heather M. Nobrega
Counsel to Committee

MEMORANDUM

To: All Judiciary Committee Members

From: Heather Nobrega, Aide *JN*
House Judiciary Committee

Date: February 19, 2001

Re: Fiscal notes

The following fiscal notes have been requested, but have not yet been received:

HB 102: Theft of Propelled Vehicles
Department of Law
Department of Public Safety
Department of Administration-DMV & Public Defender's

HB 97: Purchase of Structured Settlements
Department of Law

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 102
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
 Title: An Act relating to the theft of propelled vehicles. BRU: 271
 Component: All
 Sponsor: Representative Kott
 Requester: House Judiciary Committee Component Number: 694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	***	***	***	**	***	***

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	***	***	***	***	***	***

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill adds a provision making it a C felony (vehicle theft in the 1st degree) if the owner is deprived of the use of the vehicle for seven days or more. It also adds snow machines and four wheelers to the Vehicle Theft 1 statute. It is unclear how many new felony offenders will result from this legislation. The Department of Corrections does think that this will have an impact, but we are submitting an indeterminate fiscal note because we don't know the figures.

Prepared by: Candace Browe Phone 456-4652
 Division: Commissioner's Office Date/Time 02/16/01 5:30 p.m.
 Approved by: Margaret Pugh, Commissioner Date 02/16/01 5:30 p.m.
 Agency: Dept. of Corrections

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

BILL NO. HB 102

Revision Date/Time (Note if correction) _____ Dept. Affected _____
 Title Theft of Propelled Vehicles BRU Alaska Court System
 Component Trial Courts
 Sponsor Rep. Pete Kott
 Requester Rep. Pete Kott Component No. 768

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of HB 102.

Prepared by: Douglas Wooliver *Douglas Wooliver* Phone 463-4750
 Division Alaska Court System Date/Time 2/06/01 2:30 p.m.
 Approved by: Stephanie Cole *Stephanie Cole* Date 2/6/01
 Agency Alaska Court System

For distribution information, call the Governor's Legislative Office