

HB

187

ALASKA STATE LEGISLATURE
House of Representatives

Committee Assignments:

Judiciary Committee, Chairman
Labor & Commerce Committee, Member
Legislative Council, Member
Special Committees:
Economic Development, Member



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REPRESENTATIVE NORMAN ROKEBERG

e-mail: Representative_Norman_Rokeberg@legis.state.ak.us

FAX COVER SHEET

DATE: 4.9.01

TO: Legal Services

FAX: 2029 VOICE: _____

RE: 22 - LSD2Ed61C

MESSAGE: Please create a House Judiciary CS (final)

for HB 187 w/ the following amendment

Page 2, Line 18

after "law"

insert " or state permit"

Heather x4990

TOTAL NUMBER OF PAGES SENT, INCLUDING COVER SHEET: 1

Alaska State Legislature

Representative Jim Whitaker
House of Representatives
District 31



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SPONSOR STATEMENT **House Bill 187**

House Bill 187 is an act relating to the destruction, desecration, and vandalism of cemeteries and graves.

From Southeast Alaska to the Arctic Coast, Alaskans from many different regions have ways of celebrating the lives of loved ones lost. Currently under statute, there are few protections of cemeteries and memorials of past and present generations.

Implementing HB 187 will make the knowing vandalism or theft of items from a cemetery, tomb, or memorial, a Class C Felony punishable by up to five years and Fifty Thousand Dollars.

Summary: HB 187

Vandalism of Cemeteries and Graves

Under current Alaska Statutes, there are no provisions relating specifically to the vandalism or desecration of modern cemeteries and memorials. One legal opinion is that they are protected under the "Historic Preservation Act", however, persons charged with the maintenance and care of cemeteries are unconvinced that AS 41.35.200 provides for the penalties necessary to protect the safety and dignity of Alaska's cemeteries and memorials from theft, vandalism, or other forms of desecration.

Acts of vandalism are currently punishable under statutes that relate to criminal mischief, however the degree of crime centers around monetary value of the damage and do not recognize the personal insult and emotional injury to a family, community or tribe that is suffered when cemeteries, burial sites or memorials are vandalized.

House Bill 187 clearly states that it is a crime of criminal mischief in the second degree if a person "defaces, damages, or desecrates a cemetery or the contents of a cemetery or a tomb, grave, or memorial regardless of whether the tomb, grave, or memorial is in a cemetery or.....appears to be abandoned, lost or neglected.

The bill also inserts language into statute making it a crime of criminal mischief in the second degree if a person, "removes human remains or associated burial artifacts from a cemetery, tomb, grave or memorial".

Recognizing that there may be circumstances where memorials, tombs or gravesites must be altered, moved or removed, HB 187 places into statute an affirmative defense if the defendant is an employee of the cemetery acting on behalf of the cemetery or; is otherwise authorized by law to engage in the conduct.

Finally, HB 187 defines "contents of a cemetery", "memorial", and "tomb".

Currently, a violation of AS 41.35.200 is a "class A misdemeanor", and if convicted, the person faces a penalty of up to \$5,000.00 fine and one year in prison. With the passage of HB 187, these crimes may be prosecuted as a "class C felony" punishable by a fine of \$50,000.00 and up to 5 years in prison.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 187
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
Title "An Act relating to the destruction, desecration, BRU Criminal Division
and vandalism of cemeteries and graves." Component 1st-4th Judicial Districts
Sponsor Representative Whitaker
Requester House Judiciary Committee Component No. 2198-99;2201;61;79

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 ()						
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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	0.0	0.0	0.0	0.0	0.0	0.0

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)

HB 187 raises to a class C felony the crimes of defacing, damaging, or desecrating a cemetery or its contents, a tomb, grave, or memorial, or for removing human remains or associated burial artifacts, whether or not the cemetery, tomb, grave, or memorial appears to be abandoned, lost, or neglected. Under current law, these actions are a class A misdemeanor.

The Department of Law does not anticipate a fiscal impact from passage of this legislation. While the prosecution of felonies is much more time and resource intensive than the prosecution of misdemeanors, this crime is relatively uncommon and the department believes it can handle the volume of new felony prosecutions this bill might generate with existing staff.

Prepared by: Joan M. Kasson Phone 465-5370
Division: Attorney General's Office Date/Time 4/6/01 4:36 PM
Approved by: Bob Meiners for Bruce M. Botelho, Attorney General Date 4/6/01
Agency: Department of Law

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 187
 () Publish Date: _____
 Dept. Affected: Administration
 BRU: Legal & Advocacy Svc.
 Component: Public Defender Agency
 Component Number: 1631

Revision Date/Time (Note if correction): _____
 Title: "An Act relating to vandalism of cemetaries
and graves..."
 Sponsor: Representative Whitaker
 Requester: (H) Judiciary

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 ()						
-------------------------------	--	--	--	--	--	--

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)*

See Page 2 for Analysis.

Prepared by: Barbara Brink, Director Phone (907) 334-4414
 Division: Public Defender Agency Date/Time April 6, 2001
 Approved by: Jim Duncan, Commissioner Date 4/6/01
 Agency: Department of Administration

For distribution information, call the Governor's Legislative Office

H3 187 Vandalism of Cemeteries and Graves – Fiscal Note Analysis

This bill would make it a felony-level offense to deface, damage, or desecrate a cemetery, tomb, grave, or memorial. The offense would apply even if the cemetery appears to be abandoned. Removing human remains or artifacts would also be illegal.

This bill would have some fiscal impact on the Public Defender Agency. Because this bill covers a broad range of activity and is a felony-level offense, the impact may be substantial. However, there is no way to know how many cases would be brought. Therefore, the Public Defender Agency's is submitting an indeterminate fiscal note.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

BILL NO. HB 187

Revision Date/Time (Note if correction) _____ Dept. Affected _____
 Title Vandalism of Cemeteries and Graves BRU Alaska Court System
 Component Trial Courts
 Sponsor Representative Whitakar
 Requester House Judiciary 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						
-----------------------------	--	--	--	--	--	--

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 187.

Prepared by: Douglas Wooliver Phone 463-4750
 Division Alaska Court System Date/Time 4/06/01 2:30 p.m.
 Approved by: Stephanie Cole Date _____
 Agency Alaska Court System

For distribution information, call the Governor's Legislative Office

Chapter 12.55. SENTENCING AND PROBATION

Sec. 12.55.035. Fines.

(a) Except as provided in AS 12.55.036 , upon conviction of an offense, a defendant **may be sentenced to pay a fine** as authorized in this section or as otherwise authorized by law.

(2) **\$50,000** for a class A, B, or C felony;

Sec. 12.55.125. Sentences of imprisonment for felonies

(e) A defendant convicted of a **class C felony** may be sentenced to a definite term of imprisonment of **not more than five years**, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a second felony conviction, two years;

(2) if the offense is a third felony conviction, three years.

Current Statutes

Sec. 41.35.200. Unlawful acts.

Alaska Historic Preservation Act

(a) A person may not appropriate, excavate, remove, injure, or destroy, without a permit from the commissioner, any historic, prehistoric, or archeological resources of the state.

(b) A person may not possess, sell, buy, or transport within the state, or offer to sell, buy, or transport within the state, historic, prehistoric, or archeological resources taken or acquired in violation of this section or 16 U.S.C. 433.

(c) A person may not unlawfully destroy, mutilate, deface, injure, remove, or excavate a gravesite or a tomb, monument, gravestone, or other structure or object at a gravesite, even though the gravesite appears to be abandoned, lost, or neglected.

(d) An historic, prehistoric or archeological resource that is taken in violation of this section shall be seized by any person designated in AS 41.35.220 wherever found and at any time. Objects seized may be disposed of as the commissioner determines by deposit in the proper public depository.

Sec. 41.35.210. Criminal penalties.

A person who is convicted of violating a provision of AS 41.35.010 - 41.35.240 is guilty of a class A misdemeanor.

Sec. 41.35.215. Civil penalties.

In addition to other penalties and remedies provided by law, a person who violates a provision of AS 41.35.010 - 41.35.240 is subject to a maximum civil penalty of \$100,000 for each violation.

Sec. 12.55.135. Sentences of imprisonment for misdemeanors.

(a) A defendant convicted of a class A misdemeanor may be sentenced to a definite term of imprisonment of not more than one year.

Sec. 12.55.035. Fines.

(a) Except as provided in AS 12.55.036, upon conviction of an offense, a defendant may be sentenced to pay a fine as authorized in this section or as otherwise authorized by law.

(b) Except as provided in AS 12.55.036, upon conviction of an offense, a defendant who is not an organization may be sentenced to pay, unless otherwise specified in the provision of law defining the offense, a fine of no more than

(1) \$75,000 for murder in the first or second degree, attempted murder in the first degree, sexual assault in the first degree, sexual abuse of a minor in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree;

(2) \$50,000 for a class A, B, or C felony;

(3) \$5,000 for a class A misdemeanor;

Chapter 41.35. HISTORIC PRESERVATION

Article 01. ALASKA HISTORIC PRESERVATION ACT

Sec. 41.35.010. Declaration of policy.

It is the policy of the state to preserve and protect the historic, prehistoric, and archeological resources of Alaska from loss, desecration, and destruction so that the scientific, historic, and cultural heritage embodied in these resources may pass undiminished to future generations. To this end, the legislature finds and declares that the historic, prehistoric, and archeological resources of the state are properly the subject of concerted and coordinated efforts exercised on behalf of the general welfare of the public in order that these resources may be located, preserved, studied, exhibited, and evaluated.

Sec. 41.35.020. Title to historic, prehistoric, and archeological resources; local display.

(a) The state reserves to itself title to all historic, prehistoric, and archeological resources situated on land owned or controlled by the state, including tideland and submerged land, and reserves to itself the exclusive right of field archeology on state-owned or controlled land. However, nothing in AS 41.35.010 - 41.35.240 diminishes the cultural rights and responsibilities of persons of aboriginal descent or infringes upon their right of possession and use of those resources that may be considered of historic, prehistoric, or archeological value.

(b) Although title to historic, prehistoric, and archeological resources is in the state, local cultural groups may obtain from the state, or retain, for study or display, artifacts and other items of these resources from their respective cultures or areas if the commission created in AS 41.35.300 finds that

(1) the group has a durable building with weatherproof and fireproof construction and humidity control and other factors necessary to serve as a museum which will assure safe preservation of the items, (2) the item sought to be obtained is not one for which there is an undue risk of damage during transportation, and (3) the item sought to be obtained or retained is not one requiring special treatment or care beyond the ability or means of the group requesting it. A group retaining such an item or obtaining one from the state shall house it in the museum building and shall make every reasonable effort to assure its safe preservation. If the commission finds that a local cultural group is not properly taking care of an item the group shall return it to the department.

Sec. 41.35.030. Designation of monuments and historic sites.

Upon the recommendation of the commission, the governor may declare by public order any particular historic, prehistoric, or archeological structure, deposit, site, or

Sec. 41.35.080. Permits.

The commissioner may issue a permit for the investigation, excavation, gathering, or removal from the natural state, of any historic, prehistoric, or archeological resources of the state. A permit may be issued only to persons or organizations qualified to make the investigations, excavations, gatherings or removals and only if the results of these authorized activities will be made available to the general public through institutions and museums interested in disseminating knowledge on the subjects involved. If the historic, prehistoric or archeological resource involved is one which is, or is located on a site which is, sacred, holy, or of religious significance to a cultural group, the consent of that cultural group must be obtained before a permit may be issued under this section.

Sec. 41.35.090. Notice required of private persons.

Before any construction, alteration, or improvement of any nature is undertaken on a privately owned, officially designated state monument or historic site by any person, the person shall give the department three months notice of intention to construct on, alter, or improve it. Before the expiration of the three-month notification period, the department shall either begin eminent domain proceedings under AS 41.35.060(b) or undertake or permit the recording and salvaging of any historic, prehistoric, or archeological information considered necessary.

Sec. 41.35.100. Excavation and removal of historic, prehistoric, or archeological remains on private land.

Before any historic, prehistoric, or archeological remains are excavated or removed from private land by the department, the written approval of the owner shall first be secured. When the value of the private land is diminished by the excavation or removal, the owner of the land shall be compensated for the loss at a monetary sum mutually agreed on by the department and the owner or at a monetary sum set by the court.

Sec. 41.35.230. Definitions.

In AS 41.35.010 - 41.35.240, unless the context otherwise requires,

(1) "commission" means the Alaska Historical Commission established in AS 41.35.300 ;

(2) "historic, prehistoric and archeological resources" includes deposits, structures, ruins, sites, buildings, graves, artifacts, fossils or other objects of antiquity which provide information pertaining to the historical or prehistorical culture of people in the state as well as to the natural history of the state.



CITY OF

FAIRBANKS

March 27, 2001

Representative Jim Whitaker
Alaska State Capital
Room 411
Juneau, AK 99801-1182

Re: House Bill 137

Dear Honorable Representative Whitaker:

I am writing you in support of your sponsorship of House Bill 187. Your proposed bill will be a deterrent and a protector for the City of Fairbanks' cemeteries, and for all cemeteries throughout Alaska.

As you are well aware, the City of Fairbanks is responsible for Clay Street Cemetery and for Birch Hill Cemetery. In the past, there have been numerous occasions where graves and monuments of the deceased, as well as, personal items belonging to families of the deceased have been vandalized, stolen, or desecrated. Clay Street Cemetery, a historical site where many "old timers" have been laid to rest, has unfortunately been vandalized repeatedly. For example, Mary Pedro, Felix Pedro's wife has had her headstone broken, painted, and removed many times by vandals. Birch Hill, the city's current and active cemetery has also experienced numerous vandal attacks. Deterring this destructive behavior has been difficult with the current laws. Also, our budgetary situation eliminates any possibility of placing a 24-hour guard at these locations.

As the "Cemetery Desecration Laws in Other States" report explains, there are currently Federal laws protecting certain sections of cemeteries, i.e., the Archaeological Resources Protection Act of 1979, the Native American Graves Protection and Repatriation Regulations Act of 1990, and the Veterans' Cemeteries Protection Act of 1997. However, your House Bill 187 will be a deterrent to all vandals, in all sections, of Alaskan cemeteries. Once enacted, your bill will change the law for those people obtaining perverse enjoyment by desecrating a cemetery, from a misdemeanor to committing a crime of criminal mischief in the second degree.

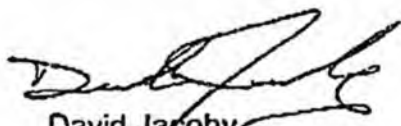
Representative Whitaker, since Alaska is a multi-cultural state, I trust you will share with your fellow representatives the importance of individuals expressing their cultural heritage through their various ways of grieving and burying their deceased. Additionally, I urge your colleagues, in the House of Representatives, to understand the monetary value associated with the loss of a family member is nil, when compared to the emotional loss a family suffers when a loved one passes and later discovers the grave site has been

desecrated. It is appalling that these misguided people who have desecrated burial sites are only charged with a misdemeanor. That is why I urge your colleagues to support House Bill 187 to change the law from a misdemeanor, to committing a crime of criminal mischief in the second degree for deplorable behavior relating to the destruction, desecration, and vandalism of cemeteries and graves.

Thank you for your continued support of the City of Fairbanks and the great State of Alaska.

Respectfully,

CITY OF FAIRBANKS



David Jacoby
Public Works Director
2121 Peger Road
Fairbanks, AK 99709
(907) 459-6896

**Municipality
of
Anchorage**



P.O. Box 196650
Anchorage, Alaska 99519-6650
Telephone: (907) 343-6814

George P. Wuerch, Mayor

MEMORIAL PARK CEMETERY
(535 East 9th Avenue)
<http://www.ci.anchorage.ak.us/cemetery>

April 2, 2001

Representative Jim Whitaker
State Capitol, Room 411
Juneau, AK 99801-1182

The Honorable Jim Whitaker,

Subject: Letter of Support, House Bill No. 187

The Municipality of Anchorage and more specifically the staff of the Anchorage Memorial Park Cemetery offer our support to House Bill Number 187, "An Act relating to the destruction, desecration, and vandalism of cemeteries and graves".

Many of the major acts of destruction, desecration, and vandalism that permeated our cemetery in the past have been mitigated by the 1992 installation of our fence. Still today, the families and friends of our loved ones occasionally suffer the indignity of stolen statues and pushed over headstones. Also, minor acts of vandalism and desecration of graves continue at an alarming rate. Since this is a public cemetery and access is uncontrolled during the day, these acts generally take the form of stealing decorations or moving decorations from one grave to another. Additionally, in the summer we are continually persuading the inebriates who traverse our cemetery not to drink alcoholic beverages or perform "personal" acts on and around the graves.

Purposeful cemetery damage in any form is a disgraceful, cowardly act. We support any action to increase the penalty for these despicable acts perpetrated against the loved ones of our community and hold those responsible at bay.

If I can be of any further assistance in this matter, please don't hesitate to call me at 907-343-6814.

Respectfully,

Donald B. Warden
Cemetery Director

cc: Tim Rogers, MOA Legislative Team

To: Rep. Jim Whitaker
Alaska State Capitol Room 411
Juneau, Alaska 99801

Re: HB 187

Dear Sir:

I am very interested in going on record in support of HB 187. "An act relating to the destruction, desecration, and vandalism of cemeteries and graves."

I am involved with the restoration, preservation, and protection of cemeteries and gravesites in Alaska. Since 1986 I have restored over 15 historical cemeteries and received the 1988 volunteer of year award from the State of Alaska for this service. I have also received recognition locally, statewide, nationally and internationally for my work in this area. Therefore I feel that I have many years of first hand experience in cemetery preservation and maintenance.

Sir, for many years, vandalism, desecration, and cemetery destruction has taken its toll on cemeteries and gravesites all across Alaska. On a daily basis cemeteries and gravesites are disappearing due to neglect and destruction. When a community neglects its historical gravesites and ignores their duty to preserve, protect, and honor their ancestors a grave concern occurs as some community members begin to feel that it is ok to vandalize and destroy our sacred cultural heritage sites.

Another grave concern is theft of grave artifacts associated with cemetery desecration and neglect. Currently there is a lucrative market of Alaska Native artifacts and headstones with Alaska Native symbols on them. As a caretaker of cemeteries and sacred sites often I have to tell family members that their ancestors were desecrated and/or destroyed from vandals. The families of the deceased are victims of this abuse and often times their pleas go unnoticed as there are few laws in Alaska that relates to the desecration, destruction, and vandalism of cemeteries and graves.

Rep. Whitaker, thank you for sponsoring HB 187 this bill will help to preserve, protect and honor our ancestors for many years to come. I fully support HB 187 on grave concerns.

Respectfully



Robert Sam
Cemetery Caretaker
Sitka Alaska

FW: cemetery legislation

Subject: FW: cemetery legislation

Date: Wed, 11 Apr 2001 11:59:33 -0800

From: "Ann Ringstad" <ann.ringstad@alaska.edu>

To: "Jim Whitaker" <representative_jim_whitaker@legis.state.ak.us>,
"Janet Seitz" <janet.seitz@legis.state.ak.us>

-----Original Message-----

From: Maribeth Murray [<mailto:ffmsm@uaf.edu>]

Sent: Monday, April 09, 2001 1:28 PM

To: Ann Ringstad

Subject: cemetery legislation

APR 11 2001

Dear Ms. Ringstad

I have reviewed the legislation regarding the changes to the cemetery portion. There is no need for concern here as these proposals are already covered by Federal NAGPRA legislation and the Historic Preservation Act.

Maribeth Murray
Assistant Professor, Anthropology, UAF

Sec. 11.46.482. Criminal mischief in the second degree.

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

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

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

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

(4) *[Repealed, § 11 ch 71 SLA 1996.]*

(5) *[Repealed, § 11 ch 71 SLA 1996.]*

(b) Criminal mischief in the second degree is a class C felony.

(§ 4 ch 166 SLA 1978; am § 13 ch 102 SLA 1980; am § 1 ch 2 SLA 1991; am § 11 ch 71 SLA 1996)

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

Effect of amendments. The 1991 amendment, effective July 3, 1991, added former paragraph (a)(5) and made related stylistic changes.

The 1996 amendment, effective June 20, 1996, in subsection (a), repealed paragraphs (4) and (5).

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

NOTES TO DECISIONS

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

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.

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).

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).

Conviction and sentence upheld. - See *Andrejko v. State*, 695 P.2d 246 (Alaska Ct. App. 1985).

Sentence upheld. - See *Austin v. State*, 627 P.2d 657 (Alaska Ct. App. 1981).

Applied in *Deal v. State*, 657 P.2d 404 (Alaska Ct. App. 1983).

Quoted in *Shewey v. State*, 739 P.2d 136 (Alaska Ct. App. 1987); *Young v. State*, 848 P.2d 267 (Alaska Ct. App. 1993).

Stated in *Wertz v. State*, 611 P.2d 8 (Alaska 1980).

Cited in *State v. Grogan*, 628 P.2d 570 (Alaska 1981); *Tritt v. State*, 625 P.2d 882 (Alaska Ct. App. 1981); *Deal v. State*, 659 P.2d 625 (Alaska Ct. App. 1983); *Crouse v. State*, 736 P.2d 783 (Alaska Ct. App. 1987); *Coleman v. State*, 846 P.2d 141 (Alaska Ct. App. 1993); *Stough v. State*, P.3d (Alaska Ct. App. 2000).

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

Sec. 12.55.035. Fines.

(a) Except as provided in AS 12.55.036, upon conviction of an offense, a defendant may be sentenced to pay a fine as authorized in this section or as otherwise authorized by law.

(b) Except as provided in AS 12.55.036, upon conviction of an offense, a defendant who is not an organization may be sentenced to pay, unless otherwise specified in the provision of law defining the offense, a fine of no more than

(1) \$75,000 for murder in the first or second degree, attempted murder in the first degree, sexual assault in the first degree, sexual abuse of a minor in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree;

(2) \$50,000 for a class A, B, or C felony;

(3) \$5,000 for a class A misdemeanor;

(4) \$1,000 for a class B misdemeanor;

(5) \$300 for a violation.

(c) Except as provided in AS 12.55.036, upon conviction of an offense, a defendant that is an organization may be sentenced to pay a fine not exceeding the greater of

(1) an amount that is

(A) \$500,000 for a felony offense or for a misdemeanor offense that results in death;

(B) \$200,000 for a class A misdemeanor offense that does not result in death;

(C) \$25,000 for a class B misdemeanor offense that does not result in death;

(D) \$10,000 for a violation;

(2) two times the pecuniary gain realized by the defendant as a result of the offense; or

(3) two times the pecuniary damage or loss caused by the defendant to another, or to the property of another, as a result of the offense.

(d) If a defendant is sentenced to pay a fine, the court may grant permission for the payment to be made within a specified period of time or in specified installments.

(e) In imposing a fine under (c) of this section, in addition to any other relevant factors, the court shall consider

(1) measures taken by the organization to discipline an officer, director, employee, or agent of the organization;

(2) measures taken by the organization to prevent a recurrence of the offense;

(3) the organization's obligation to make restitution to a victim of the offense, and the extent to which imposition of a fine will impair the ability of the organization to make restitution; and

(4) the extent to which the organization will pass on to consumers the expense of the fine.

(f) In imposing a fine, the court may not reduce the fine by the amount of a surcharge or otherwise consider the applicability of a surcharge to the offense.

(§ 12 ch 166 SLA 1978; am § 17 ch 45 SLA 1982; am § 26 ch 143 SLA 1982; am § 4 ch 59 SLA 1988; am § 18 ch 85 SLA 1988; am §§ 1, 2 ch 142 SLA 1990; am § 2 ch 71 SLA 1992; am §§ 2 - 4 ch 79 SLA 1994; am § 3 ch 56 SLA 1998)

Cross references. For classification of offenses, see AS 11.81.250; for sentences of imprisonment for felonies, see AS 12.55.125; for sentences of imprisonment for misdemeanors, see AS 12.55.135.

Effect of amendments. The 1992 amendment, effective September 14, 1992, deleted the last two sentences in subsection (a).

The 1994 amendment, effective July 1, 1994, substituted "Except as provided in AS 12.55.036, upon" for "Upon" at the beginning of subsections (a)-(c).

The 1998 amendment, effective August 27, 1998, added subsection (f).

Sec. 12.55.125. Sentences of imprisonment for felonies.

(a) A defendant convicted of murder in the first degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years. A defendant convicted of murder in the first degree shall be sentenced to a mandatory term of imprisonment of 99 years when

(1) the defendant is convicted of the murder of a uniformed or otherwise clearly identified peace officer, fire fighter, or correctional employee who was engaged in the performance of official duties at the time of the murder;

(2) the defendant has been previously convicted of

(A) murder in the first degree under AS 11.41.100 or former AS 11.15.010 or 11.15.020;

(B) murder in the second degree under AS 11.41.110 or former AS 11.15.030; or

(C) homicide under the laws of another jurisdiction when the offense of which the defendant was convicted contains elements similar to first degree murder under AS 11.41.100 or second degree murder under AS 11.41.110;

(3) the court finds by clear and convincing evidence that the defendant subjected the murder victim to substantial physical torture; or

(4) the defendant is convicted of the murder of and personally caused the death of a person, other than a participant, during a robbery.

(b) A defendant convicted of attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree shall be sentenced to a definite term of imprisonment of at least five years but not more than 99 years. A defendant convicted of murder in the second degree shall be sentenced to a definite term of imprisonment of at least 10 years but not more than 99 years. A defendant convicted of murder in the second degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years when the defendant is convicted of the murder of a child under 16 years of age and the court finds by clear and convincing evidence that the defendant (1) was a natural parent, a stepparent, an adopted parent, a legal guardian, or a person occupying a position of authority in relation to the child; or (2) caused the death of the child by committing a crime against a person under AS 11.41.200 - 11.41.530. In this subsection, "legal guardian" and "position of authority" have the meanings given in AS 11.41.470.

(c) A defendant convicted of a class A felony may be sentenced to a definite term of imprisonment of not more than 20 years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, five years;

(2) if the offense is a first felony conviction

(A) other than for manslaughter and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, or knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional employee, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, seven years;

(B) for manslaughter and the conduct resulting in the conviction was knowingly directed towards a child under the age of 16, seven years;

(3) if the offense is a second felony conviction, 10 years;

(4) if the offense is a third felony conviction and the defendant is not subject to sentencing under (l) of this section, 15 years.

(d) A defendant convicted of a class B felony may be sentenced to a definite term of imprisonment of not more than 10 years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a second felony conviction, four years;

(2) if the offense is a third felony conviction, six years.

(3) *[Repealed, § 6 ch 6 SLA 1996.]*

(e) A defendant convicted of a class C felony may be sentenced to a definite term of imprisonment of not more than five years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a second felony conviction, two years;

(2) if the offense is a third felony conviction, three years.

(3) *[Repealed, § 6 ch 6 SLA 1996.]*

(4) if the offense is a first felony conviction, and the defendant violated AS 08.54.720(a)(15), one year.

(f) If a defendant is sentenced under (a) or (b) of this section,

(1) imprisonment for the prescribed minimum or mandatory term may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) imprisonment for the prescribed minimum or mandatory term may not be reduced, except as provided in (j) of this section.

(g) If a defendant is sentenced under (c), (d)(1), (d)(2), (e)(1), (e)(2), (e)(4), or (i) of this section, except to the extent permitted under AS 12.55.155 - 12.55.175,

- (1) imprisonment may not be suspended under AS 12.55.080;
- (2) imposition of sentence may not be suspended under AS 12.55.085;
- (3) terms of imprisonment may not be otherwise reduced.

(h) Nothing in this section or AS 12.55.135 limits the discretion of the sentencing judge except as specifically provided. Nothing in (a) of this section limits the court's discretion to impose a sentence of 99 years imprisonment, or to limit parole eligibility, for a person convicted of murder in the first or second degree in circumstances other than those enumerated in (a).

(i) A defendant convicted of sexual assault in the first degree or sexual abuse of a minor in the first degree may be sentenced to a definite term of imprisonment of not more than 30 years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, eight years;

(2) if the offense is a first felony conviction, and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 10 years;

(3) if the offense is a second felony conviction, 15 years;

(4) if the offense is a third felony conviction and the defendant is not subject to sentencing under (l) of this section, 25 years.

(j) A defendant sentenced to a (1) mandatory term of imprisonment of 99 years under (a) of this section may apply once for a modification or reduction of sentence under the Alaska Rules of Criminal Procedure after serving one-half of the mandatory term without consideration of good time earned under AS 33.20.010, or (2) definite term of imprisonment under (l) of this section may apply once for a modification or reduction of sentence under the Alaska Rules of Criminal Procedure after serving the greater of (A) one-half of the definite term or (B) 30 years. A defendant may not file and a court may not entertain more than one motion for modification or reduction of a sentence subject to this subsection, regardless of whether or not the court granted or denied a previous motion.

(k) A first felony offender convicted of an offense for which a presumptive term of imprisonment is not specified under this section

(1) may be sentenced to a term of unsuspended imprisonment that exceeds the presumptive term for a second or third felony offender convicted of the same crime if the offender is convicted of criminally negligent homicide and the victim is a child under the age of 16;

(2) except as provided in (1) of this subsection, may not be sentenced to a term of unsuspended imprisonment that exceeds the presumptive term for a second felony offender convicted of the same crime unless the court finds by clear and convincing evidence that an aggravating factor under AS 12.55.155(c) is present and that circumstances exist that would warrant a referral to the three-judge panel under AS 12.55.165.

(l) Notwithstanding any other provision of law, a defendant convicted of an unclassified or class A felony offense, and not subject to a mandatory 99-year sentence under (a) of this section, shall be sentenced to a definite term of imprisonment of at least 40 years but not more than 99 years when the defendant has been previously convicted of two or more most serious felonies and the prosecuting attorney has filed a notice of intent to seek a definite sentence under this subsection at the time the defendant was arraigned in superior court. If a defendant is sentenced to a definite term under this section,

(1) imprisonment for the prescribed definite term may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) imprisonment for the prescribed definite term may not be reduced, except as provided in (j) of this section.

(m) Notwithstanding (a)(4) and (f) of this section, if a court finds that imposition of a mandatory term of imprisonment of 99 years on a defendant subject to sentencing under (a)(4) of this section would be manifestly unjust, the court may sentence the defendant to a definite term of imprisonment otherwise permissible under (a) of this section.

(§ 12 ch 166 SLA 1978; am § 18 ch 45 SLA 1982; am §§ 28 - 30 ch 143 SLA 1982; am § 8 ch 78 SLA 1983; am §§ 1 - 3 ch 92 SLA 1983; am § 5 ch 59 SLA 1988; am § 4 ch 37 SLA 1989; am §§ 23 - 25 ch 79 SLA 1992; am § 5 ch 3 SLA 1994; am §§ 1, 2, 6 ch 6 SLA 1996; am §§ 3 - 7 ch 7 SLA 1996; am § 8 ch 30 SLA 1996; am § 4 ch 33 SLA 1996; am §§ 9 - 11 ch 54 SLA 1999; am § 1 ch 65 SLA 1999; am §§ 1, 2 ch 49 SLA 2000)

Cross references. For classification of felonies and misdemeanors, see AS 11.81.250; for authorized fines, see AS 12.55.035; for reduction of sentence for good behavior, see AS 33.20.010; for effect of the enactment of (j) of this section on Alaska Rule of Criminal Procedure 35, see § 34, ch. 79, SLA 1992 in the Temporary and Special Acts; for findings related to the addition of subsection (l), see § 1, ch. 7, SLA 1996 in the Temporary and Special Acts; for the effect of amendments to (j) of this section made by ch. 7, SLA 1996 on Alaska Rule of Criminal Procedure 35, see § 20, ch. 7, SLA 1996 in the Temporary and Special Acts.

For applicability provisions relating to the 1999 amendment of subsection (b) by § 9, ch. 54, SLA 1999, and relating to the 1999 amendment of subsections (c) and (k), see § 16, ch. 54, SLA 1999 in the 1999 Temporary & Special Acts. For applicability provisions relating to the 1999 amendment of subsection (b) by § 1, ch. 65, SLA 1999, see § 2, ch. 64, SLA 1999 in the 1999 Temporary & Special Acts.

For applicability provisions relating to the 2000 amendment of subsection (a) by sec. 1, ch. 49, SLA 2000, and the addition of subsection (m) by sec. 2, ch. 49, SLA 2000, see sec. 3, ch. 49, SLA 2000 in the 2000 Temporary & Special Acts.

Effect of amendments. The 1992 amendment, effective September 14, 1992, in subsection (a), added the second sentence and paragraphs (1) to (3); added the second sentence in subsection (h); and added subsections (j) and (k).

The 1994 amendment, effective May 30, 1994, inserted "conspiracy to commit murder in the first degree," in subsection (b).

The first 1996 amendment, effective June 27, 1996, substituted "correctional employee" for "correctional officer" in paragraphs (a)(1) and (c)(2) and repealed paragraphs (d)(3) and (e)(3).

The second 1996 amendment, effective June 27, 1996, in paragraphs (c)(4) and (i)(4), inserted "and the defendant is not subject to sentencing under (i) of this section"; in subsection (f), inserted "or mandatory" in paragraphs (1) and (2), and in paragraph (3), deleted "otherwise" preceding "reduced" and added ", except as provided in (j) of this section"; in (j), inserted "(1)," "once," and all of the language following "AS 33.20.010"; and added subsection (l).

The third 1996 amendment, effective May 16, 1996, inserted a section reference in subsection (g).

The fourth 1996 amendment, effective May 23, 1996, made a section reference substitution in paragraph (e)(4).

The first 1999 amendment, effective June 5, 1999, in subsection (b), inserted "solicitation to commit murder in the first degree" in the first sentence and added the third and fourth sentences; and added subparagraph (c)(2)(B), the subparagraph (c)(2)(A) designation, paragraph (k)(1), the paragraph (k)(2) designation, and "except as provided in (1) of this subsection" at the beginning of paragraph (k)(2).

The second 1999 amendment, effective September 20, 1999, in subsection (b) deleted "murder in the second degree," following "convicted of" in the first sentence and added the second sentence.

The 2000 amendment, effective August 9, 2000, added paragraph (a)(4) and made related stylistic changes, and added subsection (m).

Editor's notes. Section 7, ch. 6, SLA 1996 provides that the repeal of (d)(3) and (e)(3) and the amendments to (a) and (c) of this section made by ch. 6, SLA 1996 apply "to all offenses committed on or after June 27, 1996." Section 19, ch. 7, SLA 1996 provides that references to prior or previous convictions in ch. 7, SLA 1996, which amended subsections (c), (f), (i), and (j) and added subsection (l), "apply to all convictions occurring before, on, or after June 27, 1996."

Subsection (b) was amended by § 9, ch. 54, SLA 1999, with an effective date of June 5, 1999, and was further amended by § 1, ch. 65, SLA 1999, with a later effective date of September 20, 1999. Thus, on and after June 5 and before September 20, 1999, subsection (b) read as follows: "A defendant convicted of murder in the second degree, attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree shall be sentenced to a definite term of imprisonment of at least five years but not more than 99 years. A defendant convicted of murder in the second degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years when the defendant is convicted of the murder of a child under 16 years of age and the court finds by clear and convincing evidence that the defendant (1) was a natural parent, a stepparent, an adopted parent, a legal guardian, or a person occupying a position of authority in relation to the child; or (2) caused the death of the child by committing a crime against a person under AS 11.41.200 - 11.41.530. In this subsection, "legal guardian" and "position of authority" have the meanings given in AS 11.41.470."