

SB

240

CS FOR SENATE BILL NO. 240(STA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the crimes of murder, conspiracy, criminal mischief, and terroristic**
2 **threatening; making conforming amendments; and providing for an effective date."**

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

4 *** Section 1. AS 09.50.070(c) is amended to read:**

5 (c) In this section, "serious criminal offense" means the following offenses:

- 6 (1) murder in any degree;
- 7 (2) manslaughter;
- 8 (3) criminally negligent homicide;
- 9 (4) assault in any degree;
- 10 (5) kidnapping;
- 11 (6) sexual assault in any degree;
- 12 (7) sexual abuse of a minor in any degree;
- 13 (8) robbery in any degree;
- 14 (9) coercion;

- 1 (10) extortion;
- 2 (11) arson in any degree;
- 3 (12) burglary in any degree;
- 4 (13) criminal mischief in the first, second, [OR] third . or fourth
- 5 degree;
- 6 (14) driving while intoxicated or another crime resulting from the
- 7 operation of a motor vehicle, boat, or airplane when the offender is intoxicated;
- 8 (15) a crime involving domestic violence, as defined in AS 18.66.990.

9 * Sec. 2. AS 11.31.120(i)(2) is amended to read:

- 10 (2) "serious felony offense" means an offense
- 11 (A) against the person under AS 11.41, punishable as an
- 12 unclassified or class A felony; [OR]
- 13 (B) involving controlled substances under AS 11.71,
- 14 punishable as an unclassified, class A, or class B felony;
- 15 (C) that is criminal mischief in the first degree under
- 16 AS 11.46.480; or
- 17 (D) that is terroristic threatening in the first degree under
- 18 AS 11.56.807.

19 * Sec. 3. AS 11.41.100(a) is amended to read:

- 20 (a) A person commits the crime of murder in the first degree if
- 21 (1) with intent to cause the death of another person, the person
- 22 (A) causes the death of any person; or
- 23 (B) compels or induces any person to commit suicide through
- 24 duress or deception;
- 25 (2) the person knowingly engages in conduct directed toward a child
- 26 under the age of 16 and the person with criminal negligence inflicts serious physical
- 27 injury on the child by at least two separate acts, and one of the acts results in the death
- 28 of the child; [OR]
- 29 (3) acting alone or with one or more persons, the person commits or
- 30 attempts to commit a sexual offense against or kidnapping of a child under 16 years of
- 31 age and, in the course of or in furtherance of the offense or in immediate flight from

1 that offense, any person causes the death of the child; in this paragraph, "sexual
2 offense" means an offense defined in AS 11.41.410 - 11.41.470;

3 (4) acting alone or with one or more persons, the person commits
4 or attempts to commit criminal mischief in the first degree under
5 AS 11.46.480(a)(3) and, in the course of or in furtherance of the offense or in
6 immediate flight from that offense, any person causes the death of a person other
7 than one of the participants; or

8 (5) acting alone or with one or more persons, the person commits
9 terroristic threatening in the first degree under AS 11.56.807 and, in the course of
10 or in furtherance of the offense or in immediate flight from that offense, any
11 person causes the death of a person other than one of the participants.

12 * Sec. 4. AS 11.41.260(a) is amended to read:

13 (a) A person commits the crime of stalking in the first degree if the person
14 violates AS 11.41.270 and

15 (1) the actions constituting the offense are in violation of an order
16 issued or filed under AS 18.66.100 - 18.66.180 or issued under former
17 AS 25.35.010(b) or 25.35.020;

18 (2) the actions constituting the offense are in violation of a condition of
19 probation, release before trial, release after conviction, or parole;

20 (3) the victim is under 16 years of age;

21 (4) at any time during the course of conduct constituting the offense,
22 the defendant possessed a deadly weapon;

23 (5) the defendant has been previously convicted of a crime under this
24 section, AS 11.41.270, or AS 11.56.740, or a law or ordinance of this or another
25 jurisdiction with elements similar to a crime under this section, AS 11.41.270, or
26 AS 11.56.740; or

27 (6) the defendant has been previously convicted of a crime, or an
28 attempt or solicitation to commit a crime, under (A) AS 11.41.100 - 11.41.250,
29 11.41.300 - 11.41.460, AS 11.56.807, 11.56.810 [AS 11.56.810], AS 11.61.120, or (B)
30 a law or an ordinance of this or another jurisdiction with elements similar to a crime,
31 or an attempt or solicitation to commit a crime, under AS 11.41.100 - 11.41.250,

1 11.41.300 - 11.41.460, AS 11.56.807, 11.56.810 [AS 11.56.810], or AS 11.61.120,
2 involving the same victim as the present offense.

3 * Sec. 5. AS 11.46.480(a) is amended to read:

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

7 (1) with intent to cause a substantial interruption or impairment of a
8 service rendered to the public by a utility or by an organization that [WHICH] deals
9 with emergencies involving danger to life or property, the person damages or tampers
10 with property of that utility or organization and causes substantial interruption or
11 impairment of service to the public;

12 (2) with intent to damage property of another by the use of widely
13 dangerous means, the person damages property of another in an amount exceeding
14 \$100,000 by the use of widely dangerous means;

15 (3) the person intentionally damages an oil or gas pipeline or
16 supporting facility; or

17 (4) with intent to cause physical injury to another person, the person [:]

18 (A) tampers with food, air, water, or an item that is a [FOOD,]
19 drug [,] or cosmetic, or a container for food, air, water, or the item; or

20 (B) delivers, dispenses, or distributes food, air, water, or an
21 item described in (A) of this paragraph knowing that a person has tampered
22 with the food, air, water, or item or a container for the food, water, or item.

23 * Sec. 6. AS 11.46.480(b) is amended to read:

24 (b) Criminal mischief in the first degree is a class A [B] felony.

25 * Sec. 7. AS 11.46.480(c)(1) is amended to read:

26 (1) "deliver" means the actual, constructive, or attempted transfer from
27 one person to another of food, air, water, or an item;

28 * Sec. 8. AS 11.46.480(c)(3) is amended to read:

29 (3) "distribute" means to deliver food, air, water, or an item, whether or not
30 there is any money or other item of value exchanged; it includes sale, gift, or
31 exchange;

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

2 **Sec. 11.46.481. Criminal mischief in the second degree.** (a) A person
3 commits the crime of criminal mischief in the second degree if, having no right to do
4 so or any reasonable ground to believe the person has such a right, the person tampers
5 with an oil or gas pipeline or supporting facility or an airplane or helicopter with
6 reckless disregard for the risk of harm to or loss of the property;

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

8 * Sec. 10. AS 11.46.482(a) is amended to read:

9 (a) A person commits the crime of criminal mischief in the third [SECOND]
10 degree if, having no right to do so or any reasonable ground to believe the person has
11 such a right,

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

14 (2) [THE PERSON TAMPERS WITH AN OIL OR GAS PIPELINE
15 OR SUPPORTING FACILITY OR AN AIRPLANE OR HELICOPTER WITH
16 RECKLESS DISREGARD FOR THE RISK OF HARM TO OR LOSS OF THE
17 PROPERTY;

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

20 (3) [(4) REPEALED

21 (5) REPEALED

22 (6)] the person knowingly

23 (A) defaces, damages, or desecrates a cemetery or the contents
24 of a cemetery or a tomb, grave, or memorial regardless of whether the tomb,
25 grave, or memorial is in a cemetery or whether the cemetery, tomb, grave, or
26 memorial appears to be abandoned, lost, or neglected;

27 (B) removes human remains or associated burial artifacts from
28 a cemetery, tomb, grave, or memorial regardless of whether the cemetery,
29 tomb, grave, or memorial appears to be abandoned, lost, or neglected.

30 * Sec. 11. AS 11.46.482(b) is amended to read:

31 (b) It is an affirmative defense to a prosecution under (a)(3) [(a)(6)] of this

1 section that the defendant, at the time of the offense, was

2 (1) an employee of the cemetery and was engaged in an authorized
3 activity on behalf of the cemetery; or

4 (2) authorized by law or state permit to engage in the conduct.

5 * Sec. 12. AS 11.46.482(d) is amended to read:

6 (d) Criminal mischief in the third [SECOND] degree is a class C felony.

7 * Sec. 13. AS 11.46.484 is amended to read:

8 **Sec. 11.46.484. Criminal mischief in the fourth [THIRD] degree.** (a) A
9 person commits the crime of criminal mischief in the fourth [THIRD] degree if,
10 having no right to do so or any reasonable ground to believe the person has such a
11 right

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

14 (2) [REPEALED

15 (3) REPEALED

16 (4)] the person tampers with a fire protection device in a building that
17 is a public place;

18 (3) [(5)] the person knowingly accesses a computer, computer system,
19 computer program, computer network, or part of a computer system or network;

20 (4) [(6)] the person uses a device to descramble an electronic signal
21 that has been scrambled to prevent unauthorized receipt or viewing of the signal unless
22 the device is used only to descramble signals received directly from a satellite or
23 unless the person owned the device before September 18, 1984; or

24 (5) [(7)] the person knowingly removes, relocates, defaces, alters,
25 obscures, shoots at, destroys, or otherwise tampers with an official traffic control
26 device or damages the work upon a highway under construction.

27 * Sec. 14. AS 11.46.484(b) is amended to read:

28 (b) Criminal mischief in the fourth [THIRD] degree is a class A
29 misdemeanor.

30 * Sec. 15. AS 11.46.486 is amended to read:

31 **Sec. 11.46.486. Criminal mischief in the fifth [FOURTH] degree.** (a) A

1 person commits the crime of criminal mischief in the fifth [FOURTH] degree if,
2 having no right to do so or any reasonable ground to believe the person has such a
3 right,

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

7 (2) with intent to damage property of another, the person damages
8 property of another in an amount less than \$50; or

9 (3) the person rides in a propelled vehicle knowing it has been stolen
10 or that it is being used in violation of AS 11.46.360 or 11.46.365(a)(1).

11 (b) Criminal mischief in the fifth [FOURTH] degree is a class B
12 misdemeanor.

13 * Sec. 16. AS 11.46.487 is amended to read:

14 Sec. 11.46.487. **Forfeiture of property upon conviction.** Firearms and other
15 personal property, except a motor vehicle, used in aid of a violation of AS 11.46.460,
16 11.46.462, or 11.46.484(a)(5) [11.46.484(a)(7)] may be forfeited to the state upon
17 conviction of the offender for the crime.

18 * Sec. 17. AS 11.56.800(a) is amended to read:

19 (a) A person commits the crime of false information or report if the person
20 knowingly

21 (1) gives false information to a peace officer

22 (A) with the intent of implicating another in an offense; or

23 (B) concerning the person's identity while the person is

24 (i) under arrest, detention, or investigation for a crime;

25 or

26 (ii) being served with an arrest warrant or being issued a
27 citation;

28 (2) makes a false report to a peace officer that a crime has occurred or
29 is about to occur;

30 (3) makes a false report or gives a false alarm, under circumstances
31 not amounting to terroristic threatening in the second degree under

1 AS 11.56.810, that a fire or other incident dangerous to life or property calling for an
2 emergency response has occurred or is about to occur; or

3 (4) makes a false report to the Department of Natural Resources under
4 AS 46.17 concerning the condition of a dam or reservoir.

5 * Sec. 18. AS 11.56 is amended by adding a new section to read:

6 **Sec. 11.56.807. Terroristic threatening in the first degree.** (a) A person
7 commits the crime of terroristic threatening in the first degree if the person sends,
8 delivers, attempts to send or deliver, or solicits the sending or delivery of an envelope,
9 package, or any other item containing a biological or chemical substance or an
10 imitation biological or chemical substance with intent

11 (1) to place a person in fear of physical injury to any person;

12 (2) to cause evacuation of a building, public place, business premises,
13 or means of public transportation; or

14 (3) to cause serious public inconvenience.

15 (b) In this section,

16 (1) "biological or chemical substance" means a material that is harmful
17 to the health of a person;

18 (2) "imitation biological or chemical substance" means a material that
19 by its appearance would lead a reasonable person to believe that it is harmful to the
20 health of a person.

21 (c) Terroristic threatening in the first degree is a class B felony.

22 * Sec. 19. AS 11.56.810 is amended to read

23 **Sec. 11.56.810. Terroristic threatening in the second degree.** (a) A person
24 commits the crime of terroristic threatening in the second degree if the person
25 knowingly makes a false report

26 (1) that a circumstance dangerous to human life exists or is about to
27 exist and

28 (A) [(1)] places a person in fear of physical injury to any
29 person;

30 (B) [(2)] causes evacuation of a building, public place,
31 business premises, or means of public transportation; [OR]

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(C) [(3)] causes serious public inconvenience;

(D) that claims that a biological or chemical substance that is harmful to the health of a person has been sent or is present in a building, public place, business premises, or means of public transportation; or

(2) that threatens damage to an oil or gas pipeline or supporting facility.

(b) Terroristic threatening in the second degree is a class C felony.

* Sec. 20. AS 11.56.810 is amended by adding a new subsection to read:

(c) In this section, "oil or gas pipeline or supporting facility" has the meaning given in AS 11.46.490.

* Sec. 21. AS 12.61.120(b) is amended to read:

(b) If the defendant is proceeding without counsel in a case involving a charged violation of AS 11.41, AS 11.46.300 - 11.46.330, AS 11.56.740, 11.56.807, 11.56.810, AS 11.61.190 - 11.61.210, or a crime involving domestic violence [,] and the court finds that the defendant may pose a continuing threat to the victim of or witness to the offense charged, the court shall protect the address and telephone number of the victim or witness by providing the information only to a person specified by the court or by imposing other restrictions that the court considers necessary. When an address or telephone number is released to a person specified by the court under this subsection, that person, who shall be ordered not to disclose the information to the defendant, shall contact the victim or witness on behalf of the defendant, and the defendant shall meet or speak with the victim or witness only in the presence of that person.

* Sec. 22. AS 18.66.990(3) is amended to read:

(3) "domestic violence" and "crime involving domestic violence" mean one or more of the following offenses or an offense under a law or ordinance of another jurisdiction having elements similar to these offenses, or an attempt to commit the offense, by a household member against another household member:

(A) a crime against the person under AS 11.41;

(B) burglary under AS 11.46.300 - 11.46.310;

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- (C) criminal trespass under AS 11.46.320 - 11.46.330;
- (D) arson or criminally negligent burning under AS 11.46.400 - 11.46.430;
- (E) criminal mischief under AS 11.46.480 - 11.46.486;
- (F) terroristic threatening under AS 11.56.807 or 11.56.810 [AS 11.56.810];
- (G) violating a domestic violence order under AS 11.56.740;
- or
- (H) harassment under AS 11.61.120(a)(2) - (4);

* Sec. 23. The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. This Act applies to offenses committed on or after the effective date of this Act.

* Sec. 24. This Act takes effect immediately under AS 01.10.070(c).

A M E N D M E N T

OFFERED IN THE SENATE

TO: SB 240

Page 1, following line 4:

Insert new bill sections to read:

****Section 1.** AS 11.31.120(i)(2) is amended to read:

(2) "serious felony offense" means an offense

(A) against a person under AS 11.41, punishable as an unclassified or class A felony; [OR]

(B) involving controlled substances under AS 11.71, punishable as an unclassified, class A or class B felony;

(C) that is damaging an oil or gas pipeline or supporting facility under AS 11.46.470;

(D) that is terroristic threatening in the first degree under AS 11.56.807; or

(E) that is criminal mischief in the first degree under AS 11.46.430.

***Sec. 2.** AS 11.41.100(a) is amended to read:

(a) A person commits the crime of murder in the first degree if

(1) with intent to cause the death of another person, the

person

(A) causes the death of any person; or

(B) compels or induces any person to commit suicide through duress or deception;

(2) the person knowingly engages in conduct directed toward a child under the age of 16 and the person with criminal negligence inflicts serious physical injury on the child by at least two separate acts, and one of the acts results in the death of the child; [OR]

(3) acting alone or with one or more persons, the person commits or attempts to commit a sexual offense against or kidnapping of a child under 16 years of age and, in the course of or in furtherance of the offense or the immediate flight from that offense, any person causes the death of the child; in this paragraph, "sexual offense" means an offense defined in AS 11.41.410 - 11.41.470;

(4) acting alone or with one or more persons, the person commits or attempts to commit damaging an oil or gas pipeline facility under AS 11.46.470 and, in the course of or in furtherance of the offense or in immediate flight from that offense, any person causes the death of a person other than one of the participants; or

(5) acting alone or with one or more persons, the person commits terroristic threatening in the first degree under AS 11.56.807 and, in the course of or in furtherance of the offense or in immediate flight from that offense, any person causes the death of a person other than one of the participants.

Page 4, line 7:

Following **“containing”**:

Insert **“a biological and chemical substance or”**

Page 4, lines 13 - 15:

Delete all material and insert:

“(b) In this section

(1) “a chemical or biological substance” means a material that is harmful to the health of a person;

(2) “an imitation chemical or biological substance” means a material that by its appearance or by representations would lead a reasonable person to believe that it is harmful to the health of a person.”

22-GS2097\C
Luckhaupt
1/30/02

CS FOR SENAT ` BILL NO. 240(STA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the crimes of damaging an oil or gas pipeline or supporting facility,**
2 **criminal mischief, and terroristic threatening; making conforming amendments; and**
3 **providing for an effective date."**

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

5 *** Section 1. AS 11.41.260(a) is amended to read:**

6 (a) A person commits the crime of stalking in the first degree if the person
7 violates AS 11.41.270 and

8 (1) the actions constituting the offense are in violation of an order
9 issued or filed under AS 18.66.100 - 18.66.180 or issued under former
10 AS 25.35.010(b) or 25.35.020;

11 (2) the actions constituting the offense are in violation of a condition of
12 probation, release before trial, release after conviction, or parole;

13 (3) the victim is under 16 years of age;

14 (4) at any time during the course of conduct constituting the offense,

1 the defendant possessed a deadly weapon;

2 (5) the defendant has been previously convicted of a crime under this
3 section, AS 11.41.270, or AS 11.56.740, or a law or ordinance of this or another
4 jurisdiction with elements similar to a crime under this section, AS ^o11.41.270, or
5 AS 11.56.740; or

6 (6) the defendant has been previously convicted of a crime, or an
7 attempt or solicitation to commit a crime, under (A) AS 11.41.100 - 11.41.250,
8 11.41.300 - 11.41.460, AS 11.56.807, 11.56.810 [AS 11.56.810], AS 11.61.120, or (B)
9 a law or an ordinance of this or another jurisdiction with elements similar to a crime,
10 or an attempt or solicitation to commit a crime, under AS 11.41.100 - 11.41.250,
11 11.41.300 - 11.41.460, AS 11.56.807, 11.56.810 [AS 11.56.810], or AS 11.61.120,
12 involving the same victim as the present offense.

13 * Sec. 2. AS 11.46 is amended by adding a new section to read:

14 **Sec. 11.46.470. Damaging an oil or gas pipeline or supporting facility. (a)**

15 A person commits the crime of damaging an oil or gas pipeline or supporting facility
16 if, having no right to do so or any reasonable ground to believe the person has such a
17 right, the person intentionally damages an oil or gas pipeline or supporting facility.

18 (b) Damaging an oil or gas pipeline or supporting facility is a class A felony.

19 * Sec. 3. AS 11.46.480(a) is amended to read:

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

23 (1) with intent to cause a substantial interruption or impairment of a
24 service rendered to the public by a utility or by an organization that [WHICH] deals
25 with emergencies involving danger to life or property, the person damages or tampers
26 with property of that utility or organization and causes substantial interruption or
27 impairment of service to the public;

28 (2) with intent to damage property of another by the use of widely
29 dangerous means, the person damages property of another in an amount exceeding
30 \$100,000 by the use of widely dangerous means;

31 (3) the person tampers with [INTENTIONALLY DAMAGES] an oil

1 or gas pipeline or supporting facility or an airplane or helicopter, with reckless
2 disregard for the risk of harm to or loss of the property; or

3 (4) with intent to cause physical injury to another person, the person[:]

4 (A) tampers with food, air, water, or an item that is a [FOOD,]
5 drug [,] or cosmetic, or a container for food, air, water, or the item; or

6 (B) delivers, dispenses, or distributes food, air, water, or an
7 item described in (A) of this paragraph knowing that a person has tampered
8 with the food, air, water, or item or a container for the food, water, or item.

9 * Sec. 4. AS 11.46.480(c)(1) is amended to read:

10 (1) "deliver" means the actual, constructive, or attempted transfer from
11 one person to another of food, air, water, or an item;

12 * Sec. 5. AS 11.46.480(c)(3) is amended to read:

13 (3) "distribute" means to deliver food, air, water, or an item, whether
14 or not there is any money or other item of value exchanged; it includes sale, gift, or
15 exchange;

16 * Sec. 6. AS 11.56.800(a) is amended to read:

17 (a) A person commits the crime of false information or report if the person
18 knowingly

19 (1) gives false information to a peace officer

20 (A) with the intent of implicating another in an offense; or

21 (B) concerning the person's identity while the person is

22 (i) under arrest, detention, or investigation for a crime;

23 or

24 (ii) being served with an arrest warrant or being issued a
25 citation;

26 (2) makes a false report to a peace officer that a crime has occurred or
27 is about to occur;

28 (3) makes a false report or gives a false alarm, under circumstances
29 not amounting to terroristic threatening in the second degree under
30 AS 11.56.810, that a fire or other incident dangerous to life or property calling for an
31 emergency response has occurred or is about to occur; or

1 (4) makes a false report to the Department of Natural Resources under
2 AS 46.17 concerning the condition of a dam or reservoir.

3 * Sec. 7. AS 11.56 is amended by adding a new section to read:

4 **Sec. 11.56.807. Terroristic threatening in the first degree.** (a) A person
5 commits the crime of terroristic threatening in the first degree if the person sends,
6 delivers, attempts to send or deliver, or solicits the sending or delivery of an envelope,
7 package, or any other item containing an imitation biological or chemical substance
8 with intent

9 (1) to place a person in fear of physical injury to any person;

10 (2) to cause evacuation of a building, public place, business premises,
11 or means of public transportation; or

12 (3) to cause serious public inconvenience.

13 (b) In this section, "imitation biological or chemical substance" means a
14 material that by its appearance would lead a reasonable person to believe that it is
15 harmful to the health of a person.

16 (c) Terroristic threatening in the first degree is a class B felony.

17 * Sec. 8. AS 11.56.810 is amended to read

18 **Sec. 11.56.810. Terroristic threatening in the second degree.** (a) A person
19 commits the crime of terroristic threatening in the second degree if the person
20 knowingly makes a false report

21 (1) that a circumstance dangerous to human life exists or is about to
22 exist and

23 (A) [(1)] places a person in fear of physical injury to any
24 person;

25 (B) [(2)] causes evacuation of a building, public place,
26 business premises, or means of public transportation; [OR]

27 (C) [(3)] causes serious public inconvenience;

28 (D) that claims that a biological or chemical substance that
29 is harmful to the health of a person has been sent or is present in a
30 building, public place, business premises, or means of public
31 transportation; or

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(2) that threatens damage to an oil or gas pipeline or supporting facility.

(b) Terroristic threatening in the second degree is a class C felony.

* Sec. 9. AS 11.56.810 is amended by adding a new subsection to read:

(c) In this section, "oil or gas pipeline or supporting facility" has the meaning given in AS 11.46.490.

* Sec. 10. AS 12.61.120(b) is amended to read:

(b) If the defendant is proceeding without counsel in a case involving a charged violation of AS 11.41, AS 11.46.300 - 11.46.330, AS 11.56.740, 11.56.807, 11.56.810, AS 11.61.190 - 11.61.210, or a crime involving domestic violence [,] and the court finds that the defendant may pose a continuing threat to the victim of or witness to the offense charged, the court shall protect the address and telephone number of the victim or witness by providing the information only to a person specified by the court or by imposing other restrictions that the court considers necessary. When an address or telephone number is released to a person specified by the court under this subsection, that person, who shall be ordered not to disclose the information to the defendant, shall contact the victim or witness on behalf of the defendant, and the defendant shall meet or speak with the victim or witness only in the presence of that person.

* Sec. 11. AS 18.66.990(3) is amended to read:

(3) "domestic violence" and "crime involving domestic violence" mean one or more of the following offenses or an offense under a law or ordinance of another jurisdiction having elements similar to these offenses, or an attempt to commit the offense, by a household member against another household member:

(A) a crime against the person under AS 11.41;

(B) burglary under AS 11.46.300 - 11.46.310;

(C) criminal trespass under AS 11.46.320 - 11.46.330;

(D) arson or criminally negligent burning under AS 11.46.400 - 11.46.430;

(E) criminal mischief under AS 11.46.480 - 11.46.486;

(F) terroristic threatening under AS 11.56.807 or 11.56.810

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[AS 11.56.810];

(G) violating a domestic violence order under AS 11.56.740;

or

(H) harassment under AS 11.61.120(a)(2) - (4);

* Sec. 12. AS 11.46.482(a)(2) is repealed.

* Sec. 13. The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. This Act applies to offenses committed on or after the effective date of this Act.

* Sec. 14. This Act takes effect immediately under AS 01.10.070(c).

tutes.

by statute

statutes. When all or part of it so repealing the accusation, the statute or part of it otherwise specified in

a motor vehicle without the driver's license on the repeal date. June 28,

not bar, suspend, or revoke, or other remedy regardless of whether the offense is in this title. (§ 10 ch 166)

or demonstrate a legislative intent to amend AS 11.81.250. See *State v. Fred Meyer of Alaska*, 908 P.2d 454 (Alaska Ct. App. 1999).

constitutes an offense

statute. (§ 10 ch 166)

with the authorizing statute; to which the regulation is necessary to carry out the purpose of the statute. See *State v. State*, 705 P.2d 1280 (Alaska Ct. App. 1985).

Alaska, 698 P.2d 174 (Alaska Ct. App. 1985).

State, 908 P.2d 454 (Alaska Ct. App. 1999).

S.

Alaska Rules of Criminal Procedure

Sec. 11.81.250. Classification of offenses. (a) For purposes of sentencing under AS 12.55, all offenses defined in this title, except murder in the first and second degree, attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, sexual assault in the first degree, sexual abuse of a minor in the first degree, misconduct involving a controlled substance in the first degree, and kidnapping, are classified on the basis of their seriousness, according to the type of injury characteristically caused or risked by commission of the offense and the culpability of the offender. Except for murder in the first and second degree, attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, sexual assault in the first degree, sexual abuse of a minor in the first degree, misconduct involving a controlled substance in the first degree, and kidnapping, the offenses in this title are classified into the following categories:

(1) class A felonies, which characteristically involve conduct resulting in serious physical injury or a substantial risk of serious physical injury to a person;

(2) class B felonies, which characteristically involve conduct resulting in less severe violence against a person than class A felonies, aggravated offenses against property interests, or aggravated offenses against public administration or order;

(3) class C felonies, which characteristically involve conduct serious enough to deserve felony classification but not serious enough to be classified as A or B felonies;

(4) class A misdemeanors, which characteristically involve less severe violence against a person, less serious offenses against property interests, less serious offenses against public administration or order, or less serious offenses against public health and decency than felonies;

(5) class B misdemeanors, which characteristically involve a minor risk of physical injury to a person, minor offenses against property interests, minor offenses against public administration or order, or minor offenses against public health and decency;

(6) violations, which characteristically involve conduct inappropriate to an orderly society but which do not denote criminality in their commission.

(b) The classification of each felony defined in this title, except murder in the first and second degree, attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, sexual assault in the first degree, sexual abuse of a minor in the first degree, misconduct involving a controlled substance in the first degree, and kidnapping, is designated in the section defining it. A felony under Alaska law defined outside this title for which no penalty is specifically provided is a class C felony.

(c) The classification of each misdemeanor defined in this title is designated in the section defining it. A misdemeanor under Alaska law defined outside this title for which no penalty is provided is a class A misdemeanor. (§ 10 ch 166 SLA 1978; am §§ 9, 10 ch 143 SLA 1982; am §§ 17, 18 ch 37 SLA 1986; am §§ 2, 3 ch 59 SLA 1988; am §§ 7, 8 ch 54 SLA 1999)

Cross references. — For increase in classification of misdemeanors committed in connection with a criminal street gang, see AS 12.55.137.

Effect of amendments. — The 1986 amendment inserted "sexual abuse of a minor in the first degree, misconduct involving a controlled substance in the first degree," in two places in the introductory language of subsection (a) and in the first sentence of subsection (b).

The 1988 amendment inserted "attempted murder in the first degree" in both sentences in the introductory paragraph of subsection (a) and in the first sentence in subsection (b).

The first 1999 amendment, effective June 5, 1999, inserted "solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree" in the first and second sentences of subsection (a) and in the first sentence in subsection (b).

NOTES TO DECISIONS

For cases construing former AS 11.75.030, which provided for the division of crimes into felonies and misdemeanors, see note to AS 11.81.900.

Strict liability commercial fishing violations. — Penalties for strict liability commercial fishing violations under AS 16.05.722(a), including a maxi-

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 (1) 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

(a) A defendant convicted of murder in the first degree when the defendant was engaged in the

11.15.010 or 11.15.020; AS 11.15.030; or the offense of which the defendant was engaged in the

defendant subjected the

caused the death of a

degree, solicitation to murder in the first degree, or solicitation in the first degree shall be sentenced to a definite term of imprisonment of not more than 99 years. A defendant sentenced to a definite term of imprisonment when the defendant is convicted of murder in the first degree by clear and convincing evidence, a stepparent, an adult, or a person in a position of authority in relation to the crime against a person in a position of authority and "position of

sentenced to a definite term of imprisonment of not more than 99 years. A defendant sentenced to a definite term of imprisonment when the defendant is convicted of murder in the first degree by clear and convincing evidence, a stepparent, an adult, or a person in a position of authority in relation to the crime against a person in a position of authority and "position of

used 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.

defendant is not subject to

sentenced to a definite term of imprisonment of not more than 99 years. A defendant sentenced to a definite term of imprisonment when the defendant is convicted of murder in the first degree by clear and convincing evidence, a stepparent, an adult, or a person in a position of authority in relation to the crime against a person in a position of authority and "position of

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, or 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 (i) 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 (l) 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

NOTES TO DECISIONS

For cases construing former second degree arson statute, see *Salinas v. United States*, 277 F.2d 914 (9th Cir. 1960); *Tarney v. State*, 512 P.2d 923 (Alaska 1973); *Jacinth v. State*, 593 P.2d 263 (Alaska 1979); *Mossberg v. State*, 733 P.2d 273 (Alaska Ct. App. 1987).

Cited in *Ridgely v. State*, 705 P.2d 924 (Alaska Ct. App. 1985); *Nashoalook v. State*, 744 P.2d 420 (Alaska Ct. App. 1987); *Hansen v. State*, 845 P.2d 449 (Alaska Ct. App. 1993).

Sec. 11.46.430. Criminally negligent burning. (a) A person commits the crime of criminally negligent burning if with criminal negligence the person damages property of another by fire or explosion.

(b) Criminally negligent burning is a class A misdemeanor. (§ 4 ch 166 SLA 1978)

Sec. 11.46.450. Failure to control or report a dangerous fire. (a) A person commits the crime of failure to control or report a dangerous fire if the person knows that a fire is endangering life or a substantial amount of property of another and fails to take reasonable measures to put out or control the fire, when the person can do so without substantial personal risk, or to give a prompt fire alarm if

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

(2) the fire was started by the person, with the person's consent, or on property in the person's custody or control.

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

Sec. 11.46.460. Disregard of a highway obstruction. (a) A person commits the crime of disregard of a highway obstruction if, without the right to do so or a reasonable ground to believe the person has the right, the person

(1) drives a vehicle through, over, or around an obstruction erected upon a highway under authority of AS 19.10.100; or

(2) opens an obstruction erected upon a highway under authority of AS 19.10.100.

(b) Violation of this section is a class B misdemeanor. (§ 1 ch 52 SLA 1988)

Sec. 11.46.462. Unlawful possession of official traffic control device. (a) A person commits the crime of unlawful possession of an official traffic control device if, without the right to do so or a reasonable ground to believe the person has the right, the person possesses an official traffic control device.

(b) Unlawful possession of an official traffic control device is a violation and is punishable by a fine of

(1) not less than \$100 for the first offense; or

(2) not less than \$300 for each subsequent offense. (§ 1 ch 52 SLA 1988)

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

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

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

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

(4) with intent to cause physical injury to another person, the person:

(A) tampers with an item that is a food, drug, or cosmetic or a container for the item;

or

05 P.2d 924 (Alaska Ct. App. 1984); 744 P.2d 420 (Alaska Ct. App. 1987); 845 P.2d 449 (Alaska Ct. App. 1992).

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,

(a) 166 SLA 1978)

fire. (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,

actual, or other legal

on property in the

neighbor. (§ 4 ch 166

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,

located upon a highway

of AS 19.10.100. (166 SLA 1988)

control device. (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,

a violation and is

(166 SLA 1988)

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,

of a service rendered in an emergency involving the safety of that utility or service to the public; or by dangerous means, or by means of a value of \$100,000 or more by the use of

supporting facility; or a person: (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,

(B) delivers, dispenses, or distributes an item described in (A) of this paragraph knowing that a person has tampered with the item.

(b) Criminal mischief in the first degree is a class B felony.

(c) In (a)(4) of this section,

(1) "deliver" means the actual, constructive, or attempted transfer from one person to another of an item;

(2) "dispense" means to deliver a drug to an ultimate user or research subject by or under the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the drug for that delivery;

(3) "distribute" means to deliver an item, whether or not there is any money or other item of value exchanged; it includes sale, gift, or exchange;

(4) "drug" has the meaning given in AS 11.71.900(9);

(5) "tamper" means to interfere with something improperly, meddle with it, or make unwarranted alterations to its existing condition. (§ 4 ch 166 SLA 1978; am §§ 1, 2 ch 3 SLA 1984)

Revisor's notes. — Minor word changes were made in the section in 1984.

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

NOTES TO DECISIONS

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).

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

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

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

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

(2) the person tampers with an oil or gas pipeline or supporting facility or an airplane or helicopter with reckless disregard for the risk of harm to or loss of the property; 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 196 (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).

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

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

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

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

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

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

(5) the person knowingly accesses a computer, computer system, computer program, computer network, or part of a computer system or network;

(6) the person uses a device to descramble an electronic signal that has been scrambled to prevent unauthorized receipt or viewing of the signal unless the device is used only to descramble signals received directly from a satellite or unless the person owned the device before September 18, 1984; or

(7) the person knowingly removes, relocates, defaces, alters, obscures, shoots at, destroys, or otherwise tampers with an official traffic control device or damages the work upon a highway under construction.

(b) Criminal mischief in the third degree is a class A misdemeanor.

(c) [*Repealed, § 11 ch 71 SLA 1996.*] (§ 4 ch 166 SLA 1978; am § 1 ch 18 SLA 1979; am §§ 7, 8 ch 143 SLA 1982; am § 2 ch 79 SLA 1984; am § 2 ch 114 SLA 1984; am § 1 ch 15 SLA 1985; am § 2 ch 52 SLA 1988; am § 5 ch 30 SLA 1996; am §§ 2, 11 ch 71 SLA 1996)

Revisor's notes. — Paragraph (6) of subsection (a) of this section was enacted as paragraph (a)(5). Renumbered in 1984. Also, minor word changes were made in subsection (a) in 1984.

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

Effect of amendments. — The 1988 amendment, in subsection (a), substituted "or part of a computer system or network" for "or any part of a computer system or network; or" in paragraph (5), added paragraph (7), and made a related stylistic change.

The first 1996 amendment, effective from May 16, 1996 to June 19, 1996, added "or (5)" at the end of paragraph (c)(3).

The second 1996 amendment, effective June 20, 1996, in subsection (a), repealed paragraphs (2) and

(3); in subsection (b), deleted "Except as provided in (c) of this section," from the beginning and made a related stylistic change; and repealed subsection (c).

Editor's notes. — From May 16, 1996 through June 19, 1996, former subsection (c) read as follows: "(c) A person convicted under (a)(2) of this section is guilty of a class C felony if, within the preceding seven years, the person was convicted under

"(1) the provisions of (a)(2) of this section;

"(2) former AS 28.35.010;

"(3) the provisions of AS 11.46.482(a)(4) or (5);

"(4) an offense involving the theft of a propelled vehicle under AS 11.46.120 — 11.46.140; or

"(5) a law or ordinance of this or another jurisdiction with elements substantially similar to those of the offenses described in (1) — (4) of this subsection."

NOTES TO DECISIONS

Restitution in excess of \$500. — A person pleading guilty to criminal mischief in the third degree can be required, pursuant to AS 12.55.045 and AS 12.55.100(a), to pay an amount of restitution in excess of \$500 so long as the payment is made to an aggrieved party and the amount does not exceed the actual damages or loss caused by the crime for which conviction was had. *Fee v. State*, 656 P.2d 1202 (Alaska Ct. App. 1982).

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).

Separate punishment where defendant fired at cabin and truck. — Separate punishment upon conviction of two counts of misconduct involving weapons in the second degree, and two counts of criminal mischief in the third degree, where the evidence established that defendant had fired a rifle at a cabin and a pickup truck did not violate the

double jeopardy provisions of this section since there were sufficient and significant differences between the intent in the two firings. *Leonard v. State*, 655 P.2d 766 (Alaska Ct. App. 1982).

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).

For case construing former AS 28.35.010, see *State v. G.L.P.*, 590 P.2d 65 (Alaska 1979); *Bell v. State*, 593 P.2d 908 (Alaska 1979); *Sheakley v. State*, 644 P.2d 864 (Alaska Ct. App. 1982).

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); *Shewey v. State*, 739 P.2d 196 (Alaska Ct. App. 1987).

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

Cited in *Plant v. State*, 724 P.2d 536 (Alaska Ct. App. 1986); *Ortberg v. State*, 751 P.2d 1368 (Alaska Ct. App. 1988); *Jerrel v. State*, 756 P.2d 301 (Alaska Ct. App. 1988); *In re J.H.*, 758 P.2d 1287 (Alaska Ct. App. 1988).

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

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

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

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

(3) the person rides in a propelled vehicle knowing it has been stolen or that it is being used in violation of AS 11.46.360 or 11.46.365(a)(1).

(b) Criminal mischief in the fourth degree is a class B misdemeanor. (§ 4 ch 166 SLA 1978; am § 6 ch 30 SLA 1996; am § 3 ch 71 SLA 1996)

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

Effect of amendments. — The first 1996 amendment, effective from May 16, 1996 to June 19, 1996, inserted "or (5)" near the end of paragraph (a)(3).

The second 1996 amendment, effective June 20, 1996, made section reference substitutions in paragraph (a)(3).

Editor's notes. — From May 16, 1996 through June 19, 1996, subsection (a) read as follows: "(a) A person commits the crime of criminal mischief in the fourth degree if, having no right to do so or any reasonable ground to believe the person has such a right,

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

"(2) with intent to damage property of another, the person damages property of another in an amount less than \$50; or

"(3) the person rides in a propelled vehicle knowing it has been stolen or that it is being used in violation of AS 11.46.482(a)(4) or (5) or 11.46.484(a)(2)."

Under § 54, ch. 30, SLA 1996, references to prior convictions in subsection (a), as amended by § 6, ch. 30, SLA 1996 refer to convictions occurring before, on, or after May 16, 1996.

NOTES TO DECISIONS

Defense of necessity in prosecution for reckless destruction of personal property and joy-

riding. — See *Nelson v. State*, 597 P.2d 977 (Alaska 1979).

46 (Alaska Ct. App.

Justin v. State, 627 P.2d

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- (a)(2) of this section is
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.46.482(a)(4) or (5);
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- 11.46.140; or
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similar to those of the
4) of this subsection."

SENATE BILL 240
SECTIONAL ANALYSIS

Senate Bill 240 addresses threats and terroristic acts by increasing the level of offense for certain acts, and adding new provisions to the criminal code. The bill proposes raising the consequences of harming an oil or gas pipeline or supporting facility from the current levels. Intentionally damaging an oil or gas pipeline or supporting facility is currently a class B felony; the bill raises this conduct to a class A felony. There is a similar increase in recklessly tampering with an oil or gas pipeline or supporting facility from a class C to a class B felony.

The bill also adds new provisions to Title 11. Terroristic threatening in the first degree prohibits sending imitation substances that appear to be harmful to a person with intent to cause serious disruption or fear of physical injury. The bill also adds tampering with a person's water supply with the intent to cause physical injury to criminal mischief in the first degree. Current law prohibits tampering with food, drugs, or cosmetics with the intent to cause physical injury. Additionally, making a false threat to damage an oil or gas pipeline is added to the criminal code as a class C felony.

Section 1 is a conforming amendment that adds terroristic threatening in the first degree as a predicate offense, along with other crimes including terroristic threatening in current law, that would raise the offense of stalking in the second degree to stalking in the first degree.

Section 2, damaging an oil or gas pipeline or supporting facility, makes it a class A felony to intentionally damage an oil or gas pipeline or supporting facility. Under current law, this offense is a class B felony.

Section 3 amends criminal mischief in the first degree (a class B felony) in two ways: First, it adds the prohibition of tampering with an oil or gas pipeline or supporting facility or an airplane or helicopter with reckless disregard for the risk of harm or loss to property. Under current law, this conduct is a class C felony. Second, it prohibits tampering with water or a container for water, or delivering or distributing water, knowing that it has been tampered with, with the intent to cause physical injury to another person.

Sections 4 and 5 make conforming amendments to the definitions of "deliver" and "distribute" for criminal mischief in the first degree, to add the delivery or distribution of water to the definitions.

Section 6 makes a conforming amendment to making a false information or report in violation of AS 11.56.800(a) to exclude conduct that arises to terroristic threatening in the second degree.

Section 7 adopts the crime of terroristic threatening in the first degree, that prohibits sending or delivering, or attempting or soliciting the sending or delivery of an imitation biological or chemical substance with the intent to place another in fear of physical injury to any person, cause the evacuation of a building or other facility, or cause serious public inconvenience. This is a class B felony.

Section 8 changes the current terroristic threatening to the second degree offense, and adds the prohibition of making a false report with the intent to cause an evacuation of a public place, business premises, or means of public transportation. It also adds the prohibitions of making a false report that claims that a biological or chemical substance harmful to a person's health has been sent or is present in specified places, or that threatens damage to an oil or gas pipeline or supporting facility.

Section 9 adds the definition of "oil or gas pipeline or supporting facility" to terroristic threatening in the second degree.

Section 10 is a conforming amendment that adds terroristic threatening in the first degree to those crimes that allow for the victim's or witness's address and telephone number to be kept confidential from the defendant if the court finds that the defendant may be a continuing threat to the victim or witness.

Section 11 makes a conforming amendment that adds terroristic threatening in the first degree to those crimes that may potentially be a crime involving domestic violence.

Section 12 repeals the provision in criminal mischief in the second degree for conduct that was added to criminal mischief in the first degree (tampering with an oil or gas pipeline).

Sections 13 and 14 are applicability and effective date clauses.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 240
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
 Title "An Act relating to the crimes of dama BRU Administration and Operations
an oil or gas pipeline or supporting facility, Component All
 Sponsor Rules Committee
 Requester Senate State Affairs Component No. 694

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
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--Do not abbreviate)						
TOTAL	***	***	***	***	***	***

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill proposes to increase the criminal penalties for certain acts of terrorism, including intentional damage or unlawful tampering of an oil or gas pipeline, airplane or helicopter, or water, food and drug supplies. Additionally, it prohibits sending imitation biological or chemical substance with the intent to frighten people or cause other harm.

It is very difficult to predict the potential impact of the increased sanctions on the Department of Corrections. The specific and unusual nature of the crimes will hopefully result in an insignificant number of offenders that fit into these categories. Any increase in sanctions results in an impact on the DOC, thus we are submitting an indeterminate fiscal note.

Prepared by: Candace Brower Phone 564-4652
 Division: Commissioner's Office Date/Time 1/23/02 2:52 PM
 Approved by: Margaret Pugh Date 1/23/02
 Agency: Commissioner, Dept. of Corrections

FISCAL NOTE

STATE OF ALASKA
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Personal Services						
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Miscellaneous						
TOTAL OPERATING	***	***	***	***	***	***

CAPITAL EXPENDITURES						
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TOTAL	***	***	***	***	***	***

Estimate of any current year (FY2002) cost: 0.0
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POSITIONS

Full-time						
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