ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
4660 HJUD HB 73

232


HB
73

Alaska State Legislature

REPRESENTATIVE
MIKE W. MILLER
P.O. Box 55094
North Pole, Alaska 99705
(907) 488-2687

District 18
North Pole
Badger Road
Eielson
Moose Creek
Salcha

While in Juneau
P.O. Box V
Juneau, Alaska 99811
(907) 465-4976

House of Representatives

MEMORANDUM

TO: Representative John Sund, Chairman,
House Judiciary Committee

FROM: Representative Mike Miller M.W. Miller

RE: House Bill 73 "An Act relating to the penalty for unauthorized use of a motor vehicle"

DATE: 3/23/87

Attached are copies of departmental position papers, fiscal notes, letters of support and research information pertaining to HB 73.

As stated on the House Research Agency memorandum dated January 5, 1987, there were 14,544 reported cases of automobile theft in Alaska between 1981 and 1985. Since the purchase of an automobile is often the second largest expenditure for an individual or family, I believe HB 73 warrants committee consideration. Therefore, I would like to formally request a House Judiciary Committee hearing date be set for House Bill 73.

POSITION PAPER

HB 73

The Alaska Public Defender Agency and the Office of Public Advocacy are totally reactive agencies which provide representation to indigent persons when appointed by the court. These agencies do not make policy nor do they initiate litigation. Only proposed legislation with fiscal or program ramifications for these agencies can be said to have a direct agency impact. Thus, the Public Defender Agency and Office of Public Advocacy submit position papers for legislation which will affect these agencies fiscally or programatically or will require these agencies to litigate constitutional issues raised by the legislation.

Fiscal impact: __X__ None See attached fiscal note _____

Program impact: __X__ None See analysis below _____

Constitutional impact: _____ None See analysis below __X__

This bill will establish a mandatory minimum jail term of 60 days and a mandatory fine of $500 for those convicted of the Class C felony of Criminal Mischief in the Second Degree (Joyriding). Those convicted of misdemeanor Joyriding will be required to serve a mandatory minimum 30 days in jail and pay a fine of at least $100.

This bill raises serious concerns in that it deprives a judge of sentencing discretion for first offenders charged with Class C felonies Currently there are no mandatory minimum or presumptive terms for those convicted of a Class C felony. To establish a mandatory minimum term of two months imprisonment for the Class C felony of Joyriding, one of the less serious Class C felonies, when such Class B and C felonies as Burglary in a Dwelling or Assault in the Third Degree have no mandatory minimum term will surely create sentencing inequities.

The misdemeanor mandatory imprisonment provision is similarly problematical in that it establishes a mandatory minimum term of 30 days for one convicted of a first Joyriding offense, while a person who is convicted of a third drunk driving offense is required to serve 20 days in jail. While a 30 day term of imprisonment may be appropriate for a misdemeanor offender with a record of prior misdemeanor convictions or in other severe circumstances, it may not be necessary to achieve the sentencing goals set out by this legislature and the Supreme Court.

Regarding mandatory minimum fines, since these property offenses involve damage to the property of private persons, it might be better for a judge to order restitution to the victim rather than a fine payable to the state. With indigent clients who are unlikely to have substantial resources for payment of fines and restitution, judges are often more likely to order restitution than a fine. Again, this is an area best left to the discretion of the judge.

Finally, the Code of Criminal Procedure and its attendant sentencing framework attempts to classify offenses and their sentencing ranges

based on their relative seriousness. Establishing mandatory minimums for individual offenses without reflection on the relative seriousness of all offenses may result in serious inequities and equal protection concerns.

Dana Fabe, Director
Public Defender Agency

3/12/87
Date

Brant McGee, Director
Office of Public Advocacy

3/13/87
Date

Commissioner Garrey Peska
Department of Administration

3/18/87
Date

BILL NO: HB 73

DATE: 3/10/87

TITLE: "An Act relating to the penalty for unauthorized use of a motor vehicle..."

CONTACT: James D. Vaden
Deputy Commissioenr

DEPARTMENT OF PUBLIC SAFETY

HB 73 adds mandatory minimums to AS 11.46.482 and AS 11.46.484.

It provides minimum sentences for AS 11.46.482(a)(4) and AS 11.46.484(a)(2). These changes could impact both District Attorneys and Public Defenders as more involved plea negotiations may be required due to these minimums. Further, this bill may have an impact on the Office of Public Advocacy which would represent juveniles charged with these offenses, and would most likely affect the Department of Corrections' institutional population in both state and contracted facilities.

This bill would have minimal impact on the enforcement Divisions of this agency. It may provide some deterrent to would be offenders.

The Department of Public Safety has no position on this bill which provides minimum (presumptive) sentences for these two offenses.

William R. Nix
Acting Commissioner

FEB 25 1987

Car and Truck Renting and Leasing Association

State Wide Headquarters
P.O. Box 190128
Anchorage, Alaska 99519
Telephone (907) 243-4300

February 19, 1987

Senator Patrick Rodey
1024 West 6th Ave
Anchorage, AK 99501

Dear Senator,

CATRALA of ALASKA requests your able assistance in promoting House Bill #73, submitted by Representative Mike Miller. Car and Truck Renting and Leasing Association of Alaska (CATRALA) consists of major renting and leasing firms and companies of related service.

House Bill #73, "an act relating to the penalty for unauthorized use of a motor vehicle", would certainly benefit our organization as well as the general public. It's enactment would deter the criminal element from joy riding and torching vehicles. The expenses incurred by individuals as well as businesses warrant the enforcement of stiffer penalties other than the misdemeanor currently enforced.

Sincerely,

Courtland E. Marchant

Courtland E. Marchant
President - CATRALA

CEM/ks

cc: Mike Miller

Licensee
3730 Spenard Rd.
Anchorage, AK 99517-2676
907 276 2655

Out of Town Reservations
1-800-FOR-CARS

Thrifty Car Rental

February 18, 1987

Mike Miller
House of
Representatives
P.O. Box V
Juneau, Ak. 99811

Dear Mike,

I wish to support your House bill 73. I am the Alaska franchise owner of Thrifty Car Rental. Our office in Anchorage has had the following car thefts. These were not rentals taken but, actual thefts car stolen off our lot.

December my fence gate was broken and 4 cars were stolen and recovered as follows:
1986 Plymouth Reliant was recovered in Campbell Creek with $1274.00 damages on December 8.
1986 Plymouth Colt recovered no damage on December 26.
1987 Chrysler Fifth Avenue recovered December 19 this car had 1800 miles was total loss because the thieves poured gasoline on the car inside and then set it on fire.
1987 Chrysler Fifth Avenue recovered January 2, 1987 car had been involved in an accident with $7823.00 damages.

Total damages on all cars over $ 27,000.00.

The Anchorage Police advise me there is a 18 year old man in jail on other charges who confessed to taking the cars but charges will not be brought because as the law now reads he would be turned lose by the judge as it would be classed as " Joy riding".

In January 1987 I had a 1985 Oldsmobile stolen from our car sales lot. We found the car and recovered it at an apartment complex. The Police investigated and took finger prints, verified with apartment manager who had been driving the car. However I am advised no charges " probably" will be brought as " the DA probably won't bring charges as the jails are full and the judge will let him go anyway."

Licensee
3730 Spenard Rd
Anchorage, AK 99517-2676
907 276 2855

Out of Town Reservations
1-800-FOR-CARS

Thrifty Car Rental

There is a epidemic of cars being stolen both private parties and commercial vehicles and the police can't do anything to bring relief to any of us. Some examples of this are last May the Chevy dealer in Wasilla had 14 stolen. A storage lot in Anchorage had 11 stolen. The vehicles were recovered all wrecked. No one prosecuted even though the thieves were known by the police.

The thieves seem to follow the same operating method. They remove the license plate and replace it with a stolen temporary card board plate like you see on new cars (no record filed of this number in Department of Motor Vehicles files or on the computer) then no one can catch them as long as they are not stopped by police for a violation.

Please support HB 73 as protection for all vehicle owners.

Clair A. Floyd
Alaska Franchise Owner
Thrifty Car Rental

HOUSE COMMITTEE REPORT

(7)

Date referred: 1/23/87

FURTHER REFERRALS: Finance

DATE: April 12, 1988

The Judiciary Committee has considered HB 73

"An Act relating to the penalty for unauthorized use of a motor vehicle."

RECOMMENDS:

[✓] replace with CS HB 73 (Jud)

[ ] attached amendment(s)

[ ] the same title

[✓] a new title

[✓] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: [ ] _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

[✓] fiscal impact

[ ] zero fiscal note

[ ] zero with analysis

[ ] same as previous fiscal note published _____

[ ] same as previous zero fiscal note published _____

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Mike Navarro -no rec-

Chairman's signature

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H. JUD.	4-12-88	6:30p.m.
H. JUD	3-21-88	1:30p.m.

Original sponsors: Miller and Zawacki
by request

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 73 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act amending the penalty for the crime of criminal mischief in the third degree involving the theft of a propelled vehicle."

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

* Section 1. AS 11.46.484 is amended by adding a new subsection to read:

(d) A person convicted under (a)(2) of this section whose conviction is not a felony under (c) of this section shall be sentenced to a minimum term of imprisonment of not less than 72 hours and shall pay a fine of not less than $250 and restitution. The imposition or execution of sentence may not be suspended and probation may not be granted except on condition that the minimum imprisonment provided in this subsection is served.

5-2082L

Chenoweth
4/7/88

Original sponsor: Transportation Committee

IN THE SENATE BY THE TRANSPORTATION COMMITTEE

CS FOR SENATE BILL NO. 497 (Transportation)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act amending the penalty for the crime of criminal mischief in the third degree involving the theft of a propelled vehicle."

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

* Section 1. AS 11.46.484 is amended by adding a new subsection to read:

(d) A person convicted under (a)(2) of this section whose conviction is not a felony under (c) of this section shall be sentenced to a minimum term of imprisonment of not less than 72 hours and shall pay a fine of not less than $250 and restitution.

5-2082L
Chenoweth
4/8/88

Original sponsor: Transportation Committee

Adopted as CS H/S 373 (Jud)

IN THE SENATE BY THE TRANSPORTATION COMMITTEE

CS FOR SENATE BILL NO. 497 (Transportation)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act amending the penalty for the crime of criminal mischief in the third degree involving the theft of a propelled vehicle."

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

* Section 1. AS 11.46.484 is amended by adding a new subsection to read:

(d) A person convicted under (a)(2) of this section whose conviction is not a felony under (c) of this section shall be sentenced to a minimum term of imprisonment of not less than 72 hours and shall pay a fine of not less than $250 and restitution. The imposition or execution of sentence may not be suspended and probation may not be granted except on condition that the minimum imprisonment provided in this subsection is served.

5-0350\
Chenow
3/21/8

Original sponsors: Miller and Zawacki
by request

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 73 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act amending the definition of criminal mischief to accommodate an increase in the penalty for the crime of theft of a propelled vehicle."

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

* Section 1. AS 11.46.482(a) is amended to read:

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

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

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

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

(4) the person drives, tows away, or ~~takes the~~ propelled vehicle of another [AND THE VEHICLE OR ANY OTHER PROPERTY OF ANOTHER IS DAMAGED OR THE OWNER INCURS REASONABLE EXPENSES AS A RESULT OF THE LOSS OF USE OF THE VEHICLE IN A TOTAL AMOUNT OF $500 OR MORE].

* Sec. 2. AS 11.46.484(a) is amended to read:

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

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

(2) [THE PERSON DRIVES, TOWS AWAY, OR TAKES THE PROPELLED VEHICLE OF ANOTHER;

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

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

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

(5) [(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.

* Sec. 3. AS 11.46.484(b) is amended to read:

(b) Criminal [EXCEPT AS PROVIDED IN (c) OF THIS SECTION, CRIMINAL] mischief in the third degree is a class A misdemeanor.

* Sec. 4. AS 11.46.486(a) is amended to read:

(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,

(3)

(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 11.46.484(a)(2)].

* Sec. 5. AS 11.46.484(c) is repealed.

(4)

5-0350L
Chenowet
3/31/88

Original sponsors: Miller and Zawacki
By Request

IN THE HOUSE

CS FOR HOUSE BILL NO. 73 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act amending the definition of the crime criminal mischief and the penalty for the crime theft of a propelled vehicle."

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

* Section 1. AS 11.46.482(a) is amended to read:

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

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

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

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

(4) the person drives, tows away, or takes the propelle vehicle of another with the intent to deprive the other person of th use of that vehicle temporarily, and the vehicle or any other propert of another is damaged or the owner incurs reasonable expenses as result of the loss of use of the vehicle in a total amount of $500 o more.

* Sec. 2. AS 11.46.482 is amended by adding a new subsection to read:

(c) A person convicted under (a)(4) of this section shall b

sentenced to a minimum term of imprisonment of not less than 30 da and shall pay a fine of not less than $500 and restitution.

* Sec. 3. AS 11.46.484(a) is amended to read:

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

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

(2) the person drives, tows away, or takes the propelle vehicle of another <u>with the intent to deprive the other person of th use of that vehicle temporarily</u>;

(3) having custody of a propelled vehicle under a writte agreement with the owner of the vehicle that includes an agreement t return the vehicle to the owner at a specified time, the person know ingly retains or withholds possession of the vehicle without th consent of the owner for so long a period beyond the time specified a to render the retention or possession of the vehicle an unreasonabl deviation from the agreement;

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

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

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

* Sec. 4. AS 11.46.484 is amended by adding new subsections to read:

(d) A person convicted under (a)(2) of this section shall b sentenced to a minimum term of imprisonment of not less than 10 day and shall pay a fine of not less than $100 and restitution.

(e) A person sentenced under (c) of this section shall be sen tenced to a minimum term of imprisonment of not less than 30 days an shall pay a fine of not less than $500 and restitution.

Introduced: 1/23/87
Referred: Judiciary and Finance

IN THE HOUSE BY MILLER BY REQUEST

HOUSE BILL NO. 73

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the penalty for unauthorized use of a motor vehicle."

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

* Section 1. AS 11.46.482 is amended by adding a new subsection to read:

(c) A person convicted under (a)(4) of this section shall be sentenced to a minimum term of imprisonment of not less than 60 days and shall pay a fine of not less than $500.

* Sec. 2. AS 11.46.484 is amended by adding a new subsection to read:

(d) A person convicted under (a)(2) of this section shall be sentenced to a minimum term of imprisonment of not less than 30 days and shall pay a fine of not less than $100 except that a person sentenced under (c) of this section shall be sentenced to a minimum term of imprisonment of not less than 60 days and shall pay a fine of not less than $500.

Want to:

(1) How does this relate to car theft?

(2) Person in PSG would want to take to turn joyriding into car theft or Increase penalty for joyriding — Does this bill do that

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

MEMORANDUM March 25, 1988

SUBJECT: Amendment of the joyriding statutes (AS 11.46.482 and 11.46.484 (CSHB 73 (Jud))

TO: Representative Max Gruenberg

FROM: Jack Chenoweth
Legislative Counsel

You have asked whether the draft of CSHB 73 (Judiciary)--eliminating a distinction drawn as to crime of criminal mischief for joyriding, thereby requiring that all joyriding convictions be treated as felonies--runs afoul of due process requirements. The due process concerns are those considered by the Alaska Supreme Court in Speidel v. State, 460 P.2d 77 (Alaska, 1969), and Alex v. State, 484 P.2d 677 (Alaska, 1971), generally concluding that to convict a person of a felony for simple negligent failure to act, without proof of criminal intent, deprives the person of due process of law. Your concern apparently arises out of the absence in the revised statute of any requirement of culpability applicable to the specific crime: AS 11.46.482(a)(4), as amended, is not accompanied by a prescribed culpable mental state.

Existing law distinguishes between "aggravated joyriding," a class C felony, and "joyriding," a class A misdemeanor. The distinction is based on whether "the vehicle [taken] or any other property of another is damaged, or the owner incurs reasonable expenses as a result of the loss of use of the vehicle in a total amount of $500 or more." If there is loss of $500 or more, the charge properly brought is criminal mischief in the second degree, a class C felony.

CSHB 73 (Judiciary) proposes to delete the distinction and make each instance of joyriding a class C felony.

Joyriding is distinguishable from theft: prosecution or conviction for theft presumes the ability to show that the defendant acted with intent to deprive the vehicle's owner of the vehicle for an extended period or to appropriate the

vehicle to himself; much like its now-repealed predecessor, former AS 28.35.010(a), a joyriding prosecution contemplates proof of an intent "temporarily to deprive the owner of possession of the vehicle."

The general requirements of culpability applicable to the criminal law are set out in AS 11.81.600. Generally, to sustain the prosecution, proof of a culpable mental state must be satisfied. There are exceptions (AS 11.81.600(b)), one of which directs that "no culpable mental state must be proved if the description of the offense does not specify a culpable mental state and the offense is designated as one of 'strict liability.'" The commentary to current AS 11.46.482(a)(4) concludes that felony joyriding under current law is a crime in which the offense may be designated as one of "strict liability":

> [T]his amendment [i.e. HCS CSSB 511, enacted as ch. 102, SLA 1980] clarifies that strict liability is imposed on the defendant as to the element of causing damage to the car or expenses for the owner and allows the element of damage to be satisfied by any damage to property of another and not only damage to the propelled vehicle. Thus, the defendant who takes a propelled vehicle of another and damages property of another in an amount exceeding $500 with the vehicle commits a class C felony.

House Journal Supplement #79, May 28, 1980, at p. 11.

CSHB 73 (Judiciary) eliminates the distinction based on the element of damage.

Eliminating the distinction in the definition of the crime based on the amount of damage and redefining joyriding as a felony does not, in my judgment, raise so substantial a due process objection as to invalidate the bill.

Even with the proposed amendment eliminating the "strict liability" requirements, it appears to me that, under AS 11.46.482(a)(4), the prosecution bears the burden of proving the defendant engaged in the proscribed conduct "knowingly" (AS 11.81.610(b)(1)), that is, of showing that, with respect to the conduct, the defendant knew that the conduct would temporarily deprive the vehicle owner of use of the propelled vehicle (AS 11.81.900(2)). The exceptionary language appearing in the definition of each class of

the crime of criminal mischief ("having no right to do so or any reasonable ground to believe the person has such a right") circumscribe that knowledge requirement. Since, under AS 11.81.610(c), "[i]f acting knowingly suffices to establish an element [of an offense], an element is also established if a person acts intentionally," the prosecution may also properly prove that the defendant acted "with a conscious objective of causing that result [i.e., of temporarily depriving the vehicle owner of use of the vehicle]."

Through all of this, there may be a serious question that the application of the principles of criminal culpability to the so-called joyriding statutes (current AS 11.46.482(a)(4) and AS 11.46.484(a)(2)) is violative of the Alex decision. For the reasons I have suggested, I do not see the objection. The criminal code provisions cited appear to provide some guidance to meet the due process cautions addressed in that decision and to give direction on the point of how the prosecution may meet the burden of proof on the question of criminal intent. But even if there is a due process problem, I do not see that the question arises out of the proposed language of the amendment of CSHB 73 (Judiciary). Rather, it may be a problem that already exists, and, indeed, may have existed since the revision of the Criminal Code in 1978.

I trust this is responsive to your concerns.

JBC:bb
b4/051

[redacted] HB 73

STATE OF ALASKA
1988 LEGISLATIVE SESSION

PUBLISH DATE: 3/31/88

FISCAL NOTE

REQUEST:

Revision Date:
Title: "An Act amending the definition of the crime of criminal mischief..."
Sponsor: Rep. Miller and Zawacki
Requestor:

Agency Affected: Dept. of Administration
BRU: Public Defender Agency
Components: First, Third and Fourth Judicial Districts

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		263.8	274.4	285.4	296.8	308.7
TRAVEL		15.0	15.6	16.2	16.8	17.4
CONTRACTUAL		15.0	15.6	16.2	16.8	17.4
SUPPLIES		7.5	7.8	8.1	8.4	8.7
EQUIPMENT		10.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		311.3	313.4	325.9	338.8	352.2
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		311.3	313.4	325.9	338.8	352.2
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		5.0	5.0	5.0	5.0	5.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

(See Attachment)

Prepared by: Dana Fabe, Public Defender
Phone: 279-7541
Division: Public Defender Agency
Date: 4/7/88

Approved by Commissioner: John Andrews
Date:
Agency: Department of Administration

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

DRAFT

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CS HB 73

CS HB 73 BUDGET ANALYSIS

Juneau	Attorney III	66.0		
	Clerk/Typist III	28.7		
	Personal Services			94.7
	Travel (First Judicial District)			5.0
	Contractual (Experts, Phone, Space, etc.)			5.0
	Supplies (Office and Law Library)			3.0
	Equipment (one time)			4.0
			TOTAL	111.7
Anchorage	Attorney III	66.0		
	Clerk/Typist III	28.7		
	Personal Services			94.7
	Travel (Third Judicial District)			5.0
	Contractual (Experts, Phone, Space, etc.)			5.0
	Supplies (Office and Law Library)			3.0
	Equipment (one time)			4.0
			TOTAL	111.7
Fairbanks	Attorney III	74.4		
	Personal Services			74.4
	Travel (Fourth Judicial District)			5.0
	Contractual (Experts, Phone, Space, etc.)			5.0
	Supplies (Law Library)			1.5
	Equipment (one time)			2.0
			TOTAL	87.9
			GRAND TOTAL	311.3

DRAFT

Position Title	Attorney III		No. of Positions 1	Range/Step 22A	Barg. Unit PX
Time Status PFT	Staff Months 12.0		Location Juneau	Election District 91	

Type of Expenditure		Amount
1	2	3
Salary	49,140	
Benefits	16,834	
Premium Pay		
Other		
Total Personal Services		65,974
Travel		5,010
Contractual		5,010
Commodities		1,530
Equipment		2,010
Other		
Total Cost		79,434
Funding Source for Total Cost		
Federal Receipts 1002		
G. F. Match 1003		
General Fund 1004		79,434
GF Program Receipts 1005		
Other		

Justification

This bill would establish a 10-day minimum jail term for first offenders charged with misdemeanor joyriding and a 30-day minimum for felony joyriding which encompasses a second joyriding offense or joyriding involving damage of over $500 to the vehicle. Virtually none of our joyriding cases go to trial at the present time. However, persons with no prior criminal record who face a mandatory 10 days in jail will almost certainly elect to go to trial. These new mandatory minimums could result in hundreds of new jury trials each year and would require Public Defender representation in most cases. Jury trials are extremely time consuming in both preparation and execution. This additional burden will necessitate addition of an Attorney III who would cover Juneau, Petersburg, Sitka and other smaller Southeastern communities in joyriding cases.

Request For New Position

Agency Dept. of Administration

BRU Public Defender Agency

Component First Judicial District

Revised Date 4/7/88

FY 89

DRAFT

Position Title	Clerl/Typist III	No. of Positions 1	Range/Step 8A	Barg. Unit GGU
Time Status PFT	Staff Months 12.0	Location Juneau	Section	District 91

Type of Expenditure		Amount
1	2	3
Salary	19,572	
Benefits	9,129	
Premium Pay		
Other		
Total Personal Services		28,701
Travel		
Contractual		
Commodities		1,500
Equipment		2,000
Other		
Total Cost		32,201

Funding Source for Total Cost		
Federal Receipts	1002	
G F Match	1003	
General Fund	1004	32,201
GF Program Receipts	1005	
Other		

Justification

This bill would establish a 10-day minimum jail term for first offenders charged with misdemeanor joyriding and a 30-day minimum for felony joyriding which encompasses a second joyriding offense or joyriding involving damage of over $500 to the vehicle. Virtually none of our joyriding cases go to trial at the present time. However, persons with no prior criminal record who face a mandatory 10 days in jail will almost certainly elect to go to trial. These new mandatory minimums could result in hundreds of new jury trials each year and would require Public Defender representation in most cases. Jury trials are extremely time consuming in both preparation and execution. The Juneau office is already in a precarious position with just one clerical person to provide support to three attorneys and an investigator. Addition of an attorney will mandate a second clerical person. This Clerk/Typist III would provide clerical and paralegal support services to the additional attorney and also assist in the support needs of the three other attorneys and the investigator in the Juneau office.

Request For New Position

Agency: Department of Administration
BRU: Public Defender Agency
Component: First Judicial District

FY 89

PUBLIC DEFENDER 221 P05 FEB 02 '88 15:46

DRAFT

Position Title	Attorney III	No. of Positions 1	Range/Step 22A	Barg. Unit PX
Time Status PFT	Staff Months 12.0	Location Anchorage	Election District 92	

Type of Expenditure		Amount
1	2	3
Salary	49,140	
Benefits	16,834	
Premium Pay		
Other		
Total Personal Services		65,974
Travel		5,000
Contractual		5,000
Commodities		1,500
Equipment		2,000
Other		
Total Cost		79,474

Funding Source for Total Cost		
Federal Receipts	1002	
G. F. Match	1003	
General Fund	1004	79,474
GF Program Receipts	1005	
Other		

Justification

This bill would establish a 10-day minimum jail term for first offenders charged with misdemeanor joyriding and a 30-day minimum for felony joyriding which encompasses a second joyriding offense or joyriding involving damage of over $500 to the vehicle. Virtually none of our joyriding cases go to trial at the present time. However, persons with no prior criminal record who face a mandatory 10 days in jail will almost certainly elect to go to trial. These new mandatory minimums could result in hundreds of new jury trials each year and would require Public Defender representation in most cases. Jury trials are extremely time consuming in both preparation and execution. This additional burden will necessitate addition of an Attorney III who would cover Third Judicial District joyriding cases including Anchorage, Palmer, Kenai, Seward, Homer, Kodiak, Glennallen and smaller localities.

Request For New Position

Agency: Dept. of Administration
BRU: Public Defender Agency
Component: Third Judicial District

FY 89

PUBLIC DEFENDER 221 POS
APR 08 '88 13:46

DRAFT

Position Title	No. of Positions	Range/Step	Barg. Unit
Clerk/Typist III	1	8A	GGU

Time Status	Staff Months	Location	Election District
PFT	12.0	Anchorage	92

Type of Expenditure		Amount
1	2	3
Salary	19,572	
Benefits	9,129	
Premium Pay		
Other		
Total Personal Services		28,701
Travel		
Contractual		
Commodities		1,500
Equipment		2,000
Other		
Total Cost		32,201

Funding Source for Total Cost		
Federal Receipts	1002	
G. F. Match	1003	
General Fund	1004	32,201
GF Program Receipts	1005	
Other		

Justification

This bill would establish a 10-day minimum jail term for first offenders charged with misdemeanor joyriding and a 30-day minimum for felony joyriding which encompasses a second joyriding offense or joyriding involving damage of over $500 to the vehicle. Virtually none of our joyriding cases go to trial at the present time. However, persons with no prior criminal record who face a mandatory 10 days in jail will almost certainly elect to go to trial. These new mandatory minimums could result in hundreds of new jury trials each year and would require Public Defender representation in most cases. Jury trials are extremely time consuming in both preparation and execution. This Clerk/Typist III would provide clerical and support services to the additional attorney and also assist the Palmer and Kenai staff in meeting the support needs of seven other attorneys.

Request For New Position

Agency: Department of Administration
BRU: Public Defender Agency
Component: Third Judicial District

FY 89

FAX 88 '88 13:47 PUBLIC DEFENDER 221 P01

DRAFT

Position Title	No. of Positons	Range/Step	Barg. Unit
Attorney III	1	22A	PX

Time Status	Staff Months	Location	Election District
PFT	12.0	Fairbanks	94

Type of Expenditure		Amount
1	2	3
Salary	56,241	
Benefits	18,129	
Premium Pay		
Other		
Total Personal Services		74,373
Travel		5,000
Contractual		5,000
Commodities		1,500
Equipment		2,000
Other		
Total Cost		87,873

Funding Source for Total Cost		
Federal Receipts	1002	
G. F. Match	1003	
General Fund	1004	87,873
GF Program Receipts	1005	
Other		

Justification

This bill would establish a 10-day minimum jail term for first offenders charged with misdemeanor joyriding and a 30-day minimum for felony joyriding which encompasses a second joyriding offense or joyriding involving damage of over $500 to the vehicle. Virtually none of our joyriding cases go to trial at the present time. However, persons with no prior criminal record who face a mandatory 10 days in jail will almost certainly elect to go to trial. These new mandatory minimums could result in hundreds of new jury trials each year and would require Public Defender representation in most cases. Jury trials are extremely time consuming in both preparation and execution. This additional burden will necessitate addition of an Attorney III who would cover Fourth Judicial District joyriding cases including Fairbanks and smaller localities.

Request For New Position

Agency: Dept. of Administration

BRU: Public Defender Agency

Component: Fourth Judicial District

FY 89

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSHB 73 (Jud)
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act amending the penalty for the crime of..."
Sponsor: Rep Miller & Zawacki
Requestor: _____

Agency Affected: Department of Corrections
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		135.0	135.0	135.0	135.0	135.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	135.0	135.0	135.0	135.0	135.0
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	135.0	135.0	135.0	135.0	135.0
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	135.0	135.0	135.0	135.0	135.0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Susan E. Knighton, Director

Prepared by: _____ Phone: 465-3376
Division: Administrative Services Date: 4-22-88

Approved by Commissioner: Susan Humphrey-Barnett Date: 4-22-88
Agency: Department of Corrections

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

ANALYSIS

This fiscal note is based upon data contained in the House Research report entitled, "Motor Vehicle Thefts in Alaska."

There are approximately 3,000 motor vehicle thefts in Alaska each year. This note assumes that 50% of these thefts can be defined as joy-riding.

3000 X 3 days X $30.00 soft bed costs in Anchorage X 50% = $135,000
3000 X 3 days X $47.50 soft bed costs statewide X 50% = $213,750

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSHB 73 (Jud)
PUBLISH DATE: _____

FISCAL NOTE

REQUEST: _____

Revision Date: _____
Title: "An Act amending the penalty for the crime of..."
Sponsor: Rep. Miller & Zawacki
Requestor: _____

Agency Affected: Department of Corrections
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		270.0	270.0	270.0	270.0	270.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	270.0	270.0	270.0	270.0	270.0
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	270.0	270.0	270.0	270.0	270.0
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	270.0	270.0	270.0	270.0	270.0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

See Attached Page.

Susan E. Knighton

Prepared by: Susan E. Knighton, Director — Phone: 465-3376
Division: Administrative Services — Date: 4-15-88

Approved by Commissioner: ~~Susan Humphrey-Barnett~~ — Date: 4-15-88
Agency: Department of Corrections

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

ANALYSIS

This fiscal note is based upon data contained in the House Research report entitled, "Motor Vehicle Thefts in Alaska."

There are approximately 3,000 motor vehicle thefts in Alaska each year. This note assumes that 50% of these thefts can be defined as joy-riding.

3000 X 3 days X $30.00 soft bed costs in Anchorage = $270,000
3000 X 3 days X $47.50 soft bed costs statewide = $427,500

STATE OF ALASKA
PUBLIC DEFENDER AGENCY

STEVE COWPER, GOVERNO

900 W. 5TH AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-209(
PHONE: (907) 279-7541

April 7, 1988

Representative John Sund
House of Representatives
P.O. Box V
Juneau, Alaska 99811

RE: CS HB 73

Dear Representative Sund:

I have received your request for my comments on CS HB 73 which establishes mandatory minimum jail time for the offense of joyriding.

This bill does essentially two things on the issue of penalties. First, joyriders will be required to serve a mandatory minimum jail term of 10 days, even if they have no prior criminal record whatsoever. Second, where the current code has already aggravated a joyriding offense to felony status due to the amount of damage to the car or the fact that it is a second offense, an offender will now be required to serve 30 days of imprisonment as a mandatory minimum. Both of these changes present serious concerns.

Ten-day mandatory minimum for first offense joyriding.

Adoption of a mandatory minimum jail term for persons who joyride, regardless of whether they have any prior record, creates several anomalies. First, persons who take a vehicle temporarily with no intent to steal it permanently will be punished more harshly than persons who commit much more serious misdemeanor or felony offenses. A first offender of any kind who joyrides a car and returns it the same day will be required to spend 10 days in jail regardless of the circumstances of his case, while an offender who is charged with a first offense felony burglary or felony theft of a vehicle has no required mandatory minimum jail time. Even within the misdemeanor context, a first offender who uses a car without permission and returns it the same day will receive over three times the mandatory minimum sentence of a first offense drunk driver.

Second, given the fact that many joyriders are teens who use a car of a friend or relative without permission, injustices may result from adoption of this type of sentencing scheme. Once the police have been called regarding a missing vehicle, friends or relatives may not be able to stop charges being filed. As I have stated in other contexts, the criminal code was carefully designed to present a rational sentencing scheme where more serious offenders are punished more severely. Creation of mandatory minimum jail terms for specific types of offenses without careful review of

the context of the entire code can destroy the rational sentencing scheme which was the purpose of the code.

It should be noted that this bill may fill our jails with the wrong types of people. Persons who joyride tend to be young, and although they may be displaying extremely poor judgment, they are not hardened criminals. To fill our jails with this class of persons may create overcrowding problems which result in the release of the wrong offenders or does damage to the young offender who is placed in prison with more hardened offenders.

It should also be noted that joyriding cases rarely go to trial at this time. If mandatory minimum jail terms of 10 days are required for all misdemeanor joyriding cases, virtually all of these cases will go to trial since this is an extremely lengthy sentence within the context of the misdemeanor code. Already, higher numbers of drunk driving charges are going to trial even though those cases only involve a 72-hour mandatory minimum on a first offense. Increased trials will involve not only additional Public Defender and District Attorney time, but judicial time and the cost of juries and bailiffs.

Finally, it should be noted that the current statutory provisions already provide serious deterrents for persons who would joyride repeatedly. A.S. 11.46.484(c) provides that a person who commits the offense of joyriding a second time within seven years can be charged with a Class C felony. This recently adopted provision should provide adequate deterrence for repeat offenders, particularly since a person on his third offense would be subject to a presumptive two-year jail term under the presumptive sentencing provisions.

Thirty-day mandatory minimum jail term for felony joyriding.

The current code provisions on joyriding already require a Class C felony charge if a person joyrides and damages a vehicle in an amount of $500 or more or joyrides a second time within seven years. Elevation of a joyriding offense to felony status already provides adequate deterrence and punishment to offenders, since a felony conviction involves numerous collateral consequences including an inability to vote, an inability to carry firearms and the stigma of being branded a convicted felon. These consequences are in addition to any jail time which may be imposed by the court.

This bill adds a mandatory minimum period of 30 days in jail. Again, this would require first offender felony joyriders to serve substantial jail time for this offense when other first felony offenders charged with Class C and B burglaries, assaults, and thefts have no mandatory minimum of jail time even if they have prior misdemeanor records. Again, before this action is taken to create a mandatory minimum for a certain Class B or C felony offense, the entire code should be reviewed to ensure that the sentencing scheme is just and equitable. Requiring persons to do 30 days of jail time on a first offense felony joyriding may fill the jails with the wrong people.

In summary, recent amendments to the code have already provided a significant deterrent to persons who joyride more than once. They are

charged with a felony. Persons who cause substantial damage to a vehicle while they are joyriding are already charged with a felony under current code provisions. Adoption of the mandatory minimum provisions in this bill would be a serious mistake, in my opinion. It will also be extremely costly to the state.

Thank you for requesting my input on this bill. If I may be of any further assistance, please do not hesitate to contact me.

Very truly yours,

Dana Fabe
Public Defender

DF:sh

LAWS OF ALASKA

1978

Source: SCS CSHB 661 am S

Chapter No. 166

AN ACT

Revising the criminal laws of the state; changing Rule 35 of the Alaska Supreme Court's Rules of Criminal Procedure; and providing for an effective date.

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

* Section 1. AS 11 is amended by adding a new chapter to read:

CHAPTER 16. PARTIES TO CRIME.

Sec. 11.16.100. LEGAL ACCOUNTABILITY BASED UPON CONDUCT. A person is guilty of an offense if it is committed by his own conduct or by the conduct of another person for which he is legally accountable under sec. 110 of this chapter, or by both.

Sec. 11.16.110. LEGAL ACCOUNTABILITY BASED UPON THE CONDUCT OF ANOTHER: COMPLICITY. A person is legally accountable for the conduct of another person constituting an offense if

(1) he is made legally accountable by a provision of law defining the offense;

(2) with intent to promote or facilitate the commission of the offense,

(A) he solicits the other person to commit the offense; or

(B) he aids or abets the other person in planning or committing the offense; or

(3) acting with the culpable mental state that is sufficient for the commission of the offense, he causes an innocent person or a person who lacks criminal responsibility to engage in the proscribed conduct.

Chapter 35. Miscellaneous Provisions.

Article 1. Offenses Involving Property Rights (§§ 28.35.015 — 28.35.026)
Article 2. Operating While Intoxicated; Implied Consent (§§ 28.35.030 — 28.35.038)
Article 3. Reckless and Negligent Driving (§§ 28.35.040, 28.35.045)
Article 4. Duties Following Accidents (§§ 28.35.050 — 28.35.130)
Article 5. Miscellaneous Offenses (§§ 28.35.135 — 28.35.245)

Article 1. Offenses Involving Property Rights.

Section
15. Tampering with or damaging a vehicle
24. Renting a motor vehicle
26. Failure to return rental vehicle

Sec. 28.35.010. Driving a vehicle without owner's consent. [Repealed, § 21 ch 166 SLA 1978. For current law, see AS 11.46.484.]

Sec. 28.35.015. Tampering with or damaging a vehicle. A person without the right to do so, may not tamper with a vehicle, set or attempt to set a vehicle in motion, or damage a part or component of a vehicle. (§ 5 ch 241 SLA 1976)

Collateral references. — 7A Am. Jur. 2d Automobiles and Highway Traffic, §§ 354, 355.
61A C.J.S., Motor Vehicles, § 673.
What constitutes offense of "tampering" with "motor vehicle" or contents, 42 ALR3d 624.
Validity and construction of statute making it a criminal offense to "tamper" with motor vehicle or contents, or to obscure registration plates, 57 ALR3d 606.

Sec. 28.35.020. Conviction in larceny prosecution. [Repealed, § 21 ch 166 SLA 1978.]

Sec. 28.35.024. Renting a motor vehicle. (a) A person may not rent a motor vehicle to a person unless the person renting the vehicle is properly licensed under this title or, if a nonresident, the person is properly licensed under the laws of the jurisdiction of a person's residence.

(b) A person may not rent a motor vehicle until the person has inspected the license of the person to whom the vehicle is to be rented, and has verified the identification of the licensee.

(c) Every person renting a motor vehicle shall keep a record of the registration number of the vehicle rented, the name, address and license number of the person to whom the vehicle is rented, and the date and place when and where the license of the intended driver was issued. The record shall be open to inspection by a peace officer or employee of the department acting in an official capacity.

(d) Every person renting a motor vehicle shall comply with the financial responsibility requirements of this title.

Sec. 28.35.010. Driving a vehicle without owner's consent [Repealed effective January 1, 1980]. (a) A person who drives, tows away, or takes a vehicle not his own without the consent of the owner, with intent temporarily to deprive the owner of possession of the vehicle, or a person who is a party or accessory to or an accomplice in the driving or unauthorized taking is guilty of a misdemeanor, and upon conviction is punishable by imprisonment for not less than 30 days nor more than one year, and by a fine of not less than $100 nor more than $1,000. Upon a conviction for a second or subsequent offense, the offender may be charged with a felony, and if so charged and convicted, is punishable by imprisonment for not more than three years, or by a fine of not more than $5,000. The court may, upon conviction of a second or subsequent violation of this section, suspend the offender's license to drive a motor vehicle for a period of not to exceed three years. The consent of the owner of a vehicle to its driving, towing away, or taking shall not be presumed or implied because of the owner's consent on previous occasions to the driving, towing away or taking of the vehicle by the same or a different person.

(b) Repealed by § 20 ch 241 SLA 1976.

(c) The word "person" as used in this section does not include a United States marshal or his deputy, a state policeman, or any other peace officer who drives, tows away, or otherwise takes a vehicle with authority under law to do so.

(d) When a minor is accused of violations under this section he may be charged, prosecuted, and sentenced in the same manner as an adult, except that a parent, guardian or legal custodian shall be present at all proceedings against the minor. (§ 50-5-1 ACLA 1949; am § 1 ch 103 SLA 1953; am § 1 ch 42 SLA 1955; am § 2 ch 116 SLA 1965; am § 1 ch 87 SLA 1967; am § 1 ch 114 SLA 1968; am § 20 ch 241 SLA 1976)

Revisor's note. — HB 44 (ch. 114, SLA 1968), amending AS 28.35.010(a), was introduced during the First Session (1967) of the Fifth Legislature, but did not pass until the Second Session. Through oversight it was not amended before passage to reflect the 1967 amendment to the same subsection. It seems apparent that it was not the legislative intent, through passage of HB 44 in its original form, to nullify the 1967 amendment.

Cross references. — For additional definition of "vehicle," see AS 28.35.260. As to jurisdiction of minor accused of violating traffic laws or regulations, see AS 47.10.010(b). See AS 11.46.480 through 11.46.486, effective January 1, 1980, relating to criminal mischief.

Section repealed effective January 1, 1980. — Section 21, ch. 166, SLA 1978, repeals this section, effective January 1, 1980.

Effect of amendment. — The 1976 amendment, repealed subsection (b), which defined the word "vehicle" as used in this section.

This section abolishes any distinction between principle and accomplice. Notar v. State, Sup. Ct. Op. No. 1655 (File Nos. 3306, 3307), 580 P.2d 699 (1978).

Evidence sufficient to enable jury to find that defendants acted without consent of owner of vehicle. — See Notar v. State, Sup. Ct. Op. No. 1655 (File Nos. 3306, 3307), 580 P.2d 699 (1978).

Cited in Parish v. State, Sup. Ct. Op. No. 657 (File No. 1180), 477 P.2d 1005 (1970).

evidence offered by the defendant regarding the
complaining witness is relevant, and that the
e evidence offered is not outweighed by the pre-
ission will create undue prejudice, confusion of
anted invasion of the privacy of the complaining
all make an order stating what evidence may be
ture of the questions which shall be permitted.
n offer evidence under the order of the court.
0 is amended to read:

UNLAWFUL OR RIOTOUS ASSEMBLY. Where six [THREE,
her armed or not, are [UNLAWFULLY OR] riotously
judge, magistrate, peace officer, or the chief
a city, town, village, or settlement shall go
, or as near to them as he can with safety, and
me of the state to disperse.

) is amended to read:

ENFORCEMENT OF REGULATIONS. The Department of
chief of each city fire department and their
ives in their respective areas may enforce the
s adopted by the Department of Public Safety for
or for the protection of life and property

All state peace officers may assist the Depart-
in the enforcement of secs. 10 - 100 of this
AND] regulations adopted under it. The authority
100 of this chapter extends to the enforcement
; 11.46.400 - 11.46.430 [11.20.010 - 11.20.050.

. laws are repealed: AS 02.30.020; AS 03.35.060;
AS 06.30.875; AS 11.05.010 - 11.05.060, 11.-

05.100, 11.05.140 - 11.05.150; AS 11.10; AS 11.15.010 - 11.15.050, 11.15.-
070 - 11.15.340; AS 11.20.010 - 11.20.650, 11.20.670 - 11.20.690; AS 11.22;
AS 11.25; AS 11.30; AS 11.35; AS 11.36; AS 11.40; AS 11.45; AS 11.50; AS
11.55; AS 11.60.010 - 11.60.220, 11.60.340, 11.60.350; AS 11.65.030; AS
11.70.010 - 11.70.030; AS 11.75; AS 12.15.010 - 12.15.040; AS 12.25.130; AS
12.45.030, 12.45.040; AS 12.55.010, 12.55.020, 12.55.040 - 12.55.075; AS
12.60.010, 12.60.030, 12.60.200; AS 18.65.070; AS 23.10.005; 23.10.010; AS
27.05.100 - 27.05.130; AS 28.35.010, 28.35.020; AS 33.20.020; AS 33.30.055;
AS 34.05.030; AS 35.10.140, 35.10.150; AS 38.05.360; AS 39.51.010; AS 45.-
50.471(d), 45.50.551(c); and AS 45.75.370.

* Sec. 22. The revisor of statutes shall renumber the following laws, so as to remove them from AS 11 and place them in other appropriate titles of the Alaska Statutes: AS 11.05.070 - 11.05.090, 11.05.110 - 11.05.130; AS 11.15.060; AS 11.20.660; AS 11.60.225, 11.60.250 - 11.60.320; AS 11.65.010, 11.65.020; and AS 11.70.050.

* Sec. 23. (a) Except as otherwise provided, secs. 1 - 10 of this Act govern the construction of any offense committed on or after the effective date of this Act, as well as the construction and application of any defense to a prosecution for an offense.

(b) Except as provided in (c) of this section, sec. 12 of this Act governs the punishment for any offense committed on or after the effective date of this Act.

(c) AS 12.55.125 - 12.55.185, enacted in sec. 12 of this Act, apply only upon conviction of the crime of murder in the first or second degree, kidnapping, or any crime classified as a class A, B, or C felony or a class A or B misdemeanor. For purposes of AS 12.55.125, 12.55.145, and 12.55.155, the court shall consider prior convictions whether committed before, on, or after the effective date of this Act.

(d) AS 33.15.180, as amended in secs. 15 and 16 of this Act, applies

trial court's grant of summary judgment if alternative grounds exist for upholding its judgment, *Moore v. State*, 553 P.2d 8, 21 (Alaska 1976), we do not believe that summary judgment was properly granted in this case.

[12, 13] Our examination of the materials presented by Totem in opposition to Alyeska's motion for summary judgment leads us to conclude that Totem has made a sufficient factual showing as to each of the elements of economic duress to withstand that motion. There is no doubt that Alyeska disputes many of the factual allegations made by Totem [7] and drawing all inferences in favor of Totem, we believe that genuine issues of material fact exist in this case such that trial is necessary. Admittedly, Totem's showing was somewhat weak in that, for example, it did not produce the testimony of Roy Bell, the attorney who represented Totem in the negotiations leading to the settlement and release. At trial, it will probably be necessary for Totem to produce this evidence if it is to prevail on its claim of duress. However, a party opposing a motion for summary judgment need not produce all of the evidence it may have at its disposal but need only show that issues of material fact exist. 10 C. Wright and A. Miller, *Federal Practice and Procedure: Civil*, § 2727 at 546 (1973). Therefore, we hold that the superior court erred in granting summary judgment for appellees and remand the case to the superior court for trial in accordance with the legal principles set forth above.

IV

[14] One final issue remains in this appeal. Appellants Richard Stair and Pacific, Inc. contend that even if Totem is ultimately found to be bound by the release it executed, Stair and Pacific are not similarly bound because they did not sign the release. This contention is without merit. Neither Stair individually nor Pacific were parties to the original contract between Totem and Alyeska, nor were they parties to the amendment. No contention has been made that they were even third party beneficiaries to that contract. As they were not parties to the original contract, it follows that Stair and Pacific had no contractual claims against Alyeska which they could have released and thus it is irrelevant whether or not they executed the release. Stair and Pacific's fate in this lawsuit, therefore, depends entirely on Totem's success or failure in pursuing its contractual claims against Alyeska.

REVERSED and REMANDED.

Edward Burns KIMOKTOAK, Appellant,

v.

STATE of Alaska, Appellee.

No. 3177.

Supreme Court of Alaska.

Sept. 1, 1978.

Defendant was convicted by a jury in the Superior Court, Third Judicial District, Anchorage, Peter J. Kalamarides, J., of joyriding and of failing to render aid and assistance to a person he had run over with a motor vehicle. Defendant appealed The Supreme Court, Burke, J., held that: (1) although statute making it unlawful for a motorist to fail to render aid and assistance to a person he has run over appears constitutionally defective on its face for its failure to require criminal intent, more particularly, for its failure to require that a motor-

7. For example, Alyeska has denied that it ever admitted to owing any particular sum to Totem and has disputed the truthfulness of Totem's assertions of impending bankruptcy. Other factual issues which remain unresolved include whether or not Alyeska knew of Totem's financial situation after termination of the contract and whether Alyeska did in fact threaten by words or conduct to withhold payment unless Totem agreed to settle.

ist knowingly fail to render assistance, Supreme Court could read into statute by implication requisite intent, even though statute does not codify common-law crime but rather creates a new statutory offense; (2) prejudicial error occurred in instructing jury that it could find knowledge of injury where circumstances were such that they would lead a reasonably prudent person to assume that accident resulting in injury must have occurred; (3) there was ample evidence at trial that defendant was intoxicated at time of alleged offense, and thus error occurred in not instructing jury as to effect of such intoxication on his knowledge of facts giving rise to duty under failure to render assistance statute, and (4) where trial court allowed a sealed verdict over defense objection, reversal of both convictions was required.

Reversed and remanded for a new trial.

Matthews, J., filed opinion in which he dissented in part.

1. Criminal Law ⇐20

An act or omission can result in serious criminal liability only when a person has the requisite criminal intent.

2. Automobiles ⇐336

Although statute making it unlawful for motorist to fail to render aid and assistance to a person he has run over appears constitutionally defective on its face for its failure to require criminal intent, or more particularly, for its failure to require that a motorist knowingly fail to render assistance, Supreme Court could read into statute by implication requisite intent, even though statute does not codify a common-law crime but rather creates a new statutory offense, since it necessarily follows from fact that statute requires motorist to take an affirmative course of action that motorist must be aware of facts giving rise to such affirmative duty in order to perform such duty. AS 28.35.060.

3. Criminal Law ⇐21

Penal statutes which provide for serious penalties are generally construed to require criminal intent.

4. Constitutional Law ⇐48(3)

A rule of statutory construction is that courts should if possible construe statutes so as to avoid danger of unconstitutionality; such rule recognizes that Legislature, like courts, is pledged to support State and Federal Constitutions and that court, therefore, should presume that Legislature sought to act within constitutional limits.

5. Criminal Law ⇐21

Rule is not that criminal intent can be found by implication only in statutes which codify common-law crimes; rather rule is that such issue will be resolved on a case-by-case basis; overruling *State v. Campbell*, 536 P.2d 105.

6. Constitutional Law ⇐48(4)

Supreme Court must presume that in enacting statute making it unlawful for motorist to fail to render aid and assistance to a person he has run over, Legislature acted with basic notions of fairness and due process in mind. AS 28.35.060.

7. Automobiles ⇐336

In prosecution for a motorist's failure to render aid and assistance to a person he has run over, it is rarely possible for state to show that motorist actually knew that injury had occurred and such knowledge must usually be proved by showing surrounding facts and circumstances indicating such knowledge; moreover, because of nature of offense, it is often difficult to show even circumstantially that motorist knew that injury to other person had occurred. AS 28.35.060, 28.35.060(c).

8. Automobiles ⇐336

Under statute making it unlawful for a motorist to fail to render aid and assistance to a person he has run over, criminal liability attaches to a motorist who leaves scene of accident where state can prove by direct or circumstantial evidence that motorist actually knew of injury or that he knew that accident was of such a nature that one would reasonably anticipate that it resulted in injury to a person. AS 28.35.060, 28.35.060(c).

9. Automobiles ⇐357
Criminal Law ⇐1172.1(3)

In prosecution for motorist's failure to render aid and assistance to person he had run over, prejudicial error occurred in instructing jury that it could find knowledge of injury where circumstances were such that they would lead a reasonably prudent person to assume that accident resulting in injury must have occurred, since it was defendant's knowledge which had to be proved and not that of a hypothetical reasonable person, that is, it had to be shown that defendant knew of nature of accident before jury could then determine whether such knowledge would reasonably lead one to conclude that injury had occurred. AS 28.35.060, 28.35.060(c).

10. Criminal Law ⇐55

Voluntary intoxication generally will not excuse criminal acts requiring only general intent; however, once an element of a crime is that defendant acted or failed to act with a particular mental state, i. e., knowledge, effect of intoxication on this mental state cannot be ignored.

11. Automobiles ⇐354

Where a motorist is charged with failure to render aid and assistance to a person he has run over and there is evidence of intoxication, jury may consider fact that motorist was intoxicated in determining whether he had requisite knowledge, that is, in determining whether motorist knowingly failed to render assistance. AS 11.70.-030, 28.35.060.

12. Automobiles ⇐357

In prosecution for violating statute making it unlawful for a motorist to fail to render aid and assistance to a person he has run over, there was ample evidence at trial that motorist was intoxicated at time of alleged offense, and thus error occurred in not instructing jury as to effect of such intoxication on motorist's knowledge of facts giving rise to affirmative duty to render assistance. AS 28.35.060.

13. Criminal Law ⇐873, 1175

In prosecution for joyriding, prejudicial error occurred in ordering a sealed verdict over defense objection. Rules of Criminal Procedure, rule 31(f); AS 28.35.010.

Chris J. Rigos, Asst. Public Defender, Brian Shortell, Public Defender, Anchorage, for appellant.

Monica Jenicek, Asst. Dist. Atty., Joseph D. Balfe, Dist. Atty., Anchorage, Avrum M. Gross, Atty. Gen., Juneau, for appellee.

Before BOOCHEVER, C. J., and RABINOWITZ, CONNOR, BURKE and MATTHEWS, JJ.

OPINION

BURKE, Justice.

Edward Burns Kimoktoak was found guilty by a jury of joyriding under AS 28.35.010 and of failure to render aid and assistance to a person he had run over with a motor vehicle under AS 28.35.060. In this appeal, Kimoktoak challenges his conviction for failure to render aid under AS 28.35.060 on the grounds that the statute is unconstitutional, that two of the instructions given the jury were improper, and that the trial court improperly allowed a sealed verdict over defense objection in violation of Criminal Rule 31(f). He challenges the joyriding conviction solely on the basis that the trial court erred in allowing the sealed verdict.

There is little dispute as to the facts in this case. At about 10-10:30 p. m. on May 22. 1976, while driving an automobile he was using without permission from the owner, appellant twice ran over one Oscar Johnson while pulling out of a parking space in a parking lot behind an Anchorage bar. Kimoktoak then drove to another part of the parking lot where he remained for several minutes. The police arrived on the scene during that time and a witness pointed out the defendant's car. The officers ran toward the car, one of them shouting to the driver to stop, but the vehicle quickly sped away. One of the policemen recognized Kimoktoak as the driver and attempt-

ed unsuccessfully to stop the car by firing a shot through the back window. The officer then put out a radio "locate" with a description of the incident, the vehicle, its license plate number and the driver. Shortly thereafter, two other officers picked up Kimoktoak at the Alaska Native Services Hospital parking lot. One of the officers knocked the defendant unconscious (there was conflicting testimony as to the reason for this), and it was necessary to take him into the hospital. He was then taken to jail at about 2:00 a. m. on May 23, 1976.

Although Kimoktoak was able to recall certain of the above events,[1] he testified at trial that he had no memory of running into or over anything or anyone on the night in question and that he suffered from memory loss at many points throughout the night. He related a story of near continuous drug and alcohol use throughout May 22 and indicated that he had suffered memory loss three or four times in the past due to drinking. Two other defense witnesses also testified as to Kimoktoak's intoxication on the day and night of the incident. A friend whom he had visited early in the afternoon of the 22nd stated that he was "very drunk." The booking officer at the jail testified that he was unable to process the defendant (*i. e.*, get his name, address, etc. and fingerprint and photograph him) when he was brought to the jail after the incident because he was too inebriated and instead sent Kimoktoak to the detoxification unit. Among the symptoms of intoxication observed by the officer were Kimoktoak's slurred and confused speech, his inability to remain awake or to walk without assistance and an odor of alcohol about his person. The prosecution did not attempt to rebut the evidence that Kimoktoak was intoxicated throughout this period, although it did elicit testimony from the booking officer than he was not aware that the defendant had been knocked out nor did he know whether or not the defendant had been given any medication at the hospital prior to his arrival at the jail.

The victim, Mr. Johnson, was intoxicated at the time of the incident and did not remember being run over. Witnesses testified that he moaned faintly when the car went over him and that after it happened he was yelling. As a result of being run over, he suffered from knee injuries and was in the hospital for almost a month.

I

Appellant's first contention on appeal is that AS 28.35.060 fails to require criminal intent for conviction and that this violates his right to due process of law under the Fourteenth Amendment of the United States Constitution and art. I, sec. 7 of the Alaska Constitution. Appellant further contends that the requisite intent cannot be judicially read into the statute and that therefore the statute must be struck down.

AS 28.35.060 requires, in pertinent part:

> The operator of a vehicle involved in an accident resulting in injury to or death of a person or damage to a vehicle which is driven or attended by a person shall give his name, address, and vehicle license number to the person struck or injured, or the operator or occupant, or the person attending, and the vehicle collided with and shall render to any person injured reasonable assistance, including making of arrangements for attendance upon the person by a physician and transportation, in a manner which will not cause further injury, to a hospital for medical treatment if it is apparent that treatment is desirable.

Subsection (c) of the statute provides that "[a] person who fails to comply with a requirement . . . regarding assisting an injured person" is punishable, upon conviction, by imprisonment for not more than 10 years or by a fine of not more than $10,000 or by both. Subsection (b) provides that "a person who fails to comply with"

1. Kimoktoak remembered seeing a policeman run toward his car. He drove away, according to him, because he was drunk and did not have his license with him. He also recalled being "slugged all over" by a policeman upon his arrest, and being put into the detoxification unit at the jail.

any of the other requirements of the statute is punishable by imprisonment for not more than one year or by a fine of not more than $500 or by both.

On its face AS 28.35.060 does not require that a person have knowledge of the accident or of the fact that injuries have resulted to be guilty of a serious crime. Thus, the statute appears to hold a person strictly liable for failure to render assistance even if he is unaware of any wrongdoing, *i. e.*, unaware of the circumstances giving rise to the duty and thus unaware that he is in fact failing to do the required act. The state concedes that this is so.

[1] It is well-settled that an act or omission can result in serious criminal liability only when a person has the requisite criminal intent. Thus, in *Morissette v. United States*, 342 U.S. 246, 72 S.Ct. 240, 96 L.Ed. 288 (1952), the United States Supreme Court reversed a conviction for stealing government property because the accused had not been given the opportunity to show that he had believed the property to be abandoned, and thus did not have the wrongful intent to take property belonging to another. The Court stated:

> The contention that an injury can amount to a crime only when inflicted by intention is no provincial or transient notion. It is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil.

342 U.S. at 250, 72 S.Ct. 243, 96 L.Ed. at 293.

Referring to *Morissette*, this court has on several occasions reiterated the requirement of criminal intent. In *Speidel v. State*, 460 P.2d 77 (Alaska 1969), we invalidated part of AS 28.35.026 which made the inadvertent or negligent failure to return a rented motor vehicle a crime punishable by imprisonment up to five years and/or a fine of up to $1,000. We rejected the notion that mere inadvertent or unwitting failure to perform a legal duty could constitute a felony:

> Although an act may have been objectively wrongful, the mind and will of the doer of the act may have been innocent. In such a case the person cannot be punished for a crime, unless it is one such as the 'public welfare' type of offense, which we have discussed, where the penalties are relatively small and conviction does no great damage to an offender's reputation. . . . To make [an inadvertent, unwitting] act, without consciousness of wrongdoing or intention to inflict injury, a serious crime, and criminals of those who fall within its interdiction, is inconsistent with the general law. To convict a person of a felony for such an act, without proving criminal intent, is to deprive such person of due process of law.

460 P.2d at 80.[2] As we further explained in *Alex v. State*, 484 P.2d 677 (Alaska 1971):

> When one considers *Speidel* and *Morissette*, it is apparent that those cases deal with the necessity of basing serious crimes upon a general criminal intent as opposed to strict criminal liability which applies regardless of intention. The goal of these cases is to avoid criminal liability for innocent or inadvertent conduct. The use of the phrase 'awareness of wrongdoing' is but one means of assuring this result. The phrase does not mean a person must be aware that the conduct he is committing is specifically defined as a wrongful act. Nor does it mean that a person must know an act is proscribed by law. Rather, the requirement is that a person's intent be commensurate with the conduct proscribed.

484 P.2d at 681 [footnotes omitted].

[2] On its face, AS 28.35.060 appears constitutionally defective for its failure to require criminal intent, or more particularly, for its failure to require that a person knowingly fail to render assistance. The

2. As conceded by the state, the failure to render assistance statute does not create one of the strict liability "public welfare" offenses noted above. For a discussion of public welfare offenses see *Morissette v. United States*, 342 U.S. at 253–60, 72 S.Ct. 240, 96 L.Ed. at 295–98 and *Speidel v. State*, 460 P.2d at 78–79.

issue, then, is whether we may read into the statute by implication the requisite intent. We conclude that we may.

In *State v. Campbell*, 536 P.2d 105 (Alaska 1975), we held AS 11.25.260, a statute criminalizing the appropriation of lost property to the finder's use without advertising or reporting the finding to a peace officer, invalid for failure to require criminal intent. In that instance, we found that we were unable to redraft the statute in several particulars so as to validate it. In so doing, we enunciated the principle that "intent can be found by implication only in statutes which represent codifications of a common law crime." 536 P.2d at 110. This rule was derived from the United States Supreme Court's opinion in *Morissette v. United States*, *supra*, and our own decision in *Speidel v. State*, *supra*. Thus in *Campbell* we concluded that AS 11.25.260 was unconstitutional for failure to require criminal intent after determining that the statute was not merely a codification of the common law crime of larceny by appropriation of lost property.

In the instant case, it is clear that AS 28.35.060 does not codify a common law crime but rather creates a new statutory offense. If the rule in *Campbell* is applied here, it is equally clear that we may not cure the statute's constitutional infirmity by implying the requisite criminal intent. For the reasons which follow, however, we are persuaded that the principle of statutory construction enunciated in *Campbell* is overbroad.

First, we would note that neither *Morissette* nor *Speidel*, the two cases from which the *Campbell* rule was derived, establishes the principle that criminal intent may not be found by implication in statutes which do not codify a common law crime. A close reading of *Morissette* reveals that the Court only suggested in dicta that where a legislature creates a new statutory offense but omits a criminal intent requirement, a court in some cases *may* not be warranted in implying the requisite intent.[3] Similarly, the reasoning in *Speidel* may have suggested that criminal intent may not be found by implication where a statute creates a new offense, but that case does not establish this as a broad rule to be applied in all cases.[4]

[3] Second, we observe that in the past, this court has not hesitated to imply a criminal intent requirement into statutes creating non-common law offenses where the statute itself was silent in this respect. Thus, in *Judd v. State*, 482 P.2d 273, 280 (Alaska 1971), we stated that the Alaska Narcotic Drug Act (AS 17.10.010 *et seq.*) makes it illegal for one to knowingly possess certain drugs. Possession of drugs is not a common law offense and the Act itself does not include a requirement that possession of the proscribed drugs be knowing. As we observed in a later case also imposing the knowledge requirement under the Act, "Penal statutes which provide for serious penalties are generally construed to require criminal intent." *Thomas v. State*, 522 P.2d 528, 530 n.4 (Alaska 1974).

Other courts, too, have implied the requisite intent where statutes creating new offenses were silent as to intent. This is particularly apparent in cases involving

3. 342 U.S. at 262, 72 S.Ct. 240, 96 L.Ed. at 299. In *Morissette*, the statute before the Court was a codification of the common law crime of larceny and thus the issue in the case was whether the court could properly imply intent where a statute *does* codify the common law. The Court's statement regarding statutes creating new offenses merely recognized that in some instances a legislature may intentionally create a strict liability offense and that in such cases, a court may be precluded from implying intent.

4. In *Speidel*, the statute in question made one who "willfully neglects" to return a motor vehicle to its owner guilty of a crime. The legislature expressly defined the term "willfully neglects" in part as failing to return a vehicle "without regard for the rights of the owner, or with indifference whether a wrong is done the owner or not." AS 28.35.026(b). Thus, this was an instance where the legislature explicitly indicated that it wished to omit the requirement of wrongful intent from the crime. *Speidel* was a case, therefore, where judicial implication of intent was precluded by the legislature's express intention to eliminate such a requirement.

statutes similar to that in the instant case, for numerous jurisdictions have enacted "hit and run" statutes which, like ours, fail to expressly require that the accused knowingly fail to stop and render assistance. The great majority of courts have found the knowledge requirement to be implicit in these statutes.[5]

[4] Finally, we note that in *Campbell*, we recognized the well-established rule of statutory construction that courts should if possible construe statutes so as to avoid the danger of unconstitutionality.[6] We have alluded to this rule on many other occasions. *E. g., State v. Martin*, 532 P.2d 316, 321 (Alaska 1975); *Hoffman v. State*, 404 P.2d 644, 646 (Alaska 1965). It recognizes that the legislature, like the courts, is pledged to support the state and federal constitutions and that the courts, therefore, should presume that the legislature sought to act within constitutional limits. 2 *Sutherland Statutory Construction*, § 4509, at 326 (Horack 3d Ed.1943).

[5] Accordingly, we hold that to the extent that our decision in *Campbell* established the broad rule that criminal intent can be found by implication only in statutes which codify common law crimes, *Campbell* is overruled. Although we can conceive of cases where we may decline to imply such intent into statutes silent in this respect, hereafter we will resolve such questions on a case by case basis.

[6] Turning to the instant case, we have little difficulty in concluding that the legislature intended that criminal liability under AS 28.35.060 attach only where the operator of a motor vehicle knowingly fails to stop and render assistance. The statute requires an affirmative course of action to be taken by the driver and it necessarily follows that one must be aware of the facts giving rise to this affirmative duty in order to perform such a duty. Like other courts which have construed similar statutes also silent as to criminal intent, we cannot believe that the legislature could have intended that persons who unknowingly fail to stop and render assistance could be subject to serious criminal penalties. *See e. g., State v. Wall*, 206 Kan. 760, 482 P.2d 41, 45 (1971); *State v. Martin*, 73 Wash.2d 616, 440 P.2d 429, 436 (1968) *cert. denied* 393 U.S. 1081, 89 S.Ct. 855, 21 L.Ed.2d 773 (1969); *State v. Lemme*, 104 R.I. 416, 244 A.2d 585, 589 (1968). We must presume that in enacting AS 28.35.060, the legislature acted with basic notions of fairness and due process in mind.

II

Despite the absence of an express knowledge requirement in AS 28.35.060, the trial court did in fact instruct the jury as to this element. Appellant asserts that the court's instruction was erroneous. Instruction No. 6 was as follows:

> Knowledge by the driver of the incident is necessary before he may be found guilty under Count I. However, you need not find that the driver had actual knowledge. You may find that the driver had the required knowledge where the fact of the accident and injury was visible and obvious or where the circumstances involving the incident were such that they would lead a reasonably prudent person to assume that an accident resulting in injury to a person must have occurred.

5. *E. g., State v. Wall*, 206 Kan. 760, 482 P.2d 41, 45 (1971); *State v. Martin*, 73 Wash.2d 616, 440 P.2d 429, 436 (1968), *cert. denied* 393 U.S. 1081, 89 S.Ct. 855, 21 L.Ed.2d 773 (1969); *State v. Lemme*, 104 R.I. 416, 244 A.2d 585, 589 (1968); *Herchenbach v. Commonwealth*, 185 Va. 217, 38 S.E.2d 328 329 (1946). *See also* Annot., 23 A.L.R.3d 497 (1969). *Contra, People v. Walker*, 18 Ill.App.3d 351, 309 N.E.2d 716, 720 (1974).

6. 536 P.2d at 110. *Campbell* specifically stated that it was the duty of the court to reconcile, whenever possible, challenged legislation with the constitution by rendering a construction that would harmonize the statutory language with specific constitutional provisions. However, in fulfilling that duty, the extent to which the express language of the provision can be altered and departed from and the extent to which the infirmities can be rectified by the use of implied terms is limited by the constitutionally decreed separation of powers which prohibits this court from enacting legislation or redrafting defective statutes.

> Count I of the indictment is not a crime which requires a specific wrongful intent to commit.

It is appellant's contention that this instruction was erroneous because (1) it failed to clearly inform the jury as to what quantum of knowledge the accused had to possess, and (2) it permitted the jury to impute the requisite knowledge to the defendant if a reasonable person would have had such knowledge.

Under AS 28.35.060(c) a person may be imprisoned for up to ten years for failure to assist another who is injured as a result of an accident. Where only property damage has occurred, one who fails to provide the requisite information to those in the other vehicle is subject to significantly lesser penalties. It follows, therefore, that a person can be subject to the greater penalties provided for in subsection (c) only where it can be shown that he had knowledge of injury and it is not sufficient to show merely that he had knowledge of the accident or collision.

[7, 8] It is rarely possible, however, for the state to show that the accused actually knew that the injury had occurred and such knowledge must usually be proved by showing the surrounding facts and circumstances indicating such knowledge. Moreover, because of the nature of the offense, it is often difficult to show even circumstantially that the accused knew that injury to other persons had occurred. In *People v. Holford*, 62 Cal.2d 74, 403 P.2d 423 (1965), the court stated:

> [T]he driver who leaves the scene of the accident seldom possesses actual knowledge of injury; by leaving the scene he forecloses any opportunity to acquire such actual knowledge. Hence a requirement of actual knowledge of injury would realistically render the statute useless. We therefore believe that criminal liability attaches to a driver who knowingly leaves the scene of an accident if he actually knew of the injury or if he knew that the accident was of such a nature that one would reasonably anticipate that it resulted in injury to a person.

403 P.2d at 427 [footnote omitted]. *Accord, State v. Minkel*, 230 N.W.2d 233, 235–36 (S.D.1975). We agree with this view and accordingly hold that criminal liability under AS 28.35.060(C) attaches to a driver who leaves the scene of an accident where the state can prove by direct or circumstantial evidence that the driver actually knew of the injury or that he knew that the accident was of such a nature that one would reasonably anticipate that it resulted in injury to a person.

[9] Under the above standard, we believe that the instruction given by the court below erroneously charged the jury as to the element of knowledge. We do not find that the instruction was confusing as to whether knowledge of injury or mere knowledge of an accident was required. It is true that the instruction speaks at one point of knowledge of the "incident" and had this been a case where there was a collision between two vehicles, use of the word incident may have been confusing. However, the instant case involved appellant's failure to render assistance after he had run someone over and hence knowledge of the incident would in fact be knowledge of the injury.

Where we do find error, however, is in the court's instructing the jury that it could find knowledge of injury "where the circumstances were such that they would lead a reasonably prudent person to assume that an accident resulting in injury" must have occurred. It is not the reasonable person who is on trial but the defendant and it is the defendant's knowledge which must be proved and not that of a hypothetical reasonable person. The standard we have enunciated does speak in terms of reasonableness in that the evidence must at least show that the accused knew that the accident was of the sort that one would "reasonably anticipate" would cause personal injury. However, it must be shown that the *defendant* knew of the nature of the accident before the jury can then determine whether such knowledge would reasonably lead one to conclude that injury had occurred. While this distinction may be a

subtle one, we think it is a crucial one and one which the instruction given did not make. As the giving of this erroneous instruction was clearly harmful error, appellant's conviction for failure to render aid must be reversed.

III

Although the giving of the above instruction was reversible error in itself, we think it appropriate to resolve another related issue in this case. The defense requested but the trial court refused to give an instruction informing the jury that it could consider the accused's intoxication as a factor bearing on his knowledge of injury or lack thereof. Instead, the court gave the following instruction:

> Our law provides that 'no act committed by a person while in a state of voluntary intoxication is less criminal by reason of his having been in such condition.'
>
> This means that drunkenness, if the evidence shows that the defendant was in such a condition when allegedly he committed the crimes charged, is not of itself a defense in this case. It may throw light on the occurrence and aid you in determining what took place, but when a person in a state of intoxication, voluntarily produced by himself, commits a crime such as any of those charged against the defendant in this case, the law does not permit him to use his own vice as a shelter against the normal legal consequences of his conduct.
>
> As used above intoxication refers to intoxication from the use of a drug, as well as to intoxication from alcohol.

It is clear that this instruction did not permit the jury to consider Kimoktoak's intoxication as it related to his knowledge or lack of knowledge.

AS 11.70.030 provides in part:

> *Intoxication as defense.* (a) An act committed by a person while in a state of voluntary intoxication is not less criminal because he was intoxicated. However, when the existence of particular culpative, purpose, or intent is a necessary element to constitute a particular species, or degree of crime, the jury may take into consideration the fact that the defendant was intoxicated at the time in determining the purpose, motive, or intent with which he committed the act.

Under this statute, voluntary intoxication is generally no defense to a crime but where purpose, motive or intent is an element of a crime, such intoxication may be considered by the jury in determining whether or not the accused in fact had the requisite purpose, motive or intent.

The state maintains that an intoxication instruction under AS 11.70.030 is appropriate where the crime charged is one requiring specific intent and that since failing to render aid only requires general criminal intent, an intoxication instruction was properly refused below. In *People v. Hood*, 1 Cal.3d 444, 462 P.2d 370 (1969), the Supreme Court of California described the difference between specific and general criminal intent as follows:

> When the definition of a crime consists of only the description of a particular act, without reference to intent to do a further act or achieve a future consequence, we ask whether the defendant intended to do the prescribed act. This intention is deemed to be a general criminal intent. When the definition refers to defendant's intent to do some further act or achieve some additional consequence, the crime is deemed to be one of specific intent.

462 P.2d at 378. We agree with the state that failing to render assistance under AS 28.35.060 is not a specific intent crime but one which merely requires general criminal intent. A person need only knowingly fail to assist and need not do so with the intent to achieve a further consequence. We also agree that under AS 11.70.030, intoxication can be considered as to intent only when the intent required is so-called specific intent as described above. *See Kvasnikoff v. State*, 521 P.2d 903, 906 n.8 (Alaska 1974); *People v. Hood, supra*, 1 Cal.3d 444, 462 P.2d at 378-79.

[10] AS 11.70.030, however, also permits a jury to consider intoxication where purpose or motive is an element of the crime

charged. Strictly speaking, knowledge or awareness of a factual situation does not come within the meaning of purpose or motive. However, knowledge is a mental state that is closely related to that constituting a motive or purpose and we believe that knowledge is fairly embraced within the concepts of motive and purpose as used in AS 11.70.030. In interpreting a statute containing language virtually identical to that found in AS 11.70.030, the California courts have reached the same conclusion. *People v. Foster*, 19 Cal.App.3d 649, 97 Cal. Rptr. 94, 98 (1971); *People v. Garcia*, 250 Cal.App.2d 15, 58 Cal.Rptr. 186, 190 (1967). Such a result, we further believe, is required in light of our holding above that knowledge is a necessary element of the crime of failing to render assistance, for if intoxication in fact has precluded such knowledge, this element of the crime is necessarily absent. We are aware that voluntary intoxication generally will not excuse criminal acts requiring only general intent. However, once an element of a crime is that the defendant acted or failed to act with a particular mental state, *i. e.*, knowledge, we think that the effect of intoxication on this mental state cannot be ignored. *See People v. Rocovich*, 269 Cal. App.2d 489, 74 Cal.Rptr. 755, 758 (1969).

[11, 12] We hold, therefore, that where one is charged with failure to render assistance under AS 28.35.060, and where there is evidence of intoxication, the jury may consider the fact that the accused was intoxicated in determining whether he had the requisite knowledge.[7] There clearly was ample evidence at trial that appellant was intoxicated at the time of the alleged offense and therefore the lower court erred in not instructing the jury as to the effect of such intoxication on his knowledge of the facts giving rise to a duty under AS 28.35.-060.

IV

[13] Appellant's final argument on appeal is that under Rule 31(f), Alaska R.Crim.P., the trial court erred in ordering a sealed verdict over defense objection.[8] Criminal Rule 31(f) provides:

> Upon stipulation of counsel, the court may permit the foreman of the jury to date, sign and seal in an envelope a verdict reached after the usual business hours. The jury may then separate, but all must be in the jury box to deliver the verdict when the court next convenes or as instructed by the court.

There is no question that under this rule, the trial court may allow a sealed verdict only when counsel so stipulate and that the court below erred in permitting a sealed verdict when the defense objected to one. The only issue then is whether the trial court's error requires reversal of Kimoktoak's conviction for joyriding.[9]

7. We approve of the following instruction based upon the California Jury Instructions—Criminal (Supp.3d Ed.1970).

> In the crime of [failure to render assistance] of which the defendant is accused [in Count . . . of the information], a necessary element is the existence in the mind of defendant of knowledge that [injury has occurred or knowledge that the accident was of such a nature that one would reasonably anticipate that it resulted in injury to a person].
>
> If the evidence shows that the defendant was intoxicated at the time of the alleged offense, the jury should consider his state of intoxication in determining if defendant has such knowledge.
>
> If from all the evidence you have a reasonable doubt whether defendant had such knowledge by reason of a state of intoxication, you must give the defendant the benefit of that doubt and find that he did not have such knowledge.

CALJIC 4.25.

8. At the close of trial on August 11, 1976, the court informed counsel that it would instruct the jury that if it reached a verdict after court hours, it could enter the verdict, seal it in an envelope, return home and announce the verdict in open court on the following day. Defense counsel objected to this instruction but the objection was overruled. The jury reached its verdict at 9:30 p. m. that night, sealed it and announced it in court the following morning.

9. AS 28.35.010 provides in part:

> *Driving a vehicle without owner's consent.* (a) A person who drives, tows away, or takes a vehicle not his own without the consent of the owner, with intent temporarily to deprive the owner of possession of the vehi-

In *Johnson v. State*, 577 P.2d 1063 (Alaska 1978), we recently held that reversal was required where the trial court allowed a sealed verdict over defense objection. In response to the state's argument that the error was harmless, we stated:

> In fact, we have no way of knowing whether defendant's rights were prejudiced by the trial court's disregard for the mandate of Rule 31(f). The language of that rule is clear and unambiguous, and leaves no room for judicial construction. This was not an inadvertent mistake by the trial court. It was a deliberate refusal to follow a promulgated rule. If the rule is to have any vitality, it must be obeyed under the circumstances of this case.

577 P.2d at 1064. *Johnson* clearly controls here and therefore, appellant's conviction for joyriding under AS 28.35.010 must be reversed.[10] His conviction for failing to render assistance under AS 28.35.060 is also reversed on this ground and those discussed above.

REVERSED and REMANDED for a new trial.

MATTHEWS, Justice, dissenting in part.

For the reasons stated in my dissent in *Johnson v. State*, 577 P.2d 1063, Opinion No. 1612 (Alaska, May 5, 1978), I believe that the sealed verdict procedure followed by the superior court was harmless error. This court has now amended Criminal Rule 31(f) to permit the non-consensual use of a sealed verdict. The court has therefore recognized that this procedure does not harm the rights of an accused in a criminal case. That recognition should govern here. Thus, I would affirm appellant's conviction for joyriding. With the remainder of the opinion, I agree.

cle, or a person who is a party or accessory to or an accomplice in the driving or unauthorized taking is guilty of a [misdemeanor or felony, depending on whether first or subsequent offense].

10. We would note that effective September 1, 1978, Criminal Rule 31(f) will be changed pursuant to Supreme Court Order No. 316 so as to allow trial courts to permit sealed verdicts in their discretion, without the need for stipulation of counsel.

Olivia Lee BROWN, Appellant,

v.

MUNICIPALITY OF ANCHORAGE, Appellee.

Candace CLARK, Appellant,

v.

MUNICIPALITY OF ANCHORAGE, Appellee.

Tiela JONES, Appellant,

v.

MUNICIPALITY OF ANCHORAGE, Appellee.

Jean Ann WONG, Appellant,

v.

MUNICIPALITY OF ANCHORAGE, Appellee.

Nos. 2961, 2936, 2989 and 2863.

Supreme Court of Alaska.

Sept. 8, 1978.

In separate cases, defendants were convicted in the Superior Court, Third Judicial District, Anchorage, James K. Singleton and Ralph E. Moody, JJ., of violating ordinance prohibiting loitering for purpose of solicitation of prostitution. Defendants appealed. Cases were consolidated. The Supreme Court, Connor, J., held that: (1) ordinance prohibiting loitering for purpose of solicitation of prostitution was void for vagueness, since a formerly convicted prostitute or panderer, upon engaging in window shopping or standing on street corner to wait for a bus, could be found guilty of

Robert E. SPEIDEL, Appellant,
v.
STATE of Alaska, Appellee.
No. 1014.

Supreme Court of Alaska.
Oct. 21, 1969.

Defendant was convicted in the Superior Court, Third Judicial District, Edward V. Davis, J., of failure to return a rented motor vehicle, and he appealed. The Supreme Court, Dimond, J., held that statute making it a felony to willfully neglect to return a motor vehicle to owner is invalid to extent that it imposes criminal responsibility on one who fails to return motor vehicle without regard for rights of owner or with indifference whether a wrong is done the owner or not but is valid and may be utilized to impose criminal responsibility on one to exent that he fails to return a motor vehicle with conscious purpose to injure the owner of the vehicle.

Reversed and case remanded for new trial.

1. Automobiles ⇐316

Statute making it a felony to willfully neglect to return a motor vehicle to owner is invalid to extent that it imposes criminal responsibility on one who fails to return motor vehicle without regard for rights of owner or with indifference whether a wrong is done the owner or not but is valid and may be utilized to impose criminal responsibility on one to extent that he fails to return a motor vehicle with conscious purpose to injure the owner of the vehicle. AS 28.35.026.

2. Automobiles ⇐358

Where statute making it a felony to willfully neglect to return a motor vehicle to owner was held to be invalid to extent that it imposed criminal responsibility on one who failed to return a motor vehicle without regard for rights of owner or with indifference whether a wrong was done owner or not, but was held to be valid to extent that it imposed criminal responsibility on one who failed to return a motor vehicle with conscious purpose to injure owner of the vehicle, and verdict against defendant was a general one and did not specify ground upon which it rested, conviction could not stand and a new trial must be ordered. AS 28.35.026.

3. Criminal Law ⇐13

Statute making it a felony to willfully neglect to return a motor vehicle to owner is not unconstitutionally vague. AS 28.35.-026.

4. Automobiles ⇐316
Constitutional Law ⇐83(3)

Conviction for failure to return a rented motor vehicle did not violate constitutional prohibition against imprisonment for debt. AS 28.35.026.

5. Criminal Law ⇐987

Term "imposition of sentence" within rule giving accused right to be present at the imposition of sentence encompasses the proceedings known as the "pre-sentence conference," since those proceedings have such a direct effect on the sentence that is ultimately imposed. Rules of Criminal Procedure, rules 32(c), 38.

See publication Words and Phrases for other judicial constructions and definitions.

6. Criminal Law ⇐987

Accused had a right to be present at presentence conference and his absence affected substantial right of accused. Rules of Criminal Procedure, rules 32(c), 38.

Allen McGrath, Anchorage, for appellant.

Douglas B. Baily, Dist. Atty., Fairbanks, for appellee.

Before DIMOND, RABINOWITZ, BONEY and CONNOR, JJ.

OPINION

DIMOND, Justice.

Appellant was convicted by a jury of failure to return a rented motor vehicle. From this conviction an appeal has been taken.

The indictment alleged a violation of AS 28.35.026. Appellant moved to dismiss the indictment because the statute failed to provide for proof of criminal intent before conviction. The motion was denied.

At trial it was shown that appellant had rented an automobile from Avis Rent-A-Car Company pursuant to a signed agreement, and had failed to return the automobile at the time stated in the agreement. In regard to the allegation that AS 28.35.026 failed to require proof of criminal intent, the trial judge said:

> I find that the statute does require an element of intent as such as to constitute * * * wilfull conduct on the part of the person charged that his indifference must be a conscious indifference * * * whether the wrong is done to the owner. * * *

AS 28.35.026 provides:

> (a) A person in possession of a motor vehicle under an agreement in writing which requires him to return the vehicle to a particular place or at a particular time who refuses or wilfully neglects to return it to the place and at the time specified in the agreement in writing, or who secretes, converts, sells or attempts to sell the vehicle or any part of it is, upon conviction, punishable by imprisonment for not more than five years, or by a fine of not more than $1,000, or by both.
>
> (b) As used in this section, "wilfully neglects" means omits, fails, or forbears, with a conscious purpose to injure, or without regard for the rights of the owner, or with indifference whether a wrong is done the owner or not.

Appellant asserts that the trial court's interpretation of AS 28.35.026 is incorrect. He states that failure to return a rented automobile under the statute is a felony and requires proof of criminal intent for conviction. He argues that AS 28.35.026 has no criminal intent requirement and is, therefore, invalid.

It is said to be a universal rule that an injury can amount to a crime only when inflicted by intention—that conduct cannot be criminal unless it is shown that one charged with criminal conduct had an awareness or consciousness of some wrongdoing.[1]

But this rule is not without exception. During the past century there has been an ever increasing tendency to impose new duties with criminal sanctions which disregard any ingredient of intent. This has been caused primarily by the industrial revolution, out of which grew the necessity of imposing more stringent duties on those connected with particular industries, trades, properties, or activities that affect public health, safety or welfare. As the United States Supreme Court pointed out in Morissette v. United States:

> This has confronted the courts with a multitude of prosecutions, based on statutes or administrative regulations, for what have been aptly called "public welfare offenses." These cases do not fit neatly into any of such accepted classifications of common-law offenses, such as those against the state, the person, property, or public morals. Many of these offenses are not in the nature of positive aggressions or invasions, with which the common law so often dealt, but are in the nature of neglect where the law requires care, or inaction where it imposes a duty. Many violations of such regulations result in no direct or immediate injury to person or property but merely create the danger or probability of it which the law seeks to minimize. While such offenses do not threaten the security of the state in the manner of treason, they may be regarded as offenses against its authority, for their occurrence impairs the effi-

1. Morissette v. United States, 342 U.S. 246, 250, 72 S.Ct. 240, 96 L.Ed. 288, 293 (1952).

ciency of controls deemed essential to the social order as presently constituted. In this respect, whatever the intent of the violator, the injury is the same, and the consequences are injurious or not according to fortuity. Hence, the legislation applicable to such offenses, as a matter of policy, does not specify intent as a necessary element. The accused, if he does not will the violation, usually is in a position to prevent it with no more care than society might reasonably expect and no more exertion than it might reasonably exact from one who assumed his responsibilities.[2]

The statute under consideration here, however, does not represent what could be classified as a "public welfare offense." The health, safety and welfare of the public is not involved. All that the statute is concerned with is the protection of one select group of persons in the business community—those who rent automobiles.

Moreover, as was indicated in *Morissette*, penalties for public welfare offenses "commonly are relatively small, and conviction does no grave damage to an offender's reputation." [3] That is not true here. The penalty is not small—the offender under AS 28.35.026 is subject to conviction of a felony and imprisonment for a term of five years.[4] This would do considerable damage to one's reputation. The basis for dispensing with the requirement of criminal intent with respect to "public welfare" types of offenses has no application in this case.

It is true that one will sometimes find felony statutes that are silent on the subject of criminal intent. But these are instances where the states have codified the common law of crimes, and their courts have assumed that the omission of the requirement of criminal intent did not signify disapproval of the principle but merely recognized that intent was so inherent in the idea of the offense that it needed no statutory affirmation. Thus, as to felony-type offenses codified from the common law, the courts have found an implication of intent.[5] Representative of these instances are larceny-type offenses where the state courts have consistently retained a requirement of criminal intent.[6]

But the statute under consideration is not of that type. It is not silent as to the mental elements of the acts made criminal, so as to give rise to the inference that criminal intent is inherent in the idea of the offense denounced. A person is guilty of a crime under AS 28.35.026 if he "willfully neglects" to return a motor vehicle to the owner. The term "willfully negiects" is defined as meaning—

> omits, fails, or forbears, with a conscious purpose to injure, or without regard for the rights of the owner, or with indifference whether a wrong is done the owner or not.

By defining "willfully neglects" so specifically, the legislature has indicated that the ordinary criminal or felonious intent, as in the case of larceny (the intent to deprive the owner permanently of the property taken [7]), is not inherent in the offense of failing to return a rented automobile. In place of inherent criminal intent the legislature has substituted something else. The

2. *Id.* at 255–256, 72 S.Ct. at 246, 96 L.Ed. at 296–297.

3. *Id.* at 256, 72 S.Ct. at 246, 96 L.Ed. at 297.

4. AS 28.35.026(a) provides:

> A person in possession of a motor vehicle under an agreement in writing which requires him to return the vehicle to a particular place or at a particular time who refuses or wilfully neglects to return it to the place and at the time specified in the agreement in writing, or who secretes, converts, sells or attempts to sell the vehicle or any part of it is, upon conviction, punishable by imprisonment for not more than five years, or by a fine of not more than $1,000, or by both.

5. Morissette v. United States, 342 U.S. 246, 252, 72 S.Ct. 240, 96 L.Ed. 288, 294 (1952).

6. *Id.* at 260–262, 72 S.Ct. 240, 96 L.Ed. at 299.

7. 2 Wharton's Criminal Law and Procedure § 452, at 80 (1957).

question is whether this substitution meets the conventional requirement for criminal conduct in this kind of case, i. e., the infliction of injury on the owner of a vehicle by intention, with awareness of some wrongdoing.

By one of the definitions of "willfully neglects" the statute makes it a criminal offense to fail to return a motor vehicle "with conscious purpose to injure."[8] Here the statute incorporates an element of conscious wrongdoing or criminal intent. To that extent the statutory offense meets the conventional requirement of criminal conduct.

But that is not so as to the other definitions which make it a crime to fail to return a motor vehicle "without regard for the rights of the owner" or "with indifference whether a wrong is done the owner or not."[9] Under this terminology it is possible for one to be found guilty of the offense when there was an entire lack of any conscious deprivation of property or intentional injury. If one fails to return an automobile out of neglect, without any intention to deprive the owner of his property or to convert the property to his own use, or of doing wrong to the owner, he is made guilty of a felony although he may have acted unwittingly or inadvertently or negligently. This is contrary to the general conditions of penal liability requiring not only the doing of some act by the person to be held liable, but also the existence of a guilty mind during the commission of the act.

[1] Although an act may have been objectively wrongful, the mind and will of the doer of the act may have been innocent. In such a case the person cannot be punished for a crime, unless it is one such as the "public welfare" type of offense, which we have discussed, where the penalties are relatively small and conviction does no great damage to an offender's reputation. Under the terms of AS 28.35.026 there is no escape from a felony conviction and a possible five-year prison term for simple neglectful or negligent failure to return a rented automobile at the time specified in the rental agreement. To make such an act, without consciousnes of wrongdoing or intention to inflict injury, a serious crime, and criminals of those who fall within its interdiction, is inconsistent with the general law. To convict a person of a felony for such an act, without proving criminal intent, is to deprive such person of due process of law. To the extent that AS 28.35.026 permits that to happen, it is invalid and of no effect.[10]

However, the statute is invalid and ineffective only to the extent mentioned, and not in its entirety. It is severable by virtue of AS 01.10.030 which provides:

> Any law heretofore or hereafter enacted by the Alaska legislature which lacks a severability clause shall be construed as though it contained the clause in the following language, "If any provision of this Act, or the application thereof to any person or circumstances is held invalid, the remainder of this Act and the application to other persons or circumstances shall not be affected thereby."

What this statute means, as applied in this case, is that AS 28.35.026 is valid and may be utilized to impose criminal responsibility on one to the extent that he fails to return a motor vehicle "with con-

8. AS 28.35.026(b).

9. *Id.*

10. *Cf.* AS 28.35.025(a), which also deals with rental vehicles, where criminal intent is stated as a requirement for criminal liability. That statute provides:

> A person who, with intent to defraud, obtains possession of a motor vehicle from its owner or a person who has possession of the vehicle with the owner's consent, by agreeing in writing to pay a rental for use of the vehicle based in whole or in part on the length of time and distance the vehicle is driven, upon conviction, is punishable by imprisonment for not more than five years, or by a fine of not more than $1,000, or by both.

AS 28.35.025 and 28.35.026 were parts of one enactment by the legislature in chapter 37, SLA 1964.

scious purpose to injure" the owner of the vehicle.

This does not mean, however, that appellant's conviction may stand. In Stromberg v. California,[11] the defendant was convicted by a jury under a California statute making it an offense publicly to display a red flag for any one of three purposes. Finding it would be unconstitutional to punish one who displayed the flag for one of the three purposes, the United States Supreme Court rejected the state court's reasoning that the conviction could nevertheless be sustained because the other two statutory purposes were severable and constitutional. The Supreme Court said:

> The verdict against the appellant was a general one. It did not specify the ground upon which it rested. As there were three purposes set forth in the statute, and the jury was instructed that their verdict might be given with respect to any one of them, independently considered, it is impossible to say under which clause of the statute the conviction was obtained. If any one of these clauses, which the state court has held to be separable, was invalid, it cannot be determined upon this record that the appellant was not convicted under that clause. * * * It follows that instead of its being permissible to hold, with the state court, that the verdict could be sustained if any one of the clauses of the statute were found to be valid, the necessary conclusion from the manner in which the case was sent to the jury is that, if any of the clauses in question is invalid under the Federal Constitution, the conviction cannot be upheld.[12]

This rule has been consistently followed by the Supreme Court in later decisions.[13]

[2] We apply the rule in *Stromberg* to this case. The verdict against appellant was a general one and did not specify the ground upon which it rested. In addition, a fair reading of Instruction No. 15 leads us to the conclusion that the jury might have found appellant guilty under any one of the three definitions of "willfully neglects."[14] It is impossible to say

11. 283 U.S. 359, 51 S.Ct. 532, 75 L.Ed. 1117 (1931).

12. *Id.* at 367–368, 51 S.Ct. at 535, 75 L.Ed. at 1122.

13. Street v. New York, 394 U.S. 576, 585, 89 S.Ct. 1354, 1362, 22 L.Ed.2d 572, 581 (1969); Yates v. United States, 354 U.S. 298, 311, 77 S.Ct. 1064, 1 L.Ed.2d 1356, 1371 (1957); Terminiello v. City of Chicago, 337 U.S. 1, 5–6, 69 S.Ct. 894, 93 L.Ed. 1131, 1135 (1949); Cramer v. United States, 325 U.S. 1, 36 n. 45, 65 S.Ct. 918, 89 L.Ed. 1441, 1461 n. 45 (1945); Williams v. North Carolina, 317 U.S. 287, 292, 63 S.Ct. 207, 87 L.Ed. 279, 282 (1942).

14. Instruction No. 15 reads as follows:

> The essential elements which the State must prove to warrant a conviction of the defendant of the crime of Failure to Return a Rental Vehicle, as charged in Count I of the Indictment, are:
>
> 1. That the defendant Robert E. Spiedel [sic] was in possession of a 1968 Falcon under an agreement in writing which required him to return that vehicle to Avis Rent a Car on January 18, 1968;
>
> 2. That the defendant wilfully neglected to return that vehicle to Avis Rent a Car on January 18, 1968;
>
> 3. That the omission, failure or forbearance of defendant to return said vehicle was with a conscious purpose to injure Avis Rent a Car, or without regard for the rights of Avis Rent a Car or with an indifference whether or not a wrong was done to Avis Rent a Car.
>
> If you find from the evidence that the State has proved, beyond a reasonable doubt, each of these essential elements then you should find the defendant guilty as charged in Count I of the Indictment; but if you have a reasonable doubt as to whether all of these essential elements have been proved, then you should find the defendant not guilty.

We believe that the words in the last paragraph, "each of these essential elements" and "all of these essential elements" refer to the three essential elements as listed in numbered paragraphs 1, 2 and 3 of the instruction, and not just to the three alternative bases for conviction in paragraph number 3.

whether the jury convicted because appellant failed to return the motor vehicle "without regard for the rights of the owner" or "with indifference whether a wrong is [was] done the owner or not" or "with conscious purpose to injure" the owner of the vehicle. For this reason the conviction cannot stand and a new trial must be ordered.

Appellant next contends that AS 28.35.026 is unconstitutional because it is vague. He relies upon the doctrine that a criminal statute which "is so vague and standardless as to not give fair warning of the acts prohibited by it is a deprivation of due process of law under the 14th Amendment of the United States Constitution." [15] In Harris v. State we quoted with approval from a decision of the United States Supreme Court in Lanzetta v. New Jersey [16] as follows:

> No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids.[17]

[3] We do not believe that the statute forbids the doing of an act "in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application," [18] or that appellant or anyone else could not reasonably understand whether his contemplated conduct was proscribed. The statute makes criminal the action of one who "willfully neglects" to return a motor vehicle.[19] Under our decision as to the validity of the statute as it pertains to criminal intent, "willfully neglects" means the failure to return a motor vehicle "with conscious purpose to injure" the owner of the vehicle. One does not have to guess as to whether or not he has a conscious purpose to inflict injury on someone else. He either has such purpose and an awareness of it, or he does not. If he does, he will know from the terms of the statute that he can be found guilty of a criminal offense. He is given fair warning of the kind of act proscribed by the statute. The statute is not vague.

Appellant had signed a rental contract with Avis Rent-A-Car Company which provided in part:

> [T]he Renter acknowledges and agrees:
>
> 1. That Renter will return said vehicle, together with all tires, tools, accessories and equipment, to an Avis station in the city where the vehicle was rented * * * and on the date specified on page 2, or sooner, upon demand of Lessor.
>
> * * * * * *
>
> 3. That Renter expressly acknowledges personal liability to pay lessor on demand: (a) a mileage charge computed at the rate specified for the mileage covered by said vehicle during the term of this rental * * *; (b) time, collision damage waiver and, miscellaneous charges at the rate specified on page 2 of this rental. * * *

Appellant failed to return the automobile and pay rental fees as provided in the contract. He contends that since all he had done was fail to meet an obligation, for service or money, created by contract, his conviction and sentence of imprisonment under AS 28.35.026 violated the constitutional prohibition against imprisonment for debt.[20]

15. Harris v. State, 457 P.2d 638, 640–641 (Alaska 1969).

16. 306 U.S. 451, 452, 59 S.Ct. 618, 83 L.Ed. 888 (1939).

17. Harris v. State, *supra* n. 15.

18. Connally v. General Constr. Co., 269 U.S. 385, 391, 46 S.Ct. 126, 127, 70 L.Ed. 322, 328 (1926).

19. AS 28.35.020 makes criminal the action of one who "refuses" to return a motor vehicle. Since appellant was not charged with refusal to return the automobile in question, but with neglecting to return it, we have not discussed the issue of criminal responsibility for refusal to return a motor vehicle as it related to criminal intent.

20. Article I, section 17 of the Alaska constitution provides:

> There shall be no imprisonment for debt. This section does not prohibit civil arrest of absconding debtors.

[4] The crux of the problem is the meaning of "debt" as used in the constitution. Appellant argues that it means "all that is due a man under any form of obligation or promise."[21] This seems to be a minority position. Most courts define "debt" as "any liability to pay *money* growing out of any contract, either express or implied."[22] [Emphasis added.] The gist of the offense under the statute is failure to return an automobile with a conscious purpose to injure the owner and not mere failure to pay the rental price.[23] We hold that the constitutional prohibition against imprisonment for debt has not been violated.[24]

After conviction but prior to the imposition of sentence, a conference was held in the trial judge's chambers. Present were the trial judge, the district attorney, a probation officer and appellant's counsel. Appellant was not present. There is no record of what took place at this conference. In his brief on this appeal counsel for appellant, who was also trial counsel, stated that at the conference the facts upon which appellant's sentence was to be based were presented to the conferees for discussion, and that such facts emanated mostly from a presentence report that had been prepared by the probation officer. This statement has not been denied by appellee, so we shall assume it is correct.

Appellant contends here, as he did prior to sentencing in the trial court, that he was entitled to be present at the conference, and that his absence was a violation of Criminal Rule 38 which provides:

> The defendant shall be present at the arraignment, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by these rules.

In interpreting this rule we have said:

> [N]onadherence by the trial court to the provisions of Crim.R. 38 does not automatically constitute reversible error. A violation of the mandate of Crim.R. 38 is not prejudicial error unless such nonadherence has affected a substantial right of the defendant.[25]

The question here is whether appellant had a right to be present at the presentence conference and whether his absence affected any substantial right of appellant.

In holding that appellant had no right to be present, the trial judge said: "* * * this man had been convicted, this is not a matter of conviction, this is a matter of attempting to properly evaluate the case for sentence." But that is the very point involved in appellant's claim that he had the right to be present. We know of no person more vitally concerned and interested in a proper evaluation of the case for sentence and the proper sentence to be imposed than the appellant. As interested as the judge, the district attorney and appellant's counsel would be in these matters, the appellant is far more interested because it is his life and liberty, and not theirs, that the sentence would directly affect.

The judge also said that the effectiveness of the presentence conference would be diminished if appellant were present.

21. Bronson v. Syverson, 88 Wash. 264, 152 P. 1039, 1044, L.R.A.1916B, 993 (1915).

22. Ex parte Morse, 26 Ariz. 450, 226 P. 537, 539 (1924); Elkay Steel Co. v. Collins, 392 Pa. 441, 141 A.2d 212, 217 (1958); Clausen v. Clausen, 250 Minn. 293, 84 N.W.2d 675, 681 (1957); Ex parte Small, 92 Okl.Cr. 101, 221 P.2d 660, 679 (Ct.App.1950); Davis v. State, 237 Ala. 143, 185 So. 774, 776 (Ala.1938).

23. *See* Plapinger v. State, 217 Ga. 11, 120 S.E.2d 609, 611 (1961); Treffry v. Taylor, 67 Wash.2d 487, 408 P.2d 269, 273–274 (1965); Ennis v. State, 95 So. 2d 20, 23 (Fla.1957); Application of Windle, 179 Kan. 230, 294 P.2d 213, 215 (1956).

24. People v. Carr, 229 Cal.App.2d 74, 40 Cal.Rptr. 58 (1964).

25. Noffke v. State, 422 P.2d 102, 105 (Alaska 1967); Kugzruk v. State, 436 P.2d 962, 964 (Alaska 1968).

In what way this would be so the judge did not explain, nor do we understand. The presentence report prepared by the probation officer probably formed the basis for the discussion at the conference. That report may have contained hearsay matter concerning appellant's background and behavior. To afford the appellant the right to hear what was said about him and the opportunity to deny or explain or state mitigating circumstances would, we believe, tend to enhance rather than diminish the effectiveness of the presentence conference.

[5] As we have stated, there is no transcript of what took place at the presentence conference. We believe it is fair to assume that the parties present discussed appellant's background and character, his behavior, his reputation, his chances of rehabilitation, and the possibility of granting probation.[26] The matters discussed probably had a large influence on the judge's ultimate decision as to what sentence to impose. In all fairness to the appellant—he being the one who was to be sentenced—the opportunity should have been given him to participate in the discussion. Under Criminal Rule 38 appellant had the express right to be present "at the imposition of sentence." We hold that the term "imposition of sentence" encompasses the proceedings known as the "presentence conference," since those proceedings have such a direct effect on the sentence that is ultimately imposed.[27]

[6] The right of appellant to have been present at the presentence conference was a substantial one. The denial of that right must be assumed to have been prejudicial, since we cannot say with any degree of certainty that the judge may not have been influenced to impose a lesser sentence had appellant been given the opportunity to be heard and participate in the discussion relating to sentencing.[28] By our decision today we do not mean to bar meetings between court and counsel concerning procedural matters, scheduling problems, and similar topics which may take place before, during, or following a criminal jury trial. There are many instances in which conferences between court and counsel in chambers do not directly affect or dispose of the substantial merits of a defendant's cause or the sentence to be imposed. But the conference which took place in the case before us did have a direct effect upon the sentence received by the defendant.

The judgment is reversed and the case is remanded for a new trial.

NESBETT, C. J., did not participate in the decision of this case.

26. *See Crim.R. 32(c) which provides:*
Pre-Sentence Investigation.
(1) *When Made.* The probation service of the court shall make a presentence investigation and report to the court before the imposition of sentence or the granting of probation unless the court otherwise directs. The report shall not be submitted to the court or its contents disclosed to anyone unless the defendant has pleaded guilty or has been found guilty.
(2) *Report.* The report of the presentence investigation shall contain any prior criminal record of the defendant and such information about his characteristics, his financial condition, and the circumstances affecting his behavior as may be helpful in imposing sentence or in granting probation or in the correctional treatment of the defendant, and such other information as may be required by the court.

27. We do not pass upon the question of whether or not a defendant in a criminal case has a constitutional right to be present at a presentence conference.

28. It might be argued that appellant can show no prejudice because he was placed on probation for five years and, subject to the conditions of probation, was not obliged to serve any prison time. Such an argument would have to ignore the possibility that had appellant been present at the presentence conference his sentence might have been less than five years, and that if appellant violates the terms of probation he will be required to be imprisoned.

Alaska State Legislature

COMMITTEES:

MEMBER

JUDICIARY

FINANCE SUB-COMMITTEE ON EDUCATION

JOINT COMMITTEE ON ETHICS AND WESTERN STATES LEGISLATIVE FORESTRY TASK FORCE

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I don't know

HB150

M E M O R A N D U M

TO: Representative John Sund

FROM: Representative Robin L. Taylor R.T.

RE: SSHB 130

DATE: March 12, 1988

I am requesting the scheduling of SSHB 150 the same time you schedule a hearing for HB 73.

As you know, hundreds of people from Petersburg have signed petitions asking that the law on "joy-riding" be made much stronger. I happen to agree with them and feel that HB 73 is too lenient and does not address the wishes of our constituents.

Please let me know if you need back-up information regarding this issue.

cc: Gayle M. Eastwood

JOHN SUND, REPRESENTATIVE
2504 2nd Avenue
Ketchikan, Alaska 99901
(907) 225-5552

While in Juneau
P. O. Box V
Juneau, Alaska 99811
(907) 465-4919

March 18, 1988

Gayle M. Eastwood
Box 1185
Petersburg, Alaska 99833

Dear Ms. Eastwood:

Thank you for writing regarding the auto theft problem in Petersburg, it seems to be an issue in other communities as well. I support increasing the criminal penalties for auto theft.

Because of the difficulty in proving that there was intent to "permanently" deprive another of property, we have separate statutes on general theft and "joyriding," which is now one of several offenses grouped under the title "criminal mischief". (AS 11.46.484 (a)(2)).

On first offense, if the motor vehicle is recovered without damage, joyriding is now a Class A misdemeanor, with a maximum penalty of up to 1 year in jail and a $5,000 fine. On second offense, (AS 11.46.484(c)), it becomes a Class C felony, with a maximum penalty of five years in jail and a $50,000 fine.

As you know, it is proof that the intent was to deprive another of property "permanently" that seems to be so difficult to prove in island communities like Petersburg. The problem may be more in the way the law is implemented than in the way it is written.

I support raising the penalties for first-time joyriding to a Class C felony. We have a bill in the House Judiciary Committee, House Bill 73 which can be amended to do so. I am working on a new version of that legislation and will hear it in the Committee on Monday, March 22.

Thanks again for writing.

Sincerely,

John Hartle

for John Sund
Representative

(1)

City of Petersburg
P. O. Box 329
Petersburg, Alaska 99833

MAR 03 1988

February 29, 1988

Representative John Sund
Pouch V
Juneau, Alaska 99811

Dear Representative Sund:

A petition has been circulated by Petersburg residents calling for the crime of Criminal Mischief in the Third Degree (a Class A misdemeanor) (for vehicle theft) be increased to a felony offense category.

The Petersburg Police Chief has advised the City Manager that the District Attorney's office has been reluctant to charge persons stealing cars in Petersburg with Theft in the Second Degree, a C Felony, because one of the elements of that offense is that the person taking the vehicle has the intent to deprive the owner of the property indefinitely. In that Petersburg is on an island, the District Attorney's office feels that proving that element would be difficult or impossible and have elected to charge under the criminal Mischief statutes. Unless there is damage done over $500 to the vehicle taken, Criminal Mischief statutes require that the person be charged with Criminal Mischief in the Third Degree, an A Misdemeanor.

It seems somewhat incongruent that a person in Petersburg can enter a home and take a $600 VCR and be later apprehended and charged with Burglary in the Second Degree, a C Felony, and that another person can take a $10,000 vehicle from the street or a driveway and when apprehended only be charged with Criminal Mischief in the Third Degree, an A Misdemeanor.

During 1987, registered owners reported ten vehicles stolen and the investigations into these thefts showed the registered owners suffered a property damage loss totaling $481.30. These losses did not include losses such as inconvenience to the owners such as towing, etc. So far in 1988, the police department has had three vehicles reported stolen and property damage has amounted to $15,771.72 which should result in one to two felony charges due to the excessive damages.

Most other states classify auto theft as a felony and with the increasing cost of vehicles and the inconvenience of such a loss, it seems appropriate that the State of Alaska increase the penalty and level of this offense so that it is consistent with the theft of other valuable property.

Sincerely,

Patricia Curtis
for

Doug Barber, Mayor
City of Petersburg

MAR 0 2 1988

MAR 3 1988

February 26, 1988

Representative John Sund
P.O. Box V (MS-3100)
Juneau, Alaska 99811

Dear Representative Sund:

Enclosed please find copies of the petition that has been circulating in Petersburg. The citizens of Petersburg would like the Legislature to change the Laws regarding Stolen Vehicles. We feel that a person who steals a vehicle, be it an automobile, boat, or airplane; should be prosecuted as having committed a Felony, rather than Criminal Mischief. The fact that we live on an island is immaterial, and should not make a difference in the level of punishment for stealing a vehicle.

Only you, as our elected representative, can author a Bill to change the Law. So we are formally requesting you to do this.

If I can be of any assistance to you in doing this, please feel free to contact me.

We still have petitions out, in Petersburg, but it appears that we have 100% of the adult population in favor of the above change; AND we also have the endorsement of the Petersburg City Council.

Respectfully yours,

Gayle M. Eastwood

772-3092

enc:

cc: Governor Cowper
Senator Jones
Representative Taylor

We, the citizens of Petersburg, feel the need for a change from "Joy-riding" to Grand Theft Auto, if a person steals a vehicle. We feel that it is immaterial if we live on an island or not. It is a case of taken someone's property without their permission and should receive the penalty for their actions. If the owners leave their key in the ignition, that is between their insurance company and themselves. The thief should be prosecuted as a car thief.

NAME	ADDRESS
Ken Taylor	Box 1627 PSG AK
R. Christensen	Box 824 Petersburg AK.
J. Olsen	Box 814, Psg AK
B. Welch	Box 815 PSG AK
Jerry C. Bayonger	Box 521 PSG AK
Kendall Skyberger	Box 521 Petersburg AK
Marilyn Mickish-Myers	Box 1056, PSG AK
Steve & Karilyn O'Neil	Box 912, Psg AK.
W. Earl Midkiff	Box 920 Petersburg, AK.
Duncan Commercial Corp	Box 730 Psg, AK
Peter R. Dragboard	Box 162 Psg, AK
Louis De [illegible]	P.O. Box 1063 PSG
Artie Dorn	Box 231, Petersburg AK
George Vogler	Box 615 PSG
[illegible]	Box 484 Petersburg AK
[illegible]	Box Petersburg AK
E. Edwardson	P.O. [illegible]5
[illegible]	PO 207 Petersburg, Alaska
Sharon Wrangham	PO Box [illegible] Petersburg, Alaska
Janet Erickson	P.O. Box 581, Petersburg, Alaska.
Hoppie Davidson	P.O. Box 1336, PSG, AK.
[illegible]	P.O. Box 1348 Petersburg
Cathy Robinson	P.O. Box 1056 Petersburg AK
Carl N Burk	P.O. Box 1113 Petersburg, AK
[illegible]	PO. Box 277 PSG AK
Joeann Haynes	Box 452 Petersburg Alaska
Sandy Ruddas	Box 770 PSG AK
[illegible]	Box 120 AK
Claire Bertagnolli	Box 481 Petersburg
Christine L. Ustasiewski	Box 253 PSG.
DAVID SPOOSTBRSKI	Box 1711
Barry Jones	Box 1371 Psg, AK
Kathryn Robinson	Box 1252 PSG AK
Marnee Omey Brunner	Box 1195 Psg, AK
Heather O'Neil	Box 1083 Psg, AK
Kenny Cox	Box 1557 PSG AK
Sidney & Sandy Reid	Box 1187 Psg AK.
Paul Schwartz	Box 434 "
Carol K. Collins	Box 1531 Psg Ak.
Ingrid C. Medalen	Box 352 " "
Linda Welton	Box 504 " "
Jay Mayerle	Box 1701 " "
[illegible]	Box 1701 " "
Andi Beeks	Box 563 Petersburg, Alaska

We, the citizens of Petersburg, feel the need for a change from "Joy-riding" to Grand Theft Auto, if a person steals a vehi e. We feel that it is immaterial if we live on an island or not. It is a case of taken someone's property without their permission and should receive the penalty for their actions. If the owners leave their key in the ignition, that is between their insurance company and themselves. The thief should be prosecuted as a car thief.

NAME	ADDRESS	
Dave N. Ohmer	613 Sandy Beach Road	Dave Oh[illegible]
Bette Powel	Box 627 Petersburg	
Alene L. Ohmer	801 Sandy Beach Road - Box # 372 - Petersburg, Alaska	
James B. Berg	314 [illegible] Box 7[illegible]	James Berg
[illegible]	110 HARBOR WAY	[illegible]
Judy Henderson	1125	Judy Henderson
[illegible] Johnson	BOX 1655	
[illegible] Murphy	BOX 1701	
JERRY HEGGA	PO BOX 435	Jerry [illegible]
RAY Sherman	PO Box 89	3469
Fay Willard	Box 941	City.
[illegible] Dan [illegible]	Box 1751	City
Helen Dean	Box 689	503 Nordic Dr. Helen Dean
[illegible]	Box 1002	
[illegible]	P.O. Box 35	Petersburg AK
[illegible]	P.O. Box 1091	[illegible]
Charles O. [illegible]	P.O. Box 38	1117B Valkyrie st Petersburg Ak
[illegible] Jakobsen	P.O. Box 201	Petersburg AK.
David W. Woodland	Box 782	
Paul [illegible]	Box 836	Petersburg
[illegible]	Box 32	PSG
Sue Miller	BOX 1524	PSG
George P. Cottrell	BOX 947	Petersburg AK
[illegible] Littleton	Box 978	PSG
Andrea J. Bell	Gen Del.	PSG Andrea J. Bell
Frank L. [illegible]	Box 1225	PSG, AK 99833
Bruce Murray		
Kurt Kvist	BOX 544	CITY
Christine [illegible]	Box 1746	City
[illegible]	Box 3	PSG.
[illegible] Baker	P.O. Box 1725	PSG
Robin Christy	Box 476	PSG
Jenny Clark	Box 76	PSG
Robert Erickson	BOX 988	PSG
Kenneth [illegible]	Box 1767	PSG
Tracy MacDonald	Box 424	PSG
Renee Fernandez	Box 662	PSG
George [illegible]	Box 1764	PSG
David L. [illegible]	Box 296	PETERSBURG, AK.
[illegible] Cook	" 1628	
Robert Cook	" 1628	
[illegible]	" 266	PSG AK
[illegible] Snider	BOX 1505	PSG AK
[illegible] Woodworth	Box 1558	PSG AK

We, the citizens of Petersburg, feel the need for a change from "Joy-riding" to Grand Theft Auto, if a person steals a vehicle. We feel that it is immaterial if we live on an island or not. It is a case of taken someone's property without their permission and should receive the penalty for their actions. If the owners leave their key in the ignition, that is between their insurance company and themselves. The thief should be prosecuted as a car thief.

Please put Street address

NAME		ADDRESS		
Belinda Clayton	BELINDA CLAYTON	Box 882	Petersburg	AK 99833 #9 BEACH ST.
Vera Waggoner		"	"	"
Sharon Hubbard		Box Box 1603	PSG	
Daniel B Riedel	POB 1440		Petersburg	AK 99833
Jessie Casey	Box 1378		Petersburg	AK 99833
Mark & Lynn	Box 1021		Petersburg	AK 99833-1021
JoLynn Berk	Box 547		Petersburg	AK 99833
Lisa Trask	Box 1343	400 3rd Ave N	Petersburg	AK
Dorothy Engle	Box 315	105 S 5th ST	Petersburg	AK 99833
Mary Jane Kreutz	Box 1113	1004 N. Nordic Dr	Petersburg	AK 99833
Teresa Stolpe	200 Sandy Beach Road		Petersburg,	AK 99833
Glenn Millard	3041 A Mitkof Hiway		PSG AK	99833
Karen Severson	Box 1502		Psg. AK	99833
Debra J. Carroll	Box 334	3RD Mitkof Hwy	Psg.	AK 99833
Teresa Goodwin	Box 1565		PSG AK	99833
Beverly Hammer	Box 223	200 Lumber St	Psby	AK 99833
Tonya Sue Goodwin	200 S 2nd #9	Petersburg,	AK 99833	
Michael J Pamperin	Box 1134	Petersburg	AK	99833
William Price	Box 1010,	ICHA VALLEY RD	Petersburg,	AK 998.33
Eric Rosvold	Box 1147	703 Mitkof Highway	Petersburg	
Debbie Roth	Box 1008	310 A S. Nordic Dr	Petersburg	AK 99833
Victoria McDonald	Box 556	103 Lewis Lane	Petersburg	AK 99833
MARGARET ROGERS	BOX 893	602 ERA ST.	Petersburg	AK 99833
Teresa Watson	Box 1010	1113B Nordic	Petersburg	AK 99833
Lola R Tyson	Box 16	706 N. Nordic Dr.	Petersburg	AK 99833
Thelma Barker	1021	1010 N. Nordic Dr	Petersburg	AK 99833
KATHRYN CHANEY	1276	1008B N. NORDIC DR.	PETERSBURG	99833
David E Heinrich	PO Box 913	Papke's Landing	Petersburg	
Thomas Bell	P.O. Box 2474	Petersburg,	Alaska	
Tracey L Burchfield	706 Odin	Petersburg	AK	
Cecilia Fuhrman	PO 1404	Petersburg		
Alice Bibb	Box 64	Petersburg	Alaska	
Peter J Pillsbury	PETER PILLSBURY	BOX 882	PETERSBURG	AK 99833
Jung Hulbert	TINA HULBERT	Box 873	Petersburg	Alaska #8 HEREFORD HILL
Kay Beam	321 Mitkof Hiway	Petersburg	AK 99833	(Box 1616)
Joie Jo White	Box 246	Petersburg	AK 99833	
Kathy A Ward	BOX 792	Psg,	AK 99833	
Tiffany Nemec	Box 1086	5.4 Mitkof Highway	Petersburg	AK 99833
Bert Aho	Box 1272	103 Cornelius Rd	Petersburg	AK 99833
Judith Ellingberger	Box 1611	285 Mitkof Highway	Petersburg	AK 99833
[illegible]	Box 105	Pet	AK	
Mark Seidl		Haines	Hwy AK	99833
Daron Caples	Box 524	Psg	AK	(205 From)
May Tatt		276 Reid	Home -	Petersburg

over

We, the citizens of Petersburg, feel the need for a change from "Joy-riding" to Grand Theft Auto, if a person steals a vehicle. We feel that it is immaterial if we live on an island or not. It is a case of taken someone's property without their permission and should receive the penalty for their actions. If the owners leave their key in the ignition, that is between their insurance company and themselves. The thief should be prosecuted as a car thief.

NAME	ADDRESS	
Bonnie Duncan	711 Wrangell Ave.	Petersburg
[illegible]	116 [illegible]	Petersburg
Ruth A. Benitz	405 Haugen Dr.	Petersburg
Robert L. [illegible]	405 Haugen Dr.	Petersburg
Francis [illegible]	223 [illegible]	Petersburg
Richard Grubbe	301 [illegible]	Petersburg
Clark Mondich	P.O. 766	Petersburg
[illegible]	P.O. 271	City
Pam Darell	74 200 2nd ST Box 622	City
Judine Martinson	1306 Wrangell Box 385	Petersburg
R. R. Cook [illegible]	PO Box 1678	Petersburg
Marcia Lunde	P.O. Box 815	Petersburg
Wanda Bottrick	PO Box 1718	Petersburg
Howard [illegible]	P.O. Box 821	Petersburg
[illegible]	Box 947	Petersburg
[illegible]	Box 74	PSBG.
Elizabeth A. [illegible]	Box 1093	PSBG
Julie D. Nyberg	Box 1043	Petersburg AK.
Dennis Emmerich	Box 734	Petersburg, AK.
[illegible]	General Delivery	P-Burg
Patricia [illegible]	Box 710	Petersburg
[illegible]	Box 695	Petersburg
Richard P. [illegible]	Box 1434	Petersburg
Rene MacDonald	Box 575	Petersburg
Pete Walle	Box 495	Petersburg
Donald E. [illegible]	PO Box 273	Petersburg
Margaret Slack	P.O. Box 443	Petersburg
Sonja Babcock	P.O. Box 190	Petersburg
Deb Boettcher	P.O. Box 1063	Petersburg
[illegible]	PO Box 427	Petersburg
E. D. [illegible]	P.O. Box 118	Petersburg
[illegible]	Box 1735	"
Theresa L. Ostgaard	Box 1516	Petersburg AK
Gary W. Grandy	Box 1111	Petersburg
Beverly Thomassen	Box 81	Petersburg
Linda [illegible]	Box 1082	Petersburg
[illegible]	Box 1022	"
[illegible] Froehlich	Box 1327	PSBG
[illegible]	PO Box 487	City
[illegible]	PO Box 473	PSG
[illegible]	Gen Del	Psbg
[illegible]	Box 1503	Psbg
Ron Loesch	Box 930 801 Fram	Petersburg
Tracey Reid	Box 28	Petersburg

Kathy Landrup Box 44 City
Kent Reid Box 174 City
Sheila Reid PO Box 174 City

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NAME	ADDRESS
Grant H. [illegible]	Box 1333 400 2nd Ave. N. Petersburg. AK 99833
[illegible]	Box 1410 Psg. Ak. 99833
Robert W [illegible]	Box 881 Psg AK 99833
[illegible] Weisenberger	Box 86 Psg ak. 99833
[illegible]	Box 1152 PSG AK 99833
[illegible]	Box 1724 PSG. AK. 99833
[illegible] McCallough	Box 1724 PSG. AK. 99833
[illegible]	Box 1353 PSG AK 99833
Michael [illegible]	BOX 1411 PSG AK 99833
[illegible]	Box 614 " " "
[illegible]	Box 271 " " "
[illegible]	361
Chris [illegible]	Box 285 Psg AK 99833
[illegible]	POB 1412 [illegible] 99833
[illegible]	Box 610 Psg AK 99833
[illegible]	Box 481 Psg AK 99833
[illegible]	Box 843 Psg AK 99833
[illegible]	Box 968 PSG AK 99833
Kathy Knight	Box 1658 PSG. AK. 99833
[illegible]	Box 97 " " 99833
Rebecca [illegible]	Box 1033 " " "
[illegible]	Box 325 " " "
Christine [illegible]	Box 253 PSG. AK 99833
Mrs. [illegible]	Box 237 Psbg AK 99833
[illegible]	Box 125 " "
[illegible]	Box 1477 PSG AK "
Douglas A. [illegible]	Box 763 Psg AK 99833
Dennis McCollum	Box 1163 Psg AK 99833
[illegible]	Box 373 " "
[illegible]	1256 Town
[illegible]	Box 173 PSG ALASKA 99833
[illegible]	181 " "
Linda Kay [illegible]	Box 458 Psg AK 99833
[illegible] Johnson	Box 1655 PSG AK 99833
[illegible] Nicholson	POB 1315 PSG AK 99833
[illegible] Jean [illegible]	Box 745 Petersburg AK
[illegible]	Box 149 Petersburg AK 99833
Donald [illegible]	Box 1778 Petersburg
[illegible] Kerr	Box 1006 PSG
[illegible]	Box 1773 PSG
[illegible] Edwards	BOX 1555 PSG
Tom Drennan	BOX 523 PSG
[illegible] K. Garvey	Box 472 Psbg.

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NAME		ADDRESS
Courtney Lyons	Box 189	+14 Maxlls Petersburg AK.
[illegible]	Box 907	Petersburg AK
[illegible]	"	"
[illegible]	Box 1468	Petersburg AK
[illegible]	Bx 846	PG AK
[illegible]	Bx 89	PG AK
Jody Davis	Bx 1433	P.G. A.K
[illegible]	BX 898	" "
Michael R. Peterson	Bx 65	Petersburg, AK 99833
[illegible]	Bx 1722	petersburg AK 99833
[illegible]	"	" " "
[illegible]	Box 331	Petersburg AK 99833
[illegible]	Box 1026	Petersburg AK 99833
[illegible]	Box 77	Petersburg AK 99833
[illegible]	Box 1364	petersburg AK 99833
[illegible] Bowen	Box 68	Psg AK 99833
[illegible]	Box 1053	Pet AK
[illegible]	378	PSG
[illegible]	Box 1418	Psg 99833
Pat Hagen	PO 365	PSG 99833
[illegible]	Po 1025	PSG 99833
Ralph [illegible] Jr.	P.O. Box 512	PSG, AK 99833
Marvin L. King	P.O. Box 1638	PSG, AK 99833
[illegible]	Bx 1524	PSG AK 99833
[illegible]	Bx 665	PSBG AK 99833
[illegible]	Box 761	Petersburg AK 99833
[illegible] Rogers	Box 1555	Petersburg AK 99833
[illegible]	Box 133	PSG, AK 99833
Eric L. [illegible]	Box 1624	PSG AK 99833
Susan H. [illegible]	Box 690	Petersburg AK 99833
Roy C. [illegible]	Box 423	Psg. AK 99833
Mary C. Cronlund	Box 363	Psbrg AK 99833
Thomas W. Lewis	Box 267	Psg AK 99833
[illegible]	Box 700	" " "
Thomas L. Stewart	Box 134	" " "
[illegible]	Box 710	" " "
[illegible]	BX 935	PSG AK
[illegible]	BX 207	PSG AK
Michael [illegible]	Box 142	Ptsbg AK 99833
[illegible] Mathney	Box 641	PSG AK
Steve Bergman	365	PSG AK
MIKE COOPER	BOX 171	PSG AK 99833
William E. [illegible]	Petersburg AK Del.	STEAL A CAR GO TO JAIL

We, the citizens of Petersburg, feel the need for a change from "Joy-riding" to Grand Theft Auto, if a person steals a vehicle. We feel that it is immaterial if we live on an island or not. It is a case of taken someone's property without their permission and should receive the penalty for their actions. If the owners leave their key in the ignition, that is between their insurance company and themselves. The thief should be prosecuted as a car thief.

NAME	ADDRESS
[illegible] - James Stolpe	200 Sandy Beach Rd
[illegible]	501 Haugen Dr. Box 258
Donald B[illegible]	Box 341 805 D
John Kuso	Box 716 800 S. 8th St City
Lewis Cramer	Box 756 2451 Mitkof Hwy.
[illegible]	Bx 786 14 S. 3rd St.
W.C. [illegible]	Box 725 Psb. AK
[illegible] Buckwell	Box 814 Psg AK
Jack M [illegible]	Box 1290 Psg AK
Elias Lucas	Box 1161 Psg AK
Mitchell L. Eide	Box 15 Psg AK
Paul A Anderson	Box 1454 Psg AK
[illegible]	Box 1292 Psg AK
Gary McCullough	Box 707 Psg AK
[illegible]	Box 1046 Psg AK
Mike Villano	Box 1704 Psg AK
[illegible]	Box 1326 Psg AK
[illegible]	Box 752 [illegible]
Rick M Fleming Rick Fleming	Box 1092 - Petersburg AK. 99833
Jon Stephen	Box 584 PSG, AK 99833
Joseph M. Hubbard	P.O. Box 1566 PSG, AK. 99833
Beth Rhein	Box 436 - PSG AK 99833
Anna Lou Sadler	Bx 1463 Psg AK 99833
Tracy & Alex Reid	Box 1187 Petersburg AK 99833
Dean [illegible]	Box 257 Petersburg AK 99833
[illegible]	
[illegible]	Box 730 Psg AK. 99833
[illegible] Burrell II	Box 75 Petersburg AK 99833
Don A Luhr	Box 141 Petersburg AK 99833
Bob Dorris	Box 1232 "
John W. [illegible]	7 1/2 mi Mitkof Hwy.
[illegible]	Box 1312 PSG AK 99833
[illegible]	Box 424 PSG AK
Bruce Weiner	Box 1424 PSG, AK 99833
Elaine [illegible]	Box 452 PSG AK 99833
Donna Martensen	1304 Wrangell Ave - Box 385 Petersburg
Dennis Rogers	807 Wrangell Ave Box 572 Petersburg, AK
Pete [illegible]	Box 414 Petersburg AK 99833
[illegible]	Box 492 Petersburg
[illegible]	Box 1173 Petersburg AK
R.D. McCay	Box 161 PSG, AK 99833
Steve Connor	Box 1174 PSG AK
Gerhard Hiller	Box 1361 PSG, AK
Mike Dean	Bx 089 PSG AK - 603 S. Nordic Dr

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NAME	ADDRESS	
Sig Mathisen	Box 1460	Petersburg, Alaska 99833
[illegible]	Box 229	"
[illegible]	Box 504	" "
James A. McEwen	POB 1530	Petersburg AK.
[illegible]	Box 214	" "
[illegible] Eide	PO Box 947	" "
[illegible]	Box 274	" "
[illegible]	Box 83	Petersburg Alaska 9983
Wes Abbott	Box 185	Petersburg AK 99833
David E. Clayton	Box 882	Petersburg AK 99833
Marilyne B. Clayton	Box 882	PETERSBURG AK 99833
[illegible]	Box 1745	PETERSBURG AK 99833
[illegible]	General Delivery	Petersburg AK 99833
Brenda A. Hubbard	Box 981	Petersburg AK 99833
[illegible] Hubbard	Box 981	PeTersburg AK 99833
[illegible]	Box 647	Petersburg AK
George P. [illegible]	BX 615	PSG
William [illegible]	Bx 1520	PSG
Jack H. Willis	Box 202	PSG
[illegible]	" 507	"
[illegible]	Box 552	Psg
[illegible]	[illegible]	[illegible]
Dale [illegible]	Box 532	PSG
Ray [illegible]	Box 504	PSG
[illegible]	Box 875	PSG
James [illegible] Taylor	Box 1367	[illegible] AK
[illegible]	Box 991	Petersburg
John Winters	Box 152	Petersburg AK
[illegible]	[illegible]	
[illegible]	[illegible]	[illegible]
[illegible]	Box 523	PSG
[illegible]	[illegible] 225	PSG
[illegible]	[illegible]	[illegible]
William A. Price	Gen. Del.	Petersburg AK 99833
[illegible]	Box 36	" "
[illegible] H. Dice	Box 1303	" "
[illegible]	143	" "
[illegible]	Box 561	" "
Terry Howard	672	
[illegible]	Box 1580	" "
[illegible] Bloomquist	Box 689	" "
Cindy Bloomquist	Box 689	
[illegible]	Box 863	" "
[illegible]	571	" "

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NAME	ADDRESS	
Albert Martens	Box 623	PSG.
Rodney M. Kent	Box 446	
Margaret Mundersk	Box 155	
Frederick Jones	Box 206	Petersburg
Glenda L Cockburn	1580	7456
Mary Christiansen	box 1	PSG
[illegible] Bates	Box 1176	PSG
Brenda Hart	Box 1562	Psburg
Peter M. Lee	Box 130?	PSG, AK
Robert Bell	Box 25	PSG AK
[illegible]	Box 923	PSG AK
Harry Berry	BOX 135	PSG AK
Robert W Phillips	Gen Del	PSG AK
CARL PAINTER	PO Box 1147	PSG AK
[illegible]	P.O. Box 567	PSG
Ingrid A Pettijohn	PO Box 130	Petersburg Alaska
Debra Tackett	P.O.Box 123	Petersburg, AK
Britta Swanson	box 1161	Psg. AK. 99833
Arlene J. Hanson	PO Box 1651	Psg AK 99833
Carolyn Decker	Box 530	City
Jim Wilbert	Box 873	City
Pam Jensen	Box 681	Petersburg
Stephani Davis	Box 1423	City
Mike Price	Gen Del	City
Bradley Reid	Box 174	City
Todd Reid	Box 174	City
Andy Kramer	432	"
Helen Jensen	264	"
Scott Nelson	830	"
Virginia Montgomery	Box 1145	PSG
Paul Hamilton	Box 166	PSG
Rebecca Hagen	Box 938	PSG
Laurie Hagberg	Box 131	PSG
[illegible]	Box 1007	"
Rita L Myers	Box 1325	PSG
[illegible]	Box 1873	Petersburg
[illegible]	Box 1044	Petersburg
Michael Cagle	BOX 1243	Petersburg
[illegible]	Box 446	"
Sarah Johnson	Box 62	Petersburg
Delores Blatchley	Box 275	Petersburg
James A. Cashmore	Box 1185	Petersburg
Gayle M. Cashmore	Box 1185	17 S Third St Petersburg

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NAME PRINT	SIGNATURE	STREET ADDRESS	BOX #
Chris Valentine	Chris Valentine	P.O. Box 1146	PSG
Jeanne Wheat	Jeanne Wheat	Box 1330	PSG.
Toni Wheat	Toni Wheat	Box 1274	PSG.
Margie Fike	Margie Fike	Box 181	PSG.
Linda Bunge	Linda Bunge	Box 258	PSG
Edward Buryanski	Edward Buryanski	Box 1414	PSG
Pamela Durst	Pamela Durst	Box 164	PSG
Billie Taylor	Billie Taylor	Box 1267	
Susan Hosford	Susan Hosford	Box 1757	PSG
Helen Gilliland	Helen Gilliland	Box 147	PSG.
Jackie Tyson	Jackie Tyson	Box 587	PSG
[redacted]			
Lola Nilsen	Lola Nilsen	Box 128	PSG
Faye Ennis	Faye Ennis	Box 263	PSG
Beulah L. Lohn	Beulah L. Lohn	188 Milby Highway	PSG
MARK WEAVER	Mark Weaver	Box 1181	PETERSBURG, AK
Barbara Odegaard	Barbara Odegaard	PO Box 511	"
Ruth Sandvik	Ruth Sandvik	Box 526	"
Gale M. Kreger	Gale M. Kreger	Box 1586	PSG.
Shelley Hjort	Shelley Hjort	Box 1360	PSG
Joy Janssen	Joy Janssen	Box 1631	8035 Nordic Dr. PSG, AK 99833
Coleen Sletten	Coleen Sletten	Box 1611	PSG.
RICHARD J. WALSH	Richard J. Walsh	Box 1480	PSG
Cynthia L. Britten	Cynthia L. Britten	Box 693	PSG
Laura G. Compton	Laura G. Compton	Box 943	Petersburg
Denise Gulbranch	Denise Gulbranch	Box 775	Petersburg
Alice Langworth	Alice Longworth	Box 328	PSG AK
Dan Wanberg	Dan Wanberg	Box 643	PSG, AK
Kenneth H. Elmore	Kenneth H. Elmore	P.O. Box 1306 Nordic Dr. Apt 1	Petersburg AK Box 57
Tina M. Curtiss	P.O. Box 878 PETERSBURG, AK 99833	907-772-3995	
William P Sharp	Box 627 PETERSBURG AK 99833	907-772-4448	

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NAME	ADDRESS
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Betty Phillips	P.O. Box 414 110 N 3rd " " "
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Sally Andruss Sally Andruss	Bx 1332 Petersburg, AK 99833
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Tina Hilbert Tina Hilbert	Box 873 Petersburg AK 99833
Karen Cornelius Karen Cornelius	PO Box 1727 Petersburg, AK. 99833
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Marlene Smith	Box 702 Petersburg, AK 99833
Sylvia Larson	Box 862 Petersburg, AK. 99833
[illegible]	309 Psg AK
PETER PETRULIS	Box 1637 Psg. AK 99833
Roy Dunn	Box 1234 Petersburg AK 99833
[illegible]	Box 265 Petersburg AK 99833
[illegible]	P.O. Box 1587 Petersburg, AK. 99833
[illegible] Conner	P.O. Box 1354 Petersburg AK 99833
Marjorie Rust Marjorie T. Rust	Box 963 Petersburg, AK 99833
Tracey & Alex Reid	Box 1187 Petersburg, AK 99833
Roy & Sandra Sadler	Box 1676 Petersburg AK 99833
Christina Morrison	Box 284 Petersburg AK 99833
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Carol A. Woody	Gen Del Petersburg AK 99833
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Zenith A. Brown	Box 771 Petersburg, AK 99833
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Elsie Kalvey	Bx 991 Psg.
[illegible]	Box 236 Psg, AK 99833
Myrtis Fryer Myrtis Fryer	Box 691 Psg. AK. 99833
Thomas McKeown	Box 326 PSG AK 99833
Michael R. Heasley Michael R. Heasley	PO Box 604 Petersburg, AK 99833
Ethel Denver Ethel Denver	Box 1734 Petersburg 99833
Beth Allison-Strauss Beth Allison Strauss	Bx 967 Petersburg
Ida Reid	
[illegible] Sadler	Bx 1163 Psg 99833
Patricia A. Baker	Box 97 Psbg 99833
Sally A. Kramer	Box 968 Psbg 99833
Judy Eckenberger	Box 364 Psg 99833
Lew Brantley	Bx 238 PSG "
Dawn Burkhart	Bx 1530 PSG 99833