

**ALASKA STATE LEGISLATURE  
SENATE JUDICIARY STANDING COMMITTEE  
HOUSE JUDICIARY STANDING COMMITTEE**

APRIL 4, 1977

JOINT PUBLIC HEARING

From tape b32r14-09-JJUD-770404

**Senate**

Senator George Hohman, Chair  
Senator Robert Ziegler, Sr., Vice Chair  
Senator Patrick Rodey  
Senator Mike Colletta  
Senator Clem Tillion

**House**

Representative Terry Gardiner, Chair  
Representative Bill Miles, Vice Chair  
Representative Fred Brown  
Representative Lisa Rudd  
Representative Larry Carpenter  
Representative Ed Dankworth  
Representative Richard Eliason  
Representative Keith Specking

**COMMITTEE CALENDAR**

Criminal Code Revision Review

**WITNESS REGISTER**

BARRY JEFFREY STERN, Staff Counsel  
Criminal Law Revision Subcommission  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Provided an overview of the draft criminal code revision.

DANIEL W. HICKEY, Chief State Prosecutor  
Alaska Department of Law  
Juneau, Alaska

**POSITION STATEMENT:** Provided an overview of the draft criminal code revision.

**NOTE:** In 1975, a resolution by both houses of the Alaska State Legislature found that Alaska's criminal code was "vastly out of

step with constitutional and social developments of recent decades." The Alaska Legislature then established a Criminal Code Revision Commission as a subcommission to the Alaska Code Commission.

Pursuant to AS 24.20.075, the Criminal Code Revision Commission (also called the Criminal Law Revision Subcommittee and commonly referred to as the "Commission") was tasked with preparing a draft revision of Alaska's criminal code by December 1977. The Subcommittee's tentative draft revision was introduced to the legislature as HB 661. These minutes are part of a series of hearings on this comprehensive revision to Alaska's criminal laws.

This hearing was transcribed in 2014 from reel-to-reel tapes recorded on April 4, 1977. Some of the audio was difficult to understand, and committee members never identified themselves during the hearings. An attempt was made to determine the speakers' names, but some speakers may be incorrectly identified. In transcribing these minutes, parts of some discussions are absent because they were inaudible.

The time notations distributed throughout these minutes represent elapsed time from the beginning of the narrative, not real time. That is, these hearing minutes begin at (0:00:00) or at zero hour, zero minutes, and zero seconds.

## **ACTION NARRATIVE**

^Criminal Code Revision Review

### **Criminal Code Revision Review**

0:00:46

CHAIR GARDINER announced that the committee would review Part 3, "Offenses Against Property," [Tentative Draft, Alaska Criminal Code Revision, Part 3, Chapter 46, "Offenses Against Property"].

0:02:05

BARRY J. STERN, Staff Counsel, Alaska Criminal Law Revision Subcommittee (Commission), Alaska State Legislature, Juneau, Alaska, stated that the committee will cover two articles of the Revised Criminal Code (Code) that pertain to theft and burglary. He noted that crimes against property in the Code's Tentative Draft 3 are complete except for Article 5, "Business and Commercial Offenses." He summarized that the chapter under review covers theft, burglary, arson, and forgery.

MR. STERN pointed out that the Code has consolidated theft into one statute based in three degrees versus 18 separate crimes in existing law.

0:03:04

He revealed that the crime of theft in common law was punishable by death and the reason was not so much to protect a person's property, but to prevent breaches of the peace. He noted that beginning in 1500, committing theft in ways other than taking away property in the possession of an owner were realized. He cited an example where a person can take away property from the owner prior to the owner having possession of the property. For example, a bank teller receives and pockets money from a customer, the bank teller would be guilty of embezzlement because the bank never had possession.

He said over the years there have been many statutes developed that cover conduct that was not commonly considered larceny. He pointed out that Alaska was an example for multiple statute development where separate statutes were created to deal with mineral theft, aircraft parts theft, and animal theft. He explained that separate statutes were required to cover minerals and animals because the offenses were not common law larceny subjects.

MR. STERN explained that multiple statute development resulted in an inconsistency in provisions. He said existing law's penalty inconsistencies existed where larceny becomes a felony when the value is \$200 or \$250 and embezzlement is \$100. Additionally, stealing a cow worth more than \$50 is a felony with a 10 year prison sentence and theft by extortion, which is a threat against a person, has only a 5 year maximum penalty. He summarized that the theft area in existing law has a lot of inconsistent penalties and the Commission tried to combine as many theft offenses as possible into one statute with consistent penalties.

0:05:46

He mentioned that another problem with existing statutes is that some are unconstitutional. He pointed out that the statute for "Theft of Misplaced Property" was not in effect because the Alaska Supreme court declared the statute unconstitutional a few years ago in State v. Campbell.

He specified that in [AS 11.46.100 Theft Defined], the Commission combined the separate crimes of larceny, embezzlement, false pretenses, larceny by trick, theft of lost

property, and theft by receiving into one statute. He explained that the one intent requirement for theft has to be to permanently deprive the owner of property or to appropriate another's property to oneself or a third person.

MR. STERN pointed out that the terms "deprived" and "appropriate" are key to the theft area and were defined in General Provisions of the chapter on "Offenses against Property." He remarked that section 100, [AS 11.46.100], defines what theft is and section 110, [AS 11.46.110 Consolidation of Theft Offenses], clearly spells out that theft is one single offense. He noted that an accusation for theft is sufficient if the allegation alleges that the person committed theft without specifying a particular way the crime was committed. He pointed out that not specifying how a theft was committed is important because there are certain times when the prosecution will bring a charge alleging that theft was committed by embezzlement and later turns out that it was committed by larceny. He revealed that if the charge does not fit the proof of trial, the charge is dismissed because there has been a material variance. He said the Commission reasoned that it should not matter the particular way a person takes or appropriates property, except in a few areas. He noted that theft by extortion is one example.

0:08:24

He explained that theft by extortion is a theft offense that involves the taking of property in addition to a threat of force against a person. He specified that the Commission did not include theft by extortion within the consolidated theft statute and treated the offense separately for purposes of punishment due to its severity versus ordinary theft.

He remarked that the theft area was probably the least controversial for the Commission, but the most complex. He summarized that the Commission tried to eliminate almost all of the theft distinctions in existing law.

He explained that the Commission made three degrees of theft. He said a person commits theft in the first degree, [AS 11.46.130], if the property is worth \$500 or more, the subject of the theft is a firearm or explosive, or the property is taken from a person of another. He stated that theft in the first degree is a Class C felony. He said a person commits theft in the second degree, [AS 11.46.140], when the property is \$50 or more, but less than \$500. He stated that a person commits "petty theft," theft in the third degree, [AS 11.46.150], when the property is less than \$50.

MR. STERN pointed out that theft's three tier distinction is carried throughout the Code and differs from existing law in the sense that three degrees of the crime are recognized whereas only two degrees are recognized under existing law. He divulged that the Commission felt that there was a need for a degree of theft below tradition petty theft to cover situations where a person steals something worth less than \$50.

REPRESENTATIVE DANKWORTH asked if the Commission had a debate on moving first degree theft from \$250 to \$500.

MR. STERN replied that he noted in the commentary that the \$500 figure is arbitrary. He explained that the Commission considered dollar amounts from other states. He noted that Oregon's figure was \$200 and Arizona uses a \$1000 distinction.

REPRESENTATIVE BROWN asked him to verify that the Commission considered the dollar value for theft distinctions in 1975.

MR. STERN answered yes.

REPRESENTATIVE BROWN asked if setting the dollar value was one of the first things the Commission did.

MR. STERN answered yes.

REPRESENTATIVE BROWN stated that what the Commission did in 1975 was prior to the Legislature's 1976 amendments to current law where revisions were made to the previous \$250 amount.

REPRESENTATIVE DANKWORTH pointed out that stealing an old bicycle was a Class B offense and stealing a new bicycle was a Class A offense.

MR. STERN explained that the value of the property is based on the market value.

REPRESENTATIVE DANKWORTH commented that he has always had a problem using market value of the property as a basis.

CHAIR GARDINER stated that the Commission specifically added theft in the third degree in order for the courts to deal with a rash of small cases under \$50, like shoplifting. He noted that some states have not distinguished a third degree.

0:13:06

MR. STERN reiterated that value of property is defined as "market value" and the Code also takes into account conduct where the theft's value is aggregated. He said an example is someone who runs the city bus system takes \$2 from the till on a daily basis and the amount can be added up to determine the theft's degree.

REPRESENTATIVE DANKWORTH asked if animals were included in the theft statute.

MR. STERN replied that animals were not included as a separate aggravating factor.

REPRESENTATIVE DANKWORTH responded that stealing expensive pedigree dogs is a pretty big business.

REPRESENTATIVE BROWN called attention to the section that stated, "An accusation of theft is sufficient if it alleges these allegations." He asked if the section was controversial for the Commission.

MR. STERN replied that the section aggregates and all a person has to do is charge theft without specifying the type of theft. He stated that the Commission's intent is to consolidate theft in the Code.

REPRESENTATIVE BROWN replied that he understood the intent to consolidate. He asked if the section was controversial with the Commission.

CHAIRMAN GARDINER replied that once the Commission understood the policy decision to consolidate, any initial opposition dissipated. He stated that there was no controversy after the Commission reviewed the statute three or four times.

REPRESENTATIVE BROWN asked Chairman Gardiner if he believed the Commission's early work with the Code was as good as the quality that came out of later meetings.

CHAIRMAN GARDINER replied that there was some question about early work versus later work. He explained that the Commission has addressed problems that were pointed out and a few were just technical. He stated that he and Mr. Stern have spent considerable time reviewing the Code's theft statutes.

0:16:36

MR. STERN pointed out that he has spent considerable time on the theft statutes and noted that the statutes were complicated. He revealed that Alaska's theft statutes were almost identical to Oregon's Code. He set forth that he considered the Oregon Code to be the draft-perfect code.

REPRESENTATIVE DANKWORTH remarked that the consolidated theft statutes will be the most tested in the Code.

MR. STERN asked if Representative Dankworth meant that the consolidated theft statutes will be the most tested in terms of enforcement.

REPRESENTATIVE DANKWORTH answered yes. He specified that the consolidated theft statutes will have the most judgment and the most offenders. He stated that judges will test the consolidated theft statutes the most in the Code.

REPRESENTATIVE BROWN remarked that most criminal cases pertained to theft and assault.

MR. STERN said, [AS 11.46.100 Theft Defined], there are four ways that theft may be committed by an individual:

1. Takes, appropriates, obtains or withholds the property of another.
2. Commits theft of property lost, mislaid or delivered by mistake as provided in sec. 160 of this chapter.
3. Commits theft by deception as provided in sec. 180 of this chapter.
4. Commits theft by receiving as provided in sec. 190 of this chapter.

He noted that as a matter of style, the Commission decided not to include the longer statutes within the definition.

He explained that the sections, [AS 11.46.160 Theft of Lost or Mislaid Property] and [AS 11.46.180 Theft by Deception], described how theft may be committed and were not separate crimes. He revealed that, [AS 11.46.160], was not enforceable under existing law because the statute does not have an intent requirement. He pointed out that the necessary intent requirement is included in the Code. He said, [AS 11.46.180], the term "deception" is a key term and is defined in the "Offenses against Property" chapter in General Provisions. He remarked that the definition for "deception" is broad and noted that its application will be unusual in terms of prosecuting

consumer fraud type cases. He asserted that the definition for "deception" in the Code is a good definition.

0:19:20

MR STERN said, [AS 11.46.190], "Theft by Receiving" in the Code is basically the same as in existing law and the crime has been consolidated in the consolidated theft statute. He explained that a person commits "Theft by Receiving" when he receives property that he knows was the subject of theft.

He summarized that the consolidated theft statute should cover the most typical ways that theft is committed with exceptions. He pointed out that the Commission treated separately the crime of "Theft by Failure to Make a Required Disposition of Funds Received," [AS 11.46.210].

He said the extortion statute, [AS 11.46.195], is treated as a separate crime with a Class B felony penalty rather than theft's maximum Class C felony penalty. He pointed out that the penalty for extortion is not dependent on the value of the property. He revealed that extortion under existing law is treated less severely than larceny and the Commission felt treating extortion less severely was ridiculous. He summarized that obtaining property by threat is certainly more serious than taking property when a person is not around.

REPRESENTATIVE DANKWORTH asked for an explanation on the difference between "extortion" and "robbery." He remarked that a person committed robbery by threatening someone to immediately handover their wallet.

MR. STERN answered correct. He explained that robbery applies to an imminent threat.

REPRESENTATIVE DANKWORTH responded that robbery meant threatening somebody and putting fear into their life whether the threat occurred now or two days from now. He stated that he was having a problem with making a distinction between robbery and extortion.

MR. STERN stated that for robbery there has to be the immediate use of force and for extortion there has to be the threat of force in the future.

REPRESENTATIVE DANKWORTH added that threatening force in the future allows a person time to get away from immediate danger and inform the police.

MR. STERN replied that the scenario Representative Dankworth provided would result with the prosecution arguing that the person threatening future force would be guilty of robbery, a Class B felony. He added that robbery is a Class A felony if a weapon is used.

REPRESENTATIVE DANKWORTH revealed that he thought the penalties for robbery and extortion were misdemeanors.

MR. STERN replied no, extortion is a Class B felony.

CHAIR GARDINER confirmed that extortion is a Class B felony unless a weapon is involved.

MR. STERN added that the perpetrator could be charged with both extortion and assault with a weapon.

0:24:26

He said "Theft of Services," [AS 11.46.200], covers conduct where a person leaves without paying for a hotel room or restaurant bill. He explained that "services" is defined to include professional services, labor, or entertainment. He added that an example includes the supplying of electricity where a person tampers with an electric meter. He pointed out that tampering with an electric meter exists under existing law, but he noted that there is no separate statute to cover theft of water.

REPRESENTATIVE BROWN addressed the phrase, [AS 11.46.200(b)], "Absconding without payment for which compensation is customarily paid immediately upon the receiving of services."

MR. STERN replied that he is certain the phrase was taken from existing law.

REPRESENTATIVE BROWN replied that the phrase is not taken from existing law because people are not prosecuted when they do not pay taxi drivers and noted that HB 42 is in pre-conference committee to address the crime.

MR. STERN replied that the statute in the Code is aimed at the situation that Representative Brown described.

REPRESENTATIVE BROWN stated that he questioned if the Code covered not paying taxi drivers and pointed out that the

Commission just said, "Services for which compensation is customarily paid."

REPRESENTATIVE DANKWORTH inquired if HB 42 or similar bills passed during the Session will be included in the Code.

0:26:12

CHAIR GARDINER set forth that the Commission will look at any bills that were passed during the current Session that affect Title 11 and the Commission should fit the legislation into the Code. He asserted that the Commission has taken a position that any bills recently passed by the Legislature is a policy statement and the Commission should not make any policy decisions regarding the passed legislation.

REPRESENTATIVE DANKWORTH asked if the Commission is going to rewrite the passed the legislation.

CHAIR GARDINER answered no, unless the passed legislation does not fit into the Code's draft style. He explained that it is the Committee's job to fit any bill into the Code in terms of penalty structure, drafting style, affirmative defenses, and culpability.

MR. STERN said he could see one problem where a statute is aimed at one specific type of conduct. He noted that the statute's beauty is that it covers all affected services and there is no need to have a specific provision covering a specifically affected service when applied under the main "Theft of Services" statute.

REPRESENTATIVE DANKWORTH commented that having one statute covering all seems simple and asked why the concept was not used in the past.

CHAIRMAN GARDINER explained that just attacking specific problems is so much simpler.

REPRESENTATIVE BROWN explained that for years there was no legal tradition of "expressio unius est exclusio alterius," an expression of "One thing implies the exclusion of the other." He noted that there has been legislation that included statutes with a laundry-list of offenses. He pointed out that Mr. Stern had explained that the violent crimes statute included a weapons list that kept getting added to.

0:29:50

MR. STERN said the penalty structure for "Theft of Services" has three different types of penalties. He noted that in existing law a person could never commit "Theft of Services" and be guilty of a felony. He revealed that "Theft of Services" for more than \$500 would result in a felony.

He said, [AS 11.46.210], "Theft by Failure to Make Required Disposition of Funds Received or Held," is a very peculiar statute and appears in approximately 75 percent of other state's revised codes. He explained that [AS 11.46.210] is a technical statute where the Code specifically addresses a situation where a person obtains property subject to an agreement to make a payment to someone else and recklessly fails to make a payment. He specified that the statute in the Code gets at a person that withholds money and never pays towards a charity or for Social Security taxes. He noted that under existing law, larceny requires that property be taken and some courts have upheld that property had not been taken from another during the withholding process.

REPRESENTATIVE BROWN asked if there was any controversy in the Commission regarding [AS 11.46.210].

0:31:40

MR. STERN answered that the only controversy was whether the statute's conduct was already included within the consolidated theft statute.

REPRESENTATIVE BROWN noted that his concern is for small Alaskan business owners who are late in making their federal quarterly employee withholding payments or savings bonds withholdings. He asserted that small business could potentially be accused of a felony for being late in making their withholding, savings bonds, or annuity payments.

UNIDENTIFIED PERSON pointed out that there is a standard-of-recklessness and the statute states, "He exercises control over the property as his own and recklessly fails to make the required payment or disposition."

REPRESENTATIVE SPECKING submitted that a person would probably not get charged due to failure to pay unless the person is asked and then fails to make a payment.

0:34:12

MR. STERN pointed out that the statute states, "Recklessly fails to make the required payment."

REPRESENTATIVE BROWN asserted that "recklessly fails" was not specific.

MR. STERN replied that the definition for "reckless" says, "A gross deviation from the standard of care." He specified that the definition applies to what a reasonable person would observe under the situation.

REPRESENTATIVE BROWN conceded that he can accept Mr. Stern's explanation as a lawyer, but noted that his business owner constituents might have an issue that the Code makes something criminal that currently is not criminal.

MR. STERN inquired if Representative Brown is asserting that taking property without paying the known obligation is not a criminal act or that the act is just a reckless failure when a person has an intent to pay.

REPRESENTATIVE BROWN countered that there are a lot of questions whether a delayed payment would be considered criminal.

UNIDENTIFIED PERSON asked what would happen if the payment was \$1 million.

REPRESENTATIVE SPECKING stated that "tax people" really watch the big payments.

REPRESENTATIVE RUDD asked if the section covered trustees who do not pay the trust account beneficiaries.

0:36:01

MR. STERN replied that there is a separate statute for trustees not paying trust account beneficiaries, but the offense might also be covered by [AS 11.46.210]. He stated that there is no need for a separate statute if [AS 11.46.210] covers the offense.

REPRESENTATIVE BROWN asserted that the statute's title indicates that the offense Representative Rudd described is covered by [AS 11.46.210].

MR. STERN responded that the statute may be even broader.

REPRESENTATIVE DANKWORTH remarked that the definition of theft in the Code was too broad.

MR. STERN replied that it could be restructured.

REPRESENTATIVE DANKWORTH asked what section (b) means, [11.46.210(b)], "it is not a defense to a prosecution under (a) of this section."

MR. STERN answered that not being able to identify specific dollars or property due to comingled funds is not a defense.

REPRESENTATIVE BROWN asserted that the statute will be controversial and suggested that the Commission consider different criminality or culpability levels for the statute.

MR. STERN noted that there are two statutes that the Commission did not change from existing law other than the penalty structure: [AS 11.46.220] "Concealment of Merchandise" and [AS 11.46.230] "Reasonable Detention as a Defense." He specified that the Commission stated in the statute that if the property is worth more than \$500, the penalty is going to be a Class C felony. He noted that the offense's penalty under existing law is always a misdemeanor.

REPRESENTATIVE DANKWORTH agreed with the Code's penalty for the statute due to the prevalence of "fencing" property.

MR. STERN explained that the statute's only change from existing law was adding the felony provision.

0:39:27

He said there are two statutes that address joyriding, [AS 11.46.240 and AS 11.46.250]: "Unauthorized Use of a Propelled Vehicle" and "Unauthorized Occupancy of a Propelled Vehicle."

REPRESENTATIVE SPECKING asked when joyriding becomes stealing a car.

MR. STERN explained that taking a car with the intent that it not be found would be sufficient for theft.

REPRESENTATIVE SPECKING asked what would happen if the perpetrator did not intend to return a vehicle and just kept using it.

MR. STERN replied that theft occurs when a person is permanently deprived of their vehicle.

REPRESENTATIVE SPECKING asked where stealing a vehicle is covered in the Code.

MR. STERN replied that stealing a vehicle is covered under the "General Theft" provision. He specified that [AS 11.46.240] covers the situation where an individual takes a vehicle for a joy-ride and there are three ways the act is committed. He said the first one is the typical joyriding situation that requires a person to knowingly take a propelled vehicle without an owner's consent. He stated that the second one covers the situation where an owner leaves their vehicle with a mechanic and the mechanic decides to use the vehicle, but does not intend to deprive the owner permanently; the act requires that an unreasonable agreement deviation occurred, leaving the jury to decide what an unreasonable agreement deviation is. He said the final situation pertains to borrowing a car through a rental agreement and the vehicle is kept for an unreasonable deviation.

0:41:33

UNIDENTIFIED PERSON asked where joyriding is covered under existing law.

MR. STERN explained that under current law the act is covered under Title 28 and noted a recent case where the statute was held unconstitutional because the statute did not require that a person act with criminal intent.

REPRESENTATIVE BROWN stated that the statute itself could not have been declared unconstitutional.

MR. STERN replied no, the provision of the statute was considered unconstitutional.

REPRESENTATIVE BROWN stated that the particular application of the statute was declared unconstitutional.

MR. STERN replied yes. He said there were parts of the statute that were okay, but other parts were not.

DANIEL W. HICKEY, Chief Prosecutor, Alaska Department of Law, Juneau, Alaska, stated that there were two statutes with one that requires an intent to defraud and the other one does not.

MR. STERN noted the Supreme Court case in Speidel v. State.

MR. HICKEY pointed out that the statutes are back-to-back in Title 28.

REPRESENTATIVE BROWN asked the following:

Did the court say that the thing was unconstitutional on its face or merely that as it applied it, it was unconstitutional without an allegation of intent that it should be implied in all criminal statutes?

MR. STERN replied no, on its face it did require intent.

REPRESENTATIVE BROWN countered as follows:

That's not what I said, I know that. Do you understand the difference between having something declared unconstitutional on its face and having an application of an otherwise unconstitutional statute declared as unconstitutional? That's the distinction that was made by the court in those cases or do we have something that is invalid on the books now?

0:43:06

MR. STERN stated that he believes a particular portion of the statute was unconstitutional on its face.

He specified that "propelled vehicle" was broadly defined as covering vehicles, airplanes, motorcycles, snow machines, all-terrain vehicles, sailboats, and construction equipment. He noted that there were two joyriding statutes under existing law, one that covers motor vehicles and the other covering boats and planes. He pointed out that existing law covered the two joyriding statutes separately under Title 11 and Title 28. He summarized that the Code consolidated the joyriding provisions in one statute.

REPRESENTATIVE DANKWORTH noted that snow machines were not covered in Title 28.

MR. HICKEY replied that snow machines would not be covered under Title 28.

MR. STERN added that the Code covers snow machines in [AS 11.46.210].

MR. STERN said the Commission has retained a number of provisions from existing law that included "consent" and "prosecuting a minor as an adult except when a guardian is present." He specified that the penalty for the first offense is

a Class A misdemeanor and the second is a Class C felony, which corresponds with Title 28 penalties.

He said there is another statute, [AS 11.46.250], that covers "Unauthorized Occupancy of a Propelled Vehicle" and the statute provides the following:

A person commits a crime if he rides in the vehicle and at the time of entry he knew or had been informed that the vehicle was stolen or was used or about to be used in violation of Section 240 of this chapter.

He said normally a person that is an accessory to the act will say, "I didn't intent to promote the offense, I didn't act with the necessary intent." He specified that [AS 11.46.250] states that a person will be charged with a separate offense if they enter a propelled vehicle and knew it was stolen or going to be used for an unreasonable deviation from the rental agreement. He said the penalty is a Class A misdemeanor. He summarized that the Code has two provisions on joyriding.

0:45:49

He said, [AS 11.46.260 Removal of Identification Marks], is a useful tool for law enforcement. He pointed out that the statute covers a situation where a person steals property and removes identification marks with the intent to cause ownership interruption to another. He said the next statute, [AS 11.46.270 Unlawful Possession], covers situations where a person knowingly possesses articles where serial numbers have been removed with the intent to change the item's identity. He summarized that [AS 11.46.260] and [AS 11.46.270] cover situations where a person removes identification marks and knowingly possess items with removed identification marks with the intent to change the item's identity.

REPRESENTATIVE BROWN asked why the Commission deleted the bad checks provision.

0:47:40

MR. STERN answered that there was some question whether the Commission ever considered the bad check provision and noted that the provision will be presented to the Commission once again.

REPRESENTATIVE DANKWORTH asked to readdress joyriding. He inquired if a provision had ever been considered in the

joyriding statute that takes into account crossing state lines or taking a vehicle out of a jurisdiction.

REPRESENTATIVE BROWN commented that abandoning a vehicle in a place where nobody has a reason to find it, deprives somebody of their vehicle and it would be theft.

REPRESENTATIVE DANKWORTH noted the difficulty in extraditing a person from another jurisdiction for a misdemeanor.

REPRESENTATIVE BROWN offered that placing a presumption in the statute that removing a vehicle from a jurisdictional boundary raises the presumption of intention to permanently deprive so that the act is promoted to the level of theft rather than a misdemeanor.

REPRESENTATIVE DANKWORTH replied that the intent is to separate the person that is taking the car to Fairbanks to repaint it rather than the kid that is just driving the car around his hometown.

0:50:08

CHAIR GARDINER noted that the definition of "deprive" read as follows:

Withhold property of another or causes property of another to be withheld from him permanently or for so extended a period for under such circumstances that the major portion of its economic value or benefit is lost.

MR. STERN added that the definition of "deprive" goes on as follows:

Dispose of the property in such a manner or in such circumstances to make it unlikely that the owner will recover the property.

REPRESENTATIVE DANKWORTH asked what happens when a stolen vehicle is placed on a ferry bound for Seattle and if an arrest warrant can be authorized in Seattle.

REPRESENTATIVE SPECKING asked how a vehicle's economic value and displaced benefit to the owner are addressed in the joyriding statute.

CHAIR GARDINER explained that if an individual deprives a person of their car for six months, the individual has deprived the person for 100 percent of their vehicle's benefit.

REPRESENTATIVE BROWN stated that some presumptions should be placed in the joyriding statute that promotes the act to a felony.

CHAIR GARDINER stated that all you have to do is look at the act and see if it can be prosecuted under the theft statute.

REPRESENTATIVE BROWN replied that a presumption should be included for intention to deprive, like removing the property from a jurisdictional boundary.

CHAIR GARDINER said the Commission had problems with arbitrary numbers and standards for moving property a certain distance.

REPRESENTATIVE RUDD asked if the statute could stipulate just a number of miles from where the care was taken from

0:53:21

CHAIR GARDINER replied that the act and not distance is the factor. He noted that an individual could hide a car two miles away.

REPRESENTATIVE DANKWORTH pointed out that the statute does not address taking a car and heading for the border.

MR. STERN replied that the act is implied in the definition.

REPRESENTATIVE DANKWORTH noted that under the old statute a person that takes a car towards Canada could be arrested at the border because intent was shown to cross the state line.

UNIDENTIFIED PERSON asked what would happen to a person in Haines that takes a vehicle up the road and does not have to stop at customs.

REPRESENTATIVE DANKWORTH remarked that people get angry when they call customs to stop their car at the border and an individual is taken in for a misdemeanor.

REPRESENTATIVE BROWN reiterated that including a presumption for the intention to deprive may be necessary in order to allow for a felony charge if something has been taken out of a jurisdiction. He explained that charging a felony would increase

the chances of getting property back and prosecuting the perpetrator.

0:55:21

MR. STERN replied that he will review statutes in the other state's revised codes.

He declared that the theft statutes have been covered except for the defenses, [AS 11.46.120 Defenses to Theft]. He said the Code says to commit theft a person has to act with an intent to permanently deprive the owner. He specified that a person has not committed theft if the person acts believing the property is his own or he is not aware that the property belongs to another: the person has not acted with a specific intent and the defense is noted in the Code.

He stated that the next defense to theft deals with a difficult problem of property belonging to married couples. He explained the defense as follows:

It is a defense that the property involves that of the defendant's spouse unless the property does not constitute household belongings or constitutes household belongings but is the subject of theft while the parties are maintaining separate households and without a claim of right made in good faith.

He said "household belongings" is defined as follows:

Furniture, personal effects, vehicles, money, or its equivalent in amounts customarily used for household purposes and other property usually found in and about the common dwelling and accessible to its occupants; this leaves property disputes to the divorce courts and only covers situations where the claim is the spouse's property.

0:57:30

He said the final statute in "Defenses to Theft," [AS 11.46.120(d)], is saying that theft is committed even though a person is taking property from a thief. He specified that a person taking their own property back would not be considered theft if the person reasonably believes entitlement to the property under section (a).

REPRESENTATIVE RUDD asked if she would be allowed to take everything out of her joint safe deposit box with her husband

and sell all of the valuable jewelry in addition to everything that belongs to her husband.

MR. STERN replied no. He referred to the definition for "household belongings" and stated that the act would be considered theft.

REPRESENTATIVE SPECKING speculated that a sort of contract is made with his wife by providing a key to his safe deposit box and that she was entitled to what was in the box.

REPRESENTATIVE DANKWORTH agreed with Representative Specking. He pointed out that everything with his wife is considered joint property. He asserted that his wife taking all of the money out of their safe deposit box would not be taken up by the District Attorney and the act would be considered a civil case.

REPRESENTATIVE BROWN stated that the phrase "personal effects" is pretty vague and bothers him when used in the definition of "household belongings." He remarked that he refers to "personal effects" all of the time in civil documents that relate to a division of property between spouses in divorce. He asserted that a definition for "personal effects" should be created when the phrase is used in the context of a crime.

1:01:08

MR. STERN said he will review how other states define "household belongings."

MR. HICKEY pointed out that in his judgment, the previous example given on a married couple's safe deposit box is that the act is not a crime in the purposes of criminal law and he would not charge. He pointed out that all safe deposit boxes are joint.

CHAIR GARDINER announced that the committee will review burglary, [Article 2, Burglary and Criminal Trespass].

MR. STERN revealed that the Commission has combined the burglary statutes in existing law from 11 provisions into 6. He explained that there are two crimes in burglary with each having two degrees: burglary and criminal trespass.

MR. STERN said "Burglary in the Second Degree," [AS 11.46.310], is defined as follows:

A person commits the crime of burglary in the second degree if he enters or remains unlawfully in a building with intent to commit a crime in the building.

He explained that second degree burglary is aggravated to first degree under a number of situations. He said the first situation is if the building is a "dwelling." He said "dwelling" is defined as follows:

A building occupied by people, regardless of whether people are there.

He specified that anytime a burglary occurs in a dwelling the act is going to be a first degree offense. He added that burglary with a deadly weapon will always be first degree regardless of whether the building is a dwelling. He specified that burglary in the first degree, [AS 11.46.300], occurs as follows:

A person is armed with a deadly weapon; causes or attempts to cause physical injury to any person; or uses or threatens to use a dangerous instrument.

He pointed out that burglary will usually always be first degree unless there is a situation where a person enters a building such as a warehouse without being armed with a deadly weapon or a dangerous instrument and he doesn't cause or attempt to cause physical injury. He summarized that most burglaries will be first degree offenses.

1:05:45

He said [AS 11.46.320 Criminal Trespass in the First Degree] and [AS 11.46.330 Criminal Trespass in the Second Degree] are also broken into two degrees. He specified that first degree criminal trespass involves trespass into a dwelling and second degree involves criminal trespass into premises. He detailed that "premises" includes real property as well as a building. He pointed out that a more serious offense occurs when a dwelling is involved.

He said section 340, [AS 11.46.340 Defense: Emergency Use of Premises], is a defense to the trespass statutes and noted that under existing law there is a separate provision that was recently amended called "Unauthorized Use and Entry." He explained that the reason for a separate provision covering unauthorized use of premises is because under the current

trespass statute, trespass does not occur unless the person that is trespassing has given notification that he is trespassing. He explained that under existing law, a person does not commit a crime if they enter a building or dwelling without specific intent to commit a crime. He said what the Commission has done in the Code is not to require notice of criminal trespass. He explained that criminal trespass occurs in the Code when a person enters or remains unlawfully upon premises. He pointed out that the term, "enter or remain unlawfully" is crucial to determining the crime.

REPRESENTATIVE SPECKING commented that Alaska has a unique situation where individuals occupy remote cabins and claim to be occupying the cabin due to an emergency if caught. He noted that he has had experience with individuals who have claimed to be inhabiting his remote cabin due to emergency.

1:08:24

MR. STERN replied that the scenario Representative Specking described is covered in the Code.

REPRESENTATIVE SPECKING asked for Mr. Stern to explain.

MR. STERN explained that, [AS 11.46.340 Defense: Emergency Use of Premises], is a defense statute that is defined as follows:

It is a defense to a prosecution that the entry, use or occupancy of premises or use of personal property on the premises is for an emergency in the case of immediate and dire need; and as soon as reasonably practical after the entry, use, or occupancy, the person contacts the owner of the premises or the police agency, unless you give notice.

REPRESENTATIVE SPECKING commented that the statute is impossible to enforce in rural situations.

MR. STERN explained that the person has to give notice as soon reasonably practical.

REPRESENTATIVE SPECKING countered that "reasonably practical" may be next spring.

CHAIR GARDINER asked if the person who used his cabin gave notice.

REPRESENTATIVE SPECKING replied no.

CHAIR GARDINER stated that people are going to have to provide notice for staying in a cabin. He said the Commission talked a lot about emergency use of premise and noted that there have been amendments over the past ten years for "trapper's cabins." He conceded that individuals have been illegitimately using somebody's cabin knowing that they have a defense. He said in the Code, individuals will have to report the use of somebody's cabin.

REPRESENTATIVE SPECKING remarked that when a person is caught at somebody's cabin, the individual will report at that time and claim the event is an emergency.

CHAIR GARDINER stated that the scenario Representative Specking explained would not be considered adequate.

REPRESENTATIVE SPECKING reiterated that the illegitimate use of a "trapper's cabin" is unique to Alaska and hard to address.

CHAIR GARDINER stated that the Commission will figure out a fool proof way to address trespassing in a "trapper's cabin."

REPRESENTATIVE SPECKING asserted that the penalties are not adequate.

1:10:15

MR. STERN asked if Representative Specking believed that the penalties for trespassing should be higher. He pointed out that under existing law there is no criminal penalty for trespass, strictly a fine. He said there is a penalty for unauthorized entry, but strictly a fine for actual trespass on land. He revealed that the Code provides penalties for trespass. He noted that the trespass penalty in the Code as a Class A misdemeanor.

REPRESENTATIVE SPECKING said his issue is when people enter his cabin, use up his supplies, and leave the cabin's door open.

MR. STERN noted that the Commission made changes to existing law regarding the differentiation between daytime and nighttime burglaries.

REPRESENTATIVE SPECKING remarked that differentiating between daytime and nighttime burglaries is meaningless during the summertime.

MR. STERN replied that the existing law actually distinguishes between wintertime and summertime robberies. He explained that existing law aggravates burglaries that occur in the wintertime. He stated that the Code does not distinguish between daytime and nighttime burglaries.

REPRESENTATIVE BROWN noted that Alaska's differentiation between daylight and nighttime larceny was based on common law definitions that dated back to 1899.

1:13:51

MR. STERN said there is another requirement in existing law that a burglar must have an intent to commit a crime at the time he enters the building. He explained that the Code recognizes that a person may commit burglary after entering the building.

He revealed that the Code eliminates another limitation in existing law that says burglary in a building other than a dwelling does not occur unless property is in the dwelling; in other words, a person cannot burglarize an empty warehouse under existing law. He added that there are additional inconsistent penalties in existing law.

UNIDENTIFIED PERSON asked Mr. Stern to address the additional inconsistent penalties in existing law.

MR. STERN replied that the Commission eliminated the inconsistency in existing law where the minimum penalty for burglary not in a dwelling is greater than the minimum penalty for burglary in a dwelling. He added that there were some overly specific statutes, one covers entering an orchard with intent to destroy grass in the orchard and another statute that covers trespass on mining claims.

CHAIR GARDINER asked the committee members for their final comments.

REPRESENTATIVE SPECKING stated that he still is not satisfied with the statute regarding people who break into remote cabins, [AS 11.46.340 Defense: Emergency Use of Premises].

CHAIR GARDINER asked Representative Specking what else could be done to the statute.

REPRESENTATIVE SPECKING replied that he did not know.

REPRESENTATIVE BROWN asked if the Commission de-criminalized or criminalized anything that was not in the burglary section.

1:18:12

MR. STERN answered yes, breaking into an empty warehouse is going to be burglary.

REPRESENTATIVE BROWN asked why a person would want to steal anything from an empty warehouse. He said if a warehouse is truly empty there is nothing to steal.

MR. STERN stated that person may not have known that the warehouse was empty prior to entering.

CHAIR GARDINER pointed out that the person had intent.

*[Audio ends at 1:19:26]*