

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

APRIL 5, 1977

JOINT PUBLIC HEARING

From tape b32r15-10-JJUD-770405

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 Subcommittee
Alaska State Legislature
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 subcommittee 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 5, 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

0:01:38

CHAIR GARDINER announced that the committee will review the Alaska Criminal Code Revision, Tentative Draft, Part 3, "Offenses against Property," [Article 3. Arson, Criminal Mischief and Related Offenses].

0:02:06

BARRY J. STERN, Staff Counsel, Alaska Criminal Law Revision Subcommittee (Commission), revealed that four degrees of arson are recognized in existing law and only two degrees in the Revised Criminal Code (Code). He said existing law primarily distinguishes between whether the burning structure is a dwelling as opposed to a building. He noted that odd results occur under the existing law where outhouses burning near a dwelling is considered a burning dwelling and burning a crowded restaurant, which is not a dwelling, is treated less severely than burning an outhouse. He said the Commission decided that the most serious form of arson involves protected property and the Code defines "Arson in the First Degree" as follows:

A person commits the crime of arson in the first degree by starting a fire or causing an explosion, he intentionally damages protected property of another.

MR. STERN stated that "protected property" is defined as follows:

A structure, place or thing customarily occupied by people, including but not limited to buildings in which persons congregate for civic, political, educational, religious, social or recreational purposes, and all land on which grass, brush, timber, and other natural vegetative material grows.

He specified that what the Commission attempted was to, with "protected property," protect forestland in Alaska and say that the burning of forestland is protected property and that is first degree arson.

0:03:59

He said under existing law a person can commit arson even though they are burning their own property. He pointed out that in the Code, a person cannot commit arson when burning their own land with one very important exception. He said the arson article's focus is to prevent damage to protected property and also to prevent endangering a person as a result of the arsonist act. He specified that first degree arson occurs when a person intentionally damages the following:

Any property regardless of whether it's yours or another person's and the act of damaging the property recklessly places in danger of physical injury or protected property of another in danger of damage.

He explained that if a person in some remote area decides to burn down his house, the act is not going to be arson unless it damages protected property of someone else or it damages a person. He opined that a person who burns down their own house in Anchorage may have committed first degree arson because the person has recklessly placed a person in danger of physical injury in putting out the fire when police and fireman arrive on scene.

0:05:29

He said existing law also has a separate offense called "Burning to Defraud an Insurer;" it's to cover the person that takes out insurance and burns his own house down to collect the money. He

said the Commission did not feel it was necessary to have a separate statute when the act would probably be covered under the same section for burning your own property and placing a person in danger of physical injury or protected property of another in danger of damage. He pointed out that in the event that a person burns his own cabin in a remote area that is not damaging anyone or any protected property, the act would amount to theft by deception under the Code and having a separate offense for burning your own property is not necessary.

0:06:21

REPRESENTATIVE DANKWORTH asked what would happen if he were mad at his wife and burned down their co-owned house in the woods.

MR. STERN replied that Representative Dankworth would have committed a crime. He specified that the Code recognizes that property of another includes property belonging wholly in part to a person's spouse. He said if a person spouse has an interest in a property, the act of burning down the co-owned house would be considered arson. He noted that the same act is covered in existing law as well.

REPRESENTATIVE DANKWORTH asked if he would be charged with arson or would his wife have to file a complaint in the case.

MR. STERN replied that he is not sure about the mechanics of how the charges would be applied.

REPRESENTATIVE DANKWORTH speculated that prosecution would not occur without his wife filing a complaint.

MR. STERN replied that he assumed Representative Dankworth's comment was correct. He said he was not certain how the noted arson scenario works in terms of the necessity to have a complaint. He added that the Code recognizes that it is not a defense that the property belong to Representative Dankworth's spouse.

REPRESENTATIVE DUNN asked to address the use of "recklessly" when referring to "recklessly placing another person in danger of physical injury" and inquired if the act included accidentally placing another person in danger.

MR. STERN replied that a person would have to be aware of the risk that the act was placing someone in danger and the act could not be just a result of a negligent act.

REPRESENTATIVE BROWN noted that the Legislature passed a bill in 1975 that created the "Negligent Use of Combustible Materials" statutes.

MR. STERN replied that the statute, [AS 11.15.340 Negligent Use of Combustible Materials], is defined as follows:

A person who negligently or recklessly causes a fire which results in physical harm to another person or damage to the property of another is guilty of a misdemeanor.

He said the term "negligently" used in the statute means "criminal negligence" and probably could not be a result of ordinary negligence; the Supreme Court would interpret it that way. He stated that the Commission recognizes that with "criminal negligence," a person has committed assault by means of a fire because fire would be considered a dangerous instrument under the assault article. He specified that if a person acts with "criminal negligence," assault has been committed and not arson. He stated that the term "arson" should be used in a limited sense. He noted that ordinary negligence where the person is just negligent is going to give rise to a civil action.

0:09:37

REPRESENTATIVE BROWN pointed out that the bill for the combustible materials statute was introduced to address a situation where a person had fallen asleep while smoking a cigar and set fire to a building where five people died. He asserted that even the term "simple negligence" would be covered as a misdemeanor and a more serious event would be a felony.

MR. STERN explained that the Commission addressed the "Negligent Use of Combustible Materials" statute as follows:

What we did was take that combustible use of materials statute and it said 'reckless and negligence' in terms of the culpable mental state; we split that up into two crimes: one was called 'reckless burning' and one was called 'criminally negligent burning.' If you acted recklessly it would be a Class A misdemeanor and if you were just criminal negligence it would be a Class B misdemeanor. Now you also had the element of causing injury to a person, the actual causing of injury to a person; I don't see any need to continue that in the 'Reckless Burning' statute or the

'Criminally Negligent Burning' statute if you covered it adequately under the assault statute and it is covered under the assault statute. With 'criminal negligence' you cause physical injury with criminal negligence by means of a dangerous instrument and that is covered under the 'Assault' section.

REPRESENTATIVE BROWN commented that the statute seems awfully contrived. He asserted that an uproar will ensue when somebody is charged with assault due to negligently or recklessly setting a fire.

0:12:28

MR. STERN replied that the Commission will consider the "causing of physical injury" and noted that he was aware of the statute's history. He asked Representative Brown if he would like a specific provision in the reckless burning statute to cover the causing of physical injury.

REPRESENTATIVE BROWN replied as follows:

The most important part of that I think is that we should consider having new and simple negligence that results in actual injury to other people because of 'negligent use of combustible materials;' have that as a misdemeanor, even if it's simple negligence and not the so called 'gross negligence' that is normally considered to be the level of culpability required for crime.

MR. STERN asserted that there are real constitutional problems with Representative Brown's recommendations.

REPRESENTATIVE BROWN responded that there is a concern and noted the overwhelming concern in 1975 that led to the bill that was introduced by Representative Wallis. He noted that the individual in question for the fire that burned down the Nordale Hotel had also started a fire four days later in the Steel Hotel.

REPRESENTATIVE DUNN added that the people who start the fires addressed in the statute are often drunk and are just too insensible to know what they are doing.

MR. STERN replied that he understands Representative Brown's point about including physical injury and noted the difficulty in using the term "negligence."

MR. STERN said there are two degrees of arson as follows:

Arson in the first degree is protected property or endangering someone or endangering a protected property. Arson in the second degree is damaging any building other than protected property.

He noted that there are two other crimes: "Reckless Burning" [AS 11.46.420] and "Criminally Negligent Burning" [AS 11.46.430]. He explained that the "Reckless Burning" statute covers a reckless act and the "Criminally Negligent Burning" statute covers a criminally negligent act.

0:15:25

REPRESENTATIVE DUNN asked for an example of a building that is not-protected property.

MR. STERN replied that a storage shed some distance away from a dwelling would be considered not-protected property. He noted that protected property in the Code is broad enough to cover the restaurant situation.

REPRESENTATIVE DUNN asked if a warehouse is "protected property" when the building is customarily occupied by people who work in the building. He inquired if "protected property" means where people live or work.

MR. STERN replied that the Commission copied the Oregon Code's standard in determining when something is "customarily occupied" as follows:

Basically it is a two-prong standard and either one fits in terms of determining whether it is 'customarily occupied.' The first one is 'by reason or circumstances of time and place when the fire or explosion occurs, people are normally in the building, structure or thing; or circumstances are such as to make the fact of occupancy by persons a reasonable possibility.' So I think we've got a warehouse in the evening and it's a reasonable possibility that there's going to be a guard there, so I think it would be covered.

0:17:07

MR. STERN explained that arson has always been associated with burning a structure or building. He specified that setting fire

to a bicycle would be covered as criminal mischief and not as arson.

REPRESENTATIVE DANKWORTH asked if a vehicle could be covered under the arson statute.

MR. STERN answered that a vehicle would not be covered unless the situation occurs where a burning vehicle sitting in front of someone's house endangers the house. He summarized that just burning a vehicle is still a crime, but not arson.

REPRESENTATIVE DANKWORTH asked to verify that burning a car's interior would not be considered arson.

MR. STERN replied that burning a car's interior would be considered "Theft by Deception" or "Criminal Mischief."

REPRESENTATIVE BROWN declared that one is a felony and one is a misdemeanor.

MR. STERN replied that "Theft by Deception" will be a felony and he was not sure about "Criminal Mischief." He explained that the approach to arson is as follows:

It's been the approach to look just at property in terms of buildings and dwellings within the concept of arson and to treat personal property within the criminal mischief statute. Again, it's emphasizing the danger to people as opposed to the danger to property. I think we are concerned about the danger to property if it endangers people. The person is going to be in the car at the time it is being burned it's going to be arson because you are endangering the person and that would be arson in the first degree.

REPRESENTATIVE BROWN asked what occurs when a person lives in a "Winnebago" and somebody burns the vehicle when the owner is not in the vehicle.

0:19:35

MR. STERN answered that the act would be considered arson because the "Winnebago" would be considered a building. He noted that the "Winnebago" would be considered protected property if the vehicle was set fire to in a campground.

He said "Failure to Control or Report a Dangerous Fire," [AS 11.46.450], was a statute based substantially on a provision

appearing in Title 41 on "Public Resources." He explained that the statute covers a person who is under a duty to give notice of alarm to putting out fires or the person that starts a fire on his land and fails to put out the fire or give fire alarm when the fire endangers a life or a substantial amount of property. He revealed that not giving notice of alarm to putting out a fire on one's land was a misdemeanor offense. He divulged that the statute under existing law only covers a forestland situation whereas the statute in the Code covers all land. He added that existing law only covers the situation where actual property is damaged and the statute in the Code covers the following:

When you are endangering life or a substantial amount of property, that it is an offense just for the sake of failing to try to put it out or to give fire alarm, regardless of whether there is actual damage; this statute is now in Title 41.

REPRESENTATIVE BROWN asked what Title 41 covers.

MR. STERN answered that Title 41 covers Public Resources. He asserted that arson manifests the difficulty in using the existing criminal code. He explained that arson is currently covered in four degrees under "Arson and Related Offenses." In addition, the statute on "Negligent Use of Combustible Materials" is contained in the "Offenses against the Person" chapter; that is a totally different section than the arson article. He added that a number of statutes covering arson-type offenses are in Title 41.

REPRESENTATIVE BROWN stated that he is interested in addressing the "Catastrophe Statute."

0:23:48

MR. STERN explained that the Commission created two Class A felony crimes for the "Catastrophe Statute" that recognizes certain situations where the causing of damage to property or the causing of serious physical injury to people is particularly bad. He explained that statute as follows:

Under the arson statute, if you burn a warehouse that's not protected property and it's not arson in the first degree, regardless of how much damage you cause it's only going to be a Class B felony. What this statute does is say that when you cause damage, property loss in excess of \$500,000, it's going to be

a Class A felony. In addition, if you cause serious physical injury to ten or more people, it's going to be a Class A felony or you cause substantial damage to 10 or more separate dwellings or structures. Now, this doesn't cover causing that type of injury by any means, what it's aimed at is dangerous and difficult combined forces or substances and we gave examples of that: explosion, fire, flood, avalanche, collapse of a building, release of poison, radioactive material, or bacteria.

MR. STERN specified that causing a catastrophe is a Class A felony and risking a catastrophe is a Class B felony. He explained that risking a catastrophe is as follows:

You are handling radioactive material or something in a particularly reckless way and nothing happens, thank goodness, but there was a damn good chance of someone being injured, not only someone, but 10 people, it's going to be a Class B felony.

0:26:00

REPRESENTATIVE DANKWORTH asked if blowing up a warehouse with nine people inside would only be a Class B felony.

MR. STERN replied that the offense would be considered felony murder.

CHAIR GARDINER explained that the statute is directed at unleashing large forces like dropping a boulder into a crowd of people, blowing up dams, causing jets to crash, or blowing up pipelines where the act is not directed at a specific person.

REPRESENTATIVE SPECKING remarked that derailing a train should be covered under the statute.

MR. STERN replied that derailing a train would be covered under the Code's assault statute because the person would be acting recklessly under circumstances manifesting extreme indifference to value of human life.

REPRESENTATIVE SPECKING remarked that there is no difference between causing a train derailment and causing the collapse of a building.

MR. STERN replied that he agrees and noted that in some respects the statute is both unnecessary and necessary. He specified that

the statute gets at a situation that causes property loss in excess of \$500,000, an act that aggravates the offense to a Class A felony. He stated that he is not sure that the statute is necessary for acts that pertain to the Code's assault sections.

REPRESENTATIVE DUNN asked if the "Catastrophe Statute" would cover an act where somebody shot a hole in the pipeline and let \$500,000 worth of oil out of the pipeline.

0:29:33

MR. STERN replied that setting off a bomb and causing an explosion would be covered, but shooting a bullet through the pipeline may not be covered. He said the statute is pretty specific and is based on New Jersey's and Missouri's proposed Penal Code Provisions. He noted that European countries have adopted "Common Dangers" provisions, a separate crime that addresses the concept of endangering a good number of people. He explained that American jurisdictions have never had statutes for "Common Dangers" and the "catastrophe statute" attempts to address explosion, fire, flood, avalanche, collapse of a building, release of poison, and radioactive material.

REPRESENTATIVE SPECKING offered that moving into the "gas and oil pipeline era" may require the examination for potential felony acts against the pipeline.

CHAIRMAN GARDINER noted that there is a bill addressing damage to the oil pipeline.

REPRESENTATIVE DUNN stated that she was not sure whether listing specific acts possibly limits the "Catastrophe Statute."

CHAIR GARDINER noted that that the phrase, "Dangerous and difficult combined forces or substances" is used in the statute.

REPRESENTATIVE DUNN replied that the statute limits the section to explosion, fire, flood, and avalanche. She said limiting the section to specific acts may not be wise because there is always a new way to cause a catastrophe which has not been thought of.

REPRESENTATIVE BROWN agreed with Representative Dunn and noted the statute's agglutinative drafting style.

0:33:18

MR. STERN remarked that he did not like the statute and added that he did not participate in the statute's drafting. He noted

that he would have drafted the statute differently if he had been involved. He said he will bring the statute to the Commission's attention at the next meeting.

CHAIRMAN GARDINER agreed that the statute required redrafting.

MR. STERN specified that the intent is for the statute to cover conduct that would ordinarily not be a serious offense by distinguishing between how much damage or injury a person causes. He restated that he has problems with the statute because damage to the pipeline may not be covered.

REPRESENTATIVE BROWN agreed that one of the statutes should address shooting the pipeline.

REPRESENTATIVE DUNN stated that somebody might sabotage an airplane, not by an explosion, but by tampering with something so that its instruments are misread.

CHAIR GARDINER stated that the Code has a pretty serious offense on tampering.

MR. STERN pointed out that killing or injuring a person is covered by the homicide and assault provisions.

CHAIR GARDINER asked to verify that the existing statute on tampering with an aircraft was covered in the Code.

0:35:13

MR. STERN said tampering with an aircraft might be covered in the "Criminal Mischief" statutes.

He announced that the committee will review forgery, [Article 4. Forgery and Related Offenses]. He commented that coverage for forgery in existing law was spotty with loopholes. He noted that a forgery case came up in Fairbanks where a man sold a false residence card where the buyer was told upfront that the residence card was false. He revealed that the seller could not be prosecuted because the buyer had to be fooled in making his purchase.

He explained that existing law has three main distinctions in forgery as to: what can be forged, by what means forgery can be accomplished, and what culpable mental state the person might act. He pointed out that there are approximately 16 statutes in existing law and the Code covers forgery with 1 statute. He revealed that existing law covers forgery for animal branding as

well as forging receipts for pork, beef, or wool delivered to a warehouse.

REPRESENTATIVE DUNN said the existing forgery statutes was a good demonstration for why the Code was needed.

REPRESENTATIVE BROWN opined that he hopes that all of the outrageous statutes get thrown out.

MR. STERN pointed out that the forgery statutes in existing law specifies ways forgery can be accomplished by using the terms: making, altering, forging, counterfeiting, printing, photographing, and passing. He noted that the forgery terms are not consistently used throughout the 16 forgery statutes and there is the potential for loopholes.

0:38:41

He said the final way existing law distinguishes forgery is between what culpable mental state the person must act with in committing the forgery. He revealed that some statutes require that a person act "willfully or knowingly," another statute requires that a person act "willfully and knowingly," some statutes require that a person act "with intent to deceive," and others require that the person act "with intent to defraud or deceive" with no explanation for the differences.

He said the solution for forgery in the Code is to have one statute, [AS 11.46.500], that covers a person committing the crime as follows:

Falsely makes, completes or alters a written instrument with the intent to defraud.

He specified that in order to commit forgery a person must act with an intent to defraud. He noted that the key term, "intent to defraud," is defined as follows:

An intent to use deception or to injure someone's interest which has value.

He noted that the definition for "deception" is derived from the theft section.

0:40:04

He said the second way "intent to defraud" works is as follows:

Knowledge that the defendant is facilitating a fraud for injury to be perpetrated or inflicted by someone else.

MR. STERN remarked that a bill in the Legislature will specifically cover the situation where a false residency card is sold to someone where the buyer is told that the residency card is false, but the bill does not make it against the law to sell other means like a false driver's license. He pointed out that the forgery statute in the Code does not look at specific problems and just covers all written instruments.

He specified that in the Code, forgery is committed in two ways. He reiterated that forgery is committed when a person acts with intent to defraud. He said the second way is when a person "falsely makes, completes, or alters a written instrument;" those terms are defined as follows:

'Falsely making' covers a situation where you drop a [inaudible] check and you completed every element. 'Falsely completing' a written instrument covers a situation where the maker may have filled in everything except his name and you sign it. 'Falsely altering' covers a situation where he gave you a check, he put \$100 and you added a zero to it.

He revealed that "falsely making" and "falsely completing" appear in every revised code; it is inclusive and covers every way that forgery can be committed.

REPRESENTATIVE BROWN asked for an explanation for "uttering."

0:42:09

MR. STERN explained that "uttering" is the next way that forgery can be committed and specified as follows:

Uttering a written instrument which he knows to be forged.

REPRESENTATIVE DANKWORTH asked for an explanation on, [AS 11.46.520], "Criminal Possession of a Forgery Device" and specifically inquired what devices were covered in the statute.

MR. STERN replied that the statute has two sections and the first one would cover a plate used for counterfeiting false residency cards where there is no other purpose but for counterfeiting false residency cards.

REPRESENTATIVE DANKWORTH stated that Mr. Stern said, "Equipment and the equipment used for the plate, but not the plate." He specified that equipment included the printing press, check-protector, and other things used for forging.

MR. STERN asked if the printing press is specifically designed for forgery.

REPRESENTATIVE DANKWORTH replied no.

REPRESENTATIVE SPECKING remarked that any device that could be used for forgery would be criminal possession.

CHAIR GARDINER specified that the equipment had to be "designed for use."

REPRESENTATIVE DANKWORTH asked what instrument is specifically designed for counterfeiting.

0:44:15

MR. STERN answered that a plate for counterfeiting would be covered.

UNIDENTIFIED PERSON stated that Mr. Stern said a printing press is not covered.

MR. STERN replied that a printing press was covered by subsection (2) as follows:

With intent to use or aid or permit another to use, the device for purposes of forgery, he makes or possesses any device, apparatus, equipment or article capable of or adaptable to such use.

REPRESENTATIVE BROWN stated that a check-protector was covered by subsection (2).

MR. STERN asked for an explanation of a check-protector.

REPRESENTATIVE BROWN explained that a check-protector is a device that a business uses that perforates a check in a unique pattern for validation.

MR. STERN explained that the problem is possessing a printing press is not illegal and an additional element is required. He

specified that a device with a specific forging purpose is covered regardless of the intent.

0:46:14

MR. STERN summarized that the Code's forgery statute covers the person who makes, completes, or alters the instrument as well as the person that passes or utters the instrument.

He said the next statute is "Criminal Possession of a Forged Instrument," [AS 11.46.510]. He noted that "Possession of Forged Instruments" has spotty coverage in existing law under the "Possession of Counterfeit Coins" and "Possession of Evidences of Debt" provisions. He explained that the Commission decided a person possessing a forged instrument, knowing an instrument to be forged, and has intent to either utter or pass an instrument should be considered an offense that is covered under a broad statute that is not limited to specific acts that are covered under existing law.

He said there is one statute in the Code covering "Criminal Possession of Forgery Device," [AS 11.46.520]. He noted that existing law only covers the possession of a forgery device that is either capable of forging coins or evidences of debt. He revealed that existing law allows a person to have a forgery device that is capable of forging counterfeit residence cards. He summarized that the Commission's statute consolidation brings notice to existing law's loopholes.

He explained that Oregon has two degrees of forgery for misdemeanor and felony offenses, whereas the Commission decided on one degree that is a felony offense. He noted that existing law treats forgery very severely with penalties in the 20 year range for most offenses.

He remarked that comments have been made that the Commission has created additional degrees for offenses, but noted that many statutes have been consolidated and pointed out an example where arson has four degrees in existing law and the Code has two.

0:48:51

He said the next offense is "Criminal Simulation," [AS 11.46.530], another area where there is only spotty coverage in existing law. He explained that the Commission's intent is to prevent the fraudulent misrepresentation of: objects, antique objects, archeological artifacts, paintings, and manuscripts under a single statute. He revealed that existing law has specific statutes that cover the simulation of gold dust,

adulterating gold dust, possession of adulterated gold dust, and the selling of imitation gold nuggets, jade or ivory. He said the Code's "Criminal Simulation" statute is broad and covers such acts as misrepresenting Alaskan native crafts that is currently not covered under existing law. He noted that New York passed the "Criminal Simulation" statute to get at falsified manuscripts or paintings whereas Alaska's applicability centers on conduct pertaining to gold nuggets.

REPRESENTATIVE SPECKING commented that Alaska is losing a lot of history by removing statutes that specifically relate to gold.

REPRESENTATIVE DANKWORTH noted that the specific statute for forging of animal brands was removed in the Code.

REPRESENTATIVE SPECKING pointed out that Alaska allows animal brands to be registered.

REPRESENTATIVE DANKWORTH remarked that Texas continues to have a statute that makes stealing chickens a hanging-offense.

0:52:26

MR. STERN said imitating brands under the Code would be considered forgery because a brand would be a written instrument.

REPRESENTATIVE DUNN asked if removing a "made in Japan" label from the bottom of a totem pole would be considered criminal simulation.

MR. STERN asked if the totem pole in the example is represented in any way to be a native totem pole.

REPRESENTATIVE DUNN answered no.

MR. STERN replied that there would be difficulty for the statute to cover the act described in the example.

REPRESENTATIVE DUNN specified that the statute states, "If he alters in such a manner that it appears to have authorship that it does not in fact possess."

UNIDENTIFIED PERSON pointed out that he was born in Alaska and noted the statute's ambiguity if he were to claim "made by native Alaskan" for something that he made.

REPRESENTATIVE SPECKING remarked that there probably is no definition for "native Alaskan."

0:54:15

MR. STERN said he could not see the statute covering a situation where a label is on the bottom of a totem pole and the seller is not holding out to be a native, the situation would be buyer-beware.

REPRESENTATIVE DUNN asked what would happen if the "made in Japan" totem pole did not have a "made in Japan" label on the bottom.

REPRESENTATIVE SPECKING noted that there is a statute requiring a label to be on it.

REPRESENTATIVE BROWN remarked that nobody states that the totem pole was made by natives and a tourist just assumes that in the context of the store the totem pole looks like it must be an Alaskan native craft.

MR. STERN replied that the scenario Representative Brown described would not be covered. He specified that the act would have to have some type of misrepresentation.

REPRESENTATIVE DUNN replied that the statute says "It 'appears' to have an authorship that it does not in fact possess."

MR. STERN responded that he does not see how a totem pole just standing in a store appears to be authorship.

0:58:01

He said the next statute for review is "Obtaining a Signature by Deception," [AS 11.46.540]. He explained that the statute gets at obtaining someone's signature on a written instrument with the intention to defraud that person or acquire a benefit for yourself. He said an example is as follows:

The best thing that comes to my mind is writing a Letter of Recommendation that you write yourself and you give it to your employer and you say, 'Here, sign this, it's another one of these letters that you have to sign' and he signs it. Well, it's not a forgery because the document is signed by him and it purports to be exactly what it is, he signed it. So we need a separate statute to cover that kind of conduct, it's covered under 'Obtaining a Signature by Deception.'

REPRESENTATIVE BROWN claimed that the statute was badly drafted, "He causes by deception another to sign." He asked that the statute be rewritten.

REPRESENTATIVE SPECKING said he would be guilty of the offense when he asks his wife to sign his name on a check that is deposited into his bank.

MR. STERN explained that he would not be guilty because he has not acted with one of the "intents" in the statute.

He said "Offering a False Instrument for Recording," [AS 11.46.550], will typically be covered by the perjury statutes if the statement is notarized. He specified that a false notarized instrument is going to be perjury and a false application for a benefit is going to be unsworn-falsification. He explained that [AS 11.46.550] covers a situation where a person files a false statement as to property or a statement reflecting a contractual relationship at a recording office.

REPRESENTATIVE BROWN asked for an explanation of the unlawful use of "slugs."

1:01:05

REPRESENTATIVE SPECKING asked if cards used to open doors or withdraw cash from a cash-machine would be considered a "slug."

REPRESENTATIVE DUNN commented that using a card to gain entrance would be considered "unlawfully gaining entrance."

MR. STERN explained that the idea of putting a card in the cash-machine to get the money out is going to be theft. If the card is a false identification card, the act is considered forgery because the card would be considered a written instrument. The "Slug Statute," [AS 11.46.560 Defrauding a Coin Machine], is aimed at putting a "slug" into a vending machine or making a "slug."

REPRESENTATIVE BROWN pointed out that Mr. Stern has been carefully general with the Code's statutes. He noted that the "slug statute" was particularized and should be covered in a general provision.

1:03:00

MR. STERN replied that "slugs" are not covered in the sense that a "slug" is not a written instrument and cannot be forged. He explained that the "slug statute" punishes "slug" possession.

REPRESENTATIVE BROWN remarked that the statute was coin-machine specific.

MR. STERN specified that the statute was mechanical-specific.

REPRESENTATIVE DUNN detailed that the statute read as follows:

Coin box, turnstile, vending machine or other
mechanical or electronic device.

REPRESENTATIVE BROWN asserted that he has a problem with the statute's drafting where the statute is particularized to one situation that has been modified by contrived definitions and the end result is not good legislation. He said the statute should be more generalized.

CHAIR GARDINER pointed out that a telephone is a "coin machine."

REPRESENTATIVE DUNN asked if Representative Brown wanted the statute to be written as a crime of defrauding a machine.

REPRESENTATIVE BROWN explained that the statute should state, "Defraud through the use of a device" or some kind of generalized language. He said drafting the statute in a particular and only generalizing in the definition section is backwards.

REPRESENTATIVE DANKWORTH asked if Oregon had the same statute.

MR. STERN answered yes.

1:06:32

CHAIR GARDINER said Michigan, New York, and Oregon used the same code. He remarked that a broader statute would have to be contrived by the committee.

REPRESENTATIVE BROWN suggested that the statute say, "Defraud with the use of a device" and then get into talking about what kind of a device.

MR. STERN stated that the statute's title should be changed.

REPRESENTATIVE SPECKING asked that the definition for coin-machine be reviewed.

REPRESENTATIVE BROWN reiterated that the definition for coin-machine is generalized.

REPRESENTATIVE SPECKING remarked that "plastic card" should be covered as something that takes the place of a "slug."

MR. STERN pointed out that the statute was originally drafted in New York to address false subway tokens. He stated that the statute can be read to cover the credit-card-type situation, but it is a strained reading.

REPRESENTATIVE SPECKING remarked that the "plastic card" Mr. Stern is referring to is a key and not a credit card.

REPRESENTATIVE BROWN asked if the act could be considered a "theft of services." He added that he agreed with Representative Specking that the noted "plastic card" is a kind of key.

MR. STERN replied that he agreed that the act is "theft of services." He stated that theft is committed when a person puts a card in and receives money. He said the problem is punishing the act regardless of whether the person received money or not.

REPRESENTATIVE SPECKING said a person can take his credit card and receive cash at 20 different locations.

MR. STERN replied that would be theft.

CHAIR GARDINGER explained that theft is only committed if you are successful.

MR. STERN answer yes, or the attempted theft.

CHAIR GARDINER added that he agreed that even if the card is used, like with a machine that is empty.

1:09:23

MR. STERN explained that using the card and not receiving money would be "attempt." He suggested that the statute is not necessary because the act is covered through either intent for using the "slug" if there is nothing there or "theft" if something is there. He stated that the only problem lies with the situation where a person makes or possesses the "slugs" and

noted that section (2) in the statute addresses the situation as follows:

Making, possessing, or offering for sale or disposes of a slug with intent to enable a person to use it fraudulently in a coin machine.

MR. STERN summarized that the statute [AS 11.46.560] is unnecessary because the act is covered as theft or attempted theft.

REPRESENTATIVE SPECKING suggested that the statute be wiped out.

REPRESENTATIVE BROWN said wipe out the statute if it is covered elsewhere or make it general if the statute is not covered elsewhere.

CHAIR GARDINER noted that section (2) in the statute is not covered someplace else in the Code.

1:11:29

MR. STERN said the final statute is "Criminal Impersonation," [AS 11.46.570]. He explained that the statute covers two situations as follows:

A person assumes a false identity and does an act in his assumed character with intent to defraud; or pretends to be a representative of some person or organization and doing an act in his pretended capacity with intent to gain benefit or defraud.

REPRESENTATIVE BROWN asked what would occur to an entertainer who does an impersonation during a performance concert in Fairbanks or Anchorage. He pointed out that according to the statute's literal language, the impersonator is "doing an act of assumed character with intent to gain benefit."

MR. STERN noted that the statute needs to say "intends to defraud." He explained that existing law is very specific and only covers acts like false badges or a person representing himself as a knight of the Knights of Columbus.

[Audio ends at 1:16:00].