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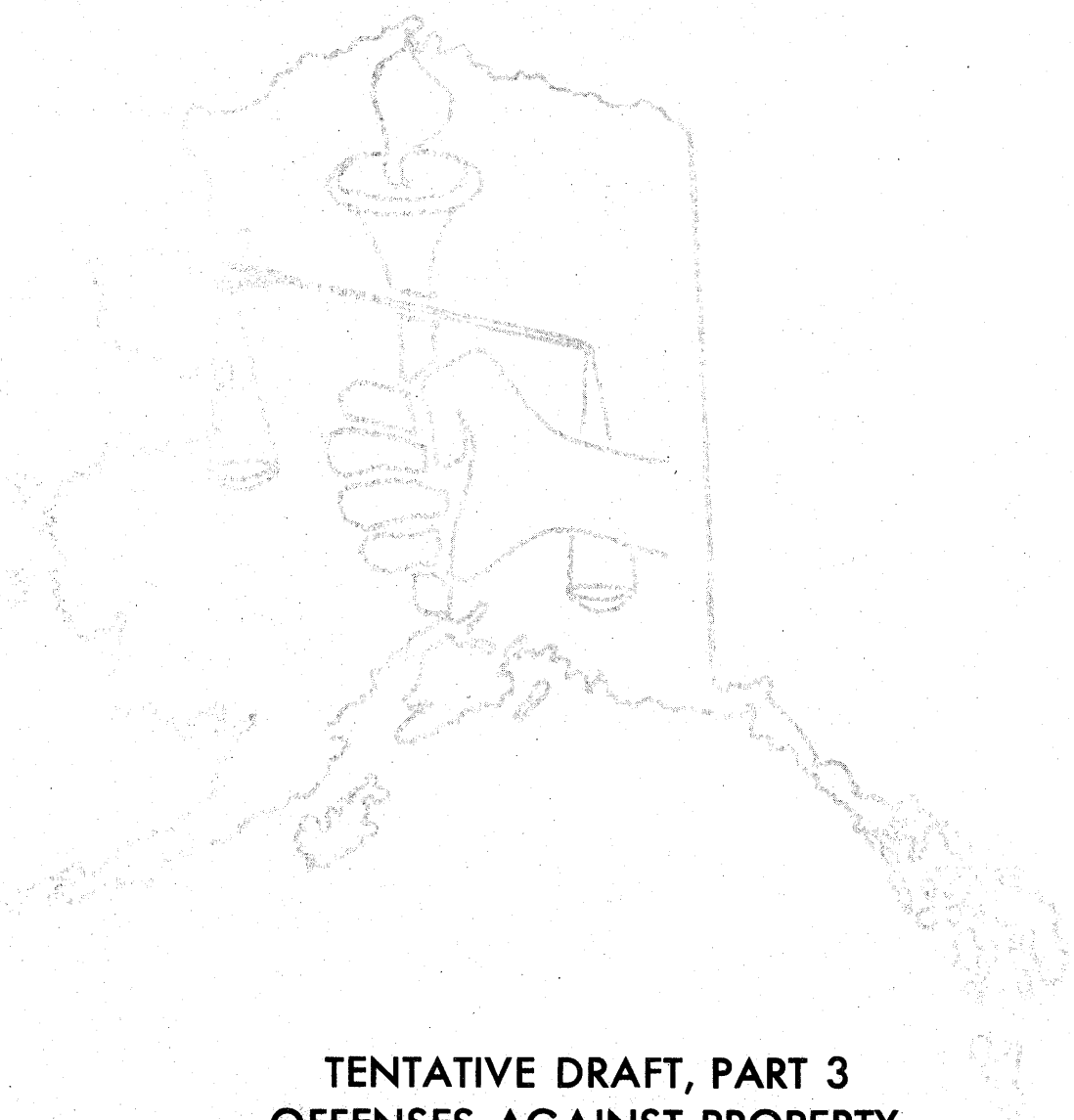

TENTATIVE DRAFT, PART 3
OFFENSES AGAINST PROPERTY

CRIMINAL CODE REVISION SUBCOMMISSION
HONORABLE TERRY GARDINER, CHAIRMAN
APRIL 1977

ALASKA REVISED CRIMINAL CODE

Tentative Draft, Part 3

Chapter 46. Offenses Against Property

Article 1. Theft and Related Offenses

Article 2. Burglary and Criminal Trespass

Article 3. Arson, Criminal Mischief and Related Offenses

Article 4. Forgery and Related Offenses

Article 6. General Provisions

April, 1977

Honorable Terry Gardiner
Chairman

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INTRODUCTION TO TENTATIVE DRAFT, PART 3

Tentative Draft, Part 3, is composed of five articles contained in the Offenses Against Property chapter of the Revised Criminal Code - theft and related offenses, burglary and criminal trespass, arson and criminal michief and related offenses, forgery and related offenses and general provisions.

Tentative Draft, Part 2, was distributed in early March and was comprised of seven articles of the Revised Criminal Code - general principles of criminal liability, parties to crime, justification, attempt and related offenses, robbery, bribery and related offenses and perjury and related offenses.

Tentative Draft, Part 1, was distributed in early February and was comprised of four articles contained in the Offenses Against the Person chapter of the Revised Criminal Code - criminal homicide, assault and related offenses, kidnapping and related offenses and sexual offenses.

Commentary follows each article in the Tentative Draft and is designed to aid the reader in analyzing the effect of the Revised Code on existing law. The Commentary also provides a section-by-section analysis of each provision of the Revised Code. All references in the Commentary to Tentative Draft provisions contain the letters TD before the usual AS cite.

Each Tentative Draft also contains several appendixes that will be useful in analyzing the Revised Code.

Appendix I lists the derivations of all sections in the Revised Code.

Appendix II allows the reader to compare provisions of the Revised Code with existing law.

Finally, Appendix III is comprised of an index which can be used in locating the page of Commentary in which a provision of the Revised Code is discussed.

CHAPTER 46. OFFENSES AGAINST PROPERTY.

ARTICLE

ARTICLE 1. THEFT AND RELATED OFFENSES.

Section

Sec. 11.46.100. THEFT DEFINED. A person commits theft when, with intent to deprive another of property or to appropriate property of another to himself or to a third person, he

(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; or

(4) commits theft by receiving as provided in sec. 190 of this chapter.

Sec. 11.46.110. CONSOLIDATION OF THEFT OFFENSES: PLEADING AND PROOF. (a) Conduct defined as theft under sec. 100 of this chapter constitutes a single offense.

(b) An accusation of theft is sufficient if it alleges that the defendant committed theft of property of the nature or value required for the commission of the crime charged without designating the particular way or manner in which the theft was committed.

(c) Proof that the defendant engaged in conduct constituting theft as defined in sec. 100 of this chapter is sufficient to support a conviction based upon any indictment, information or complaint for theft.

Sec. 11.46.120. DEFENSES TO THEFT. (a) In a prosecution for theft, it is a defense that the person acted under an honest claim of right in that

(1) he was unaware that the property was that of another; or

(2) he reasonably believed that he was entitled to the property or was authorized to dispose of it as he did.

(b) In a prosecution for theft, it is a defense that the property involved is that of the defendant's spouse unless the property

(1) does not constitute household belongings; or

(2) 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.

(c) In (b) of this section, "household belongings" means furnitur 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.

(d) It is not a defense to a prosecution for theft that the perso from whom the property was taken, appropriated, obtained or withheld himself obtained the property by means of theft.

(e) The defendant shall have the burden of injecting the issue of a defense under (a) and (b) of this section.

Sec. 11.46.130. THEFT IN THE FIRST DEGREE. (a) A person commits the crime of theft in the first degree if he commits theft as defined i sec. 100 of this chapter, and

(1) the value of the property is $500 or more;

(2) the subject of the theft is a firearm or explosive; or

(3) the property is taken from the person of another.

(b) Theft in the first degree is a class C felony.

Sec. 11.46.140. THEFT IN THE SECOND DEGREE. (a) A person commit the crime of theft in the second degree if he commits theft as defined in sec. 100 of this chapter and the value of the property is $50 or more but less than $500.

(b) Theft in the second degree is a class A misdemeanor.

Sec. 11.46.150. THEFT IN THE THIRD DEGREE. (a) A person commits theft in the third degree if he commits theft as defined in sec. 100 of this chapter and the value of the property is less than $50.

(b) Theft in the third degree is a class B misdemeanor.

Sec. 11.46.160. THEFT OF LOST OR MISLAID PROPERTY. (a) A person commits theft of lost or mislaid property if he obtains property of another knowing that the property was lost, mislaid or delivered under a mistake as to the nature or amount of the property or the identity of the recipient and, with intent to deprive the owner of the property, fails to take reasonable measures to restore the property to the owner.

(b) For purposes of (a) of this section "reasonable measures" includes but is not necessarily limited to notifying the identified owner or a peace officer.

Sec. 11.46.180. THEFT BY DECEPTION. (a) A person commits theft by deception if he obtains property of another by deception.

(b) In a prosecution for theft by deception, the defendant's intention or belief that a promise would not be performed shall not be established solely by or inferred solely from the fact that the promise was not performed.

Sec. 11.46.190. THEFT BY RECEIVING. (a) A person commits theft by receiving if he buys, receives, retains, conceals or disposes of property of another knowing that the property was the subject of theft.

(b) For purposes of this section "receiving" includes, but is not limited to, acquiring possession, control or title, or lending on the security of the property.

(c) A person whose principal business is dealing in or collecting used or secondhand merchandise or personal property, or his agent, employee, or representative who buys or receives property which has been stolen, is rebuttably presumed to have bought or received the property knowing it was stolen if a person in his capacity should have reasonably inquired as to whether the person from whom the property was bought or received had the legal right to sell or deliver it, and he failed to make the inquiry.

(d) In addition to the criminal penalty provided in secs. 130 - 150 of this chapter, a person who commits theft by receiving is liable in a civil action to the owner of the stolen property for three times the amount of actual damages sustained by him by the loss of the property, as well as all costs and reasonable attorney fees.

Sec. 11.46.195. EXTORTION. (a) A person commits the crime of extortion if, with intent to deprive another of property or to appropriat property of another, he obtains property of another by threat.

(b) In a prosecution based upon a threat as defined in sec. 990-(10)(A)(v) of this chapter, it is an affirmative defense that the defendant reasonably believed the threatened charge to be true and that his sole intent was to compel or induce the victim to take reasonable action to correct the wrong which is the subject of the threatened charge.

(c) Extortion is a class B felony.

Sec. 11.46.200. THEFT OF SERVICES. (a) A person commits the crime of theft of services if

(1) he obtains services, known by him to be available only for compensation, by deception, physical force, threat, or other means to avoid payment for the services; or

(2) having control over the disposition of services of others to which he is not entitled, he knowingly diverts those services to his own benefit or to the benefit of another not entitled to them.

(b) Absconding without payment or offer to pay for hotel, restaurant or other services for which compensation is customarily paid immediately upon the receiving of them is prima facie evidence that the services were obtained by deception.

(c) Theft of services is

(1) a class C felony if the value of the service is $500 or more;

(2) a class A misdemeanor if the value of the service is $50 or more but less than $500;

(3) a class B misdemeanor if the value of the service is less than $50.

Sec. 11.46.210. THEFT BY FAILURE TO MAKE REQUIRED DISPOSITION OF FUNDS RECEIVED OR HELD. (a) A person commits the crime of theft by failure to make required disposition of funds received or held when

(1) he obtains property from anyone or personal services from an employee upon agreement or subject to a known legal obligation to make specified payment or other disposition to a third person, whether from that property or its proceeds or from one's own property to be reserved in equivalent amount; and

(2) he exercises control over the property as his own and recklessly fails to make the required payment or disposition.

(b) It is not a defense to a prosecution under (a) of this section that it may be impossible to identify particular property as belonging to the victim at the time of the defendant's failure to make the required payment of disposition.

(c) An officer or employee of the government or of a financial institution or a fiduciary is rebuttably presumed

(1) to know any legal obligation relevant to his criminal liability under this section; and

(2) to have dealt with the property as his own if he fails to pay or account upon lawful demand, or if an audit reveals a shortage or falsification of accounts.

(d) Theft by failure to make required disposition of funds received is

(1) a class C Felony if the value of the property is $500 or more;

(2) a class A misdemeanor if the value of the property is $50 or more but less than $500;

(3) a class B misdemeanor if the value of the property is less than $50.

Sec. 11.46.220. CONCEALMENT OF MERCHANDISE. (a) A person commit the crime of concealment of merchandise if without authority he knowingly conceals upon or about his person the goods or merchandise of a retail business establishment, not purchased by the person, while still upon the premises of the retail business establishment with intent to deprive the owner of the goods or merchandise.

(b) Goods or merchandise found concealed upon or about the person which have not been purchased by the person are prima facie evidence of a knowing concealment.

(c) Concealment of merchandise is

(1) a class C felony if the value of the merchandise is $500 or more;

(2) a class A misdemeanor if the value of the merchandise is $50 or more but less than $500;

(3) a class B misdemeanor if the value of the property is less than $50.

Sec. 11.46.230. REASONABLE DETENTION AS DEFENSE. (a) In a civil or criminal action brought by a person who has been detained on or in the immediate vicinity of the premises of a mercantile establishment for the purpose of investigation or questioning as to the ownership of merchandise, it is a defense that

(1) the person was detained in a reasonable manner and for not more than a reasonable time to permit investigation or questioning by a peace officer or by the owner of the mercantile establishment, his authorized employee or agent; and

(2) that the peace officer, owner, employee or agent had reasonable grounds to believe that the person detained was committing or attempting to commit a crime as defined in sec. 220 of this chapter.

(b) For purposes of (a) of this section:

(1) "reasonable grounds" includes knowledge that a person has concealed upon or about his person unpurchased merchandise of the mercantile establishment; and

(2) "reasonable time" means the time necessary to permit the person detained to make a statement or to refuse to make a statement, and any additional time necessary to examine employees and records of the mercantile establishment relative to the ownership of the merchandise.

Sec. 11.46.240. UNAUTHORIZED USE OF A PROPELLED VEHICLE. (a) A person commits the crime of unauthorized use of a propelled vehicle if

(1) knowing that he does not have the consent of the owner, he takes, operates, exercises control over or otherwise uses another's propelled vehicle;

(2) having custody of a propelled vehicle under an agreement between himself or another person and the owner of the vehicle by which he or another person performs for compensation a specific service involving the maintenance, repair or use of the vehicle for the owner, he uses or operates it for his own purpose in a manner which constitutes an unreasonable deviation from the agreed purpose, knowing that his use or operation of the vehicle does not have the consent of the owner; or

(3) having custody of a propelled vehicle under an agreement with the owner of the vehicle in which he has agreed to return the vehicle to the owner at a specified time, he 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.

(b) The consent of the owner of a propelled vehicle to its use shall not be presumed or implied because of the owner's consent on previous occasions to its use by the same or a different person.

(c) When a minor is accused of a violation 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 a proceedings against the minor.

(d) For purposes of this section, a "propelled vehicle" means a device upon which or by which a person or property is or may be transported, and which is self-propelled, including but not limited to automobiles, vessels, airplanes, motorcycles, snow machines, all-terrain vehicles, sailboats and construction equipment.

(e) Unauthorized use of a propelled vehicle is a class A misdemeanor. A second or subsequent violation of this section is a class C felony.

Sec. 11.46.250. UNAUTHORIZED OCCUPANCY OF A PROPELLED VEHICLE. (a) A person commits the crime of unauthorized occupancy of a propelled vehicle if he rides in a propelled vehicle which, at the time he entered it, he knew or had been informed that the vehicle had been stolen or was being used or was to be used in violation of sec. 240 of this chapter.

(b) Unauthorized occupancy of a propelled vehicle is a class A misdemeanor.

Sec. 11.46.260. REMOVAL OF IDENTIFICATION MARKS. (a) A person commits the crime of removal of identification marks if he, with intent to cause interruption of the ownership of another, defaces, erases, or otherwise alters or attempts to deface, erase, or otherwise alter any

serial number or identification mark placed or inscribed on a motor vehicle, bicycle, firearm, movable or immovable construction tool or equipment, appliance, merchandise or other article or its component parts.

(b) Removal of identification marks is

(1) a class C felony if the value of the property on which the serial number or identification mark appeared is $500 or more;

(2) a class A misdemeanor if the value of the property on which the serial number or identification mark appeared is $50 or more but less than $500;

(3) a class B misdemeanor if the value of the property on which the serial number or identification mark appeared is less than $50.

Sec. 11.46.270. UNLAWFUL POSSESSION. (a) A person commits the crime of unlawful possession if he possesses a motor vehicle, firearm, movable construction tool or equipment, appliance, merchandise or other article, or any part of one of these, knowing the serial number or identification mark placed on it by the manufacturer or owner for the purpose of identification has been erased, altered, changed or removed with the intent of changing the identity of any of these items.

(b) Unlawful possession is

(1) a class C felony if the value of the property on which the serial number or identification mark appeared is $500 or more;

(2) a class A misdemeanor if the value of the property on which the serial number or identification mark appeared is $50 or more but less than $500;

(3) a class B misdemeanor if the value of the property on which the serial number or identification mark appeared is less than $50.

Sec. 11.46.280. ISSUING A BAD CHECK. [RESERVED]

COMMENTARY

The Effect of the Revised Code Provisions on the Existing Law of Theft and Related Offenses

In providing for a consolidated theft statute, the Theft and Related Offenses Article of the Revised Code eliminates many of the artificial and highly technical distinctions among the various methods in which theft may be committed. This change will affect judges, prosecutors, defendants and defense attorneys in the following manner:

1. Neither trial nor appellate judges will be forced to make delicate distinctions among the most typical forms of thievish conduct. These distinctions arose over 500 years ago as part of the development of common law larceny but serve no useful purpose in the twentieth century. These highly technical and unnecessary distinctions have been repudiated in most jurisdictions, including Oregon, the state from which our existing theft laws were derived in 1899.

2. Prosecutors will be protected against a finding that their proof at trial differed from the particular form of theft charged. The potential for successive trials, the first based upon one

theory of larceny and the second on another, will be all but eliminated.

3. Defendants and defense attorneys will not be confronted with a confusing assortment of statutory crimes, artificial and arbitrary distinctions between related offenses, and irrationally inconsistent penalties.

SECTION ANALYSIS OF REVISED CODE

I. TD AS 11.46.100 - THEFT DEFINED

A. Existing Law

The basic theft offense under existing law is larceny of money or property, AS 11.20.140, which provides that "[a] person who steals money, goods, or chattels . . . which is the property of another, is guilty of larceny." At first reading this statute appears to be a model of brevity and clarity. However, the crime of larceny has a common law history stretching back hundreds of years to medieval England. The Alaska Supreme Court has had to delve into this history to explain exactly what it means to "steal" something.

> The term "larceny" has not been defined in any of the Alaska statutes treating of that subject, so the common law may be looked to for a definition. . . [Larceny is the] wrongful or felonious taking and carrying away of the personal goods of another with the intent to permanently deprive the owner of his property therein.

Mahle v. State, 392 P.2d 19 (AK 1964).

While most of the elements of larceny listed in Mahle have been litigated over and explained through the years, appeals are still necessary to determine the scope of the larceny statute. As recently as 1974, for example, the Alaska Supreme Court has had to read briefs and hear arguments before holding that the "property of another" element does not require that property be taken from the owner; stealing from one who is merely in possession of the property is sufficient. Pulakis v. State, 476 P.2d 474 (AK 1970). Thus, at a time when the Court's caseload is increasing by approximately 20% a year, valuable court time must be devoted to clarify blackletter law. Indeed, prior to the revision of the Oregon Criminal Code in 1971, the Oregon Supreme Court in State v. Harris, 427 P.2d 107, 108 (Ore. 1967), noted that the now repealed Oregon theft statutes served no useful purpose and adversely affected the administration of justice:

> This is another appeal caused by Oregon's outdated criminal statutes. We are required to draw a fine distinction between larceny and embezzlement because such a distinction was drawn by the Eighteenth Century English Courts and incorporated into the Oregon statutes by Mathew Deady in Oregon's first code. This distinction serves no purpose whatsoever in the Twentieth Century . . ." (footnote omitted.)

As noted in the Preface to Tentative Draft, Part 1, the existing Alaska statutes in this area are primarily based on the now repealed Oregon provisions.

In addition to the basic offense of larceny, the

current Alaska statutes include at least fifteen other provisions which cover wrongful taking of the property of another. Many of the differences among these statutes are based on the type of property taken. For example, the larceny statute, AS 11.20.140, prohibits the "stealing" of

> money, goods, or chattels, or a government note, a bank note, promissory note, bill of exchange, bond, or other thing in action, or a book of accounts, order or certificate concerning money or goods due or to become due or to be delivered, or a deed or writing containing a conveyance of land or interest in land, or a bill of sale, or writing containing a conveyance of goods or chattels or interest in them, or any other valuable contract in force, or a receipt, release, or defeasance, or a writ, process, or public record. . .

This extensive listing is necessary because only money, goods and chattels could be the subjects of larceny at common law. State v. Tauscher, 360 P.2d 764 (Ore 1961).

In addition, Alaska also has separate statutes prohibiting theft of animals, AS 11.20.160; aircraft parts, AS 11.20.525; minerals, AS 11.20.190; "lost property", AS 11.20.260; and "public money", AS 11.20.300. A separate provision covers larceny occurring in a building or vessel, AS 11.20.150.

Existing Alaska law also retains the ancient distinctions between larceny, embezzlement and obtaining property by false pretenses although these distinctions serve no practical purpose. One commentator, after surveying the theft statutes in the United States almost 20 years ago noted:

> [I]f we examine the criminal statutes of almost any state, we find the ancient hands of the

> Anglo-Saxons and Normans stretch across the centuries and dominate large sections of our criminal law today. . . . Thus the modern American statutes, with rare exception, are of a piece with the legislation that started as far back as the thirteenth century. They are not based upon an analysis of the entire problem but represent cumulative narrow amendments to the common law where gaps existed or developed. The present substantive criminal law is the result of historical accidents which gave rise to specific formulas, a particularistic method of legislation, and the spinning of tenuous, complicated technicalities from the plethora of case material which arose in the last two centuries. [Footnotes ommitted].

J. Hall, Theft, Law and Society 98 (2d ed 1952).

The effect of these "historical accidents" on existing law is highlighted by Professors Wayne LaFave and Austin Scott:

> We have seen that English legal history explains the fact that, in most American jurisdictions today, the wrongful appropriation of another's property is covered by three related but separate, non-overlapping crimes--larceny, embezzlement and false pretenses. This fact, together with the fact that the borderlines between the three crimes are thin and often difficult to draw, has given rise to a favorite indoor sport played for high stakes in our appellate courts: A defendant, convicted of one of the three crimes, claims on appeal that, though he is guilty of a crime, his crime is one of the other two. Sometimes this pleasant game is carried to extremes: A defendant, charged with larceny, is acquitted by the trial court (generally on the defendant's motion for a directed verdict of acquittal) on the ground that the evidence shows him guilty of embezzlement. Subsequently tried for embezzlement, he is convicted; but he appeals on the ground that the evidence proves larceny rather than embezzlement. The appellate court agrees and reverses the conviction. [Footnotes ommitted].

LaFave and Scott, Criminal Law 673 (1972).

Today, 42 states have either adopted or are considering revised criminal codes. Virtually all of these revisions have repudiated the unnecessary and outdated distinctions among the most common theft offenses. The Theft and Related Offenses Article of the Revised Code accomplishes this result in Alaska.

B. The Revised Code

1. Consolidation of Theft Offenses

The primary purpose of the Theft Offense Article of the Revised Code is the consolidation of a number of crimes which have traditionally been thought of as theft offenses. The traditionally distinct crimes of larceny, larceny by trick, embezzlement, theft of mislaid property, obtaining property by false pretenses and receiving stolen property are now combined into the single crime of "theft". Theft is divided for purposes of punishment into three degrees depending on the value of the property stolen and certain other aggravating factors.

Theft is defined in TD AS 11.46.100. Because a substantial portion of the conduct described in this section has not been included within the common law definition of larceny, the conduct is labelled as "theft" to avoid any implication that the consolidated theft statute is limited by the scope of common law larceny.

The structure of TD AS 11.46.100 is two-fold: the first part of the section describes the culpable mental

state with which the defendant must act to commit theft while subsections (1)-(4) describe the act of theft. Therefore, the crime of theft is committed when any of the acts listed in the subsections (1)-(4) is committed with the culpable mental state of "intent to deprive another of property or to appropriate property of another to himself or to a third person."

Subsection (1), referring to a person who "takes, appropriates, obtains or withholds the property of another" with the requisite intent is broad enough to cover all forms of thievish conduct. See, State v. Jim/White, 508 P.2d 430 (Or. App. 1973), interpreting the identical language in the Oregon consolidated theft statute. However, as a concession to the potential hold of tradition, subsections (2)-(4) specifically list conduct traditionally not included within the definition of common law larceny.

Subsections (2)-(4) refer the reader to specific statutes describing in detail how theft of lost property, theft by deception and theft by receiving may be committed. It is important to note that the conduct described in these specific statutes do not create separate crimes. Conduct described in Theft by Deception, TD AS 11.46.180, for example, is Theft under TD AS 11.46.100, and depending on the value of the property involved will be punished as theft in the first, second or third degree. There is no separate offense of theft by deception in the Revised Code.

The definitions of "appropriate" and "deprive", TD AS 11.46.990(1) and (3), are used in determining the requisite intent on the part of the defendant to commit theft. The thrust of the definitions of "deprive" and "appropriate" is that they require a purpose on the part of the defendant to exert permanent or virtually permanent control over the property, or to cause permanent or virtually permanent loss to the owner of the possession or use of the property. Consistent with existing law, it is this feature that distinguishes theft from some other offenses which, while similar to theft, are satisfied by an intent to obtain only temporary possession or use of property or to cause temporary loss to the owner, (e.g., TD AS 11.46.240, Unauthorized Use of Propelled Vehicle).

The definition of "obtain", TD AS 11.46.990(6), extends the concept of taking to include constructive acquisition of property and is consistent with the definition of "property", TD AS 11.46.990(7), which includes real property. Because asportation or "carrying away" of property is not an element of theft under the consolidated theft statute, theft of real property is possible under the Revised Code, even though it was not included within the common law crime of larceny.

The question of what can be the subject of larceny is resolved in existing law by an extensive, specific listing

of various items which could not be the subject of larceny at common law because they are "intangibles" -- documents reflecting a right to possession of property but not considered property in themselves by English judges in the 1500's. The Revised Code simply prohibits theft of "property", which is defined broadly in TD AS 11.46.990(7) as "an article, substance or thing of value. . . ." The definition then lists several examples of property, including intangible property, real property and evidence of debt or contract. The inclusion of commodities of a public utility nature such as gas, electricity, steam and water within the definition of "property" insures that a person commits theft, for example, when he takes water from a reservoir or gas from a storage tank. If, however, the taking of the commodity occurs in the more typical manner of a homeowner tampering with his water or electric meter, theft of services, TD AS 11.46.200, infra, has occurred.

The Revised Code requires that for theft to occur the defendant must obtain the "property of another". TD AS 11.46.990(8) defines "property of another" as "property in which a person has possession or an interest upon which the actor is not privileged to infringe. . . ." In recognizing that theft may occur "whether or not the actor also has an interest in the property," the definition embodies the policy that co-owners of property should be as well protected against depredations by other co-owners as they are against outsiders.

With regard to property subject to a security interest, the Revised Code recognizes that possession of the property is the most important factor, and provides that one who has such possession has not committed theft if he withholds the property from the secured party. Further, in the absence of a specific agreement to the contrary, a secured party commits theft if it repossesses property without the consent of the party in possession. The Revised Code will cover conduct which defrauds secured creditors in Article 5 of this chapter, Business and Commercial Offenses.

II. TD AS 11.46.110. CONSOLIDATION OF THEFT OFFENSES: PLEADING AND PROOF

TD AS 11.46.110 spells out the procedural consequences of the consolidation of theft offenses. Under the Revised Code a charge of theft is sufficient without designating the particular means by which the property was obtained. The section serves to underscore one of the chief aims of the theft article: elimination of the confusing distinctions among the most typical theft offenses in existing law.

The necessity for this section was acknowledged by the primary drafter of the Oregon Revised Criminal Code.

> As noted by the Model Penal Code reporters, despite the substantive consolidation of the theft offenses ". . . the tendency to cling to the old categories is so strong that it is considered advisable to state expressly what logically follows. . ." The [Revised Code], anticipating this possibility, contains a

> special section detailing the procedural consequences of the consolidation of theft offenses. It provides that a charge of theft is sufficient without designating the particular theory of the crime. . . . Thus, the state will not be required in most cases, to designate the particular way or manner in which the crime was committed. A general allegation that the defendant committed theft of property of the nature or value required for the commission of the particular crime will be supportable by proof that he engaged in conduct constituting theft as defined by the [Revised Code]. The proof might be that the defendant engaged in conduct amounting to common law larceny, "embezzlement," "theft by receiving," or some other type of theivish conduct. [Footnotes ommitted].

Paillette, The Oregon Theft Laws: Consolidation v. Conglomeration, 51 ORE. L. REV. 525 (1972).

III. TD AS 11.46.120. DEFENSES TO THEFT.

The Revised Code provides in subsection (a) that a person does not commit theft if he acts under an honest claim of right. This section is consistent with existing law which recognizes that larceny occurs only if property is taken "with intent to deprive the owner" of property. If the defendant honestly believes that he is entitled to the property he has not acted with the required intent. TD AS 11.46.120(a) codifies this "claim of right" doctrine, with the additional requirement that not only must the defendant honestly believe in his claim, but his belief must be a "reasonable" one.

Subsection (b) modifies the common law rule that the legal unity of husband and wife prevents one spouse from

committing theft against the other. In the Revised Code, the spousal defense to theft applies only if the property is "household belongings" as defined in subsection (c). Further, even if household belongings are the subject of theft, a spouse can still be guilty of theft if separate households are being maintained and the taking is not based on a claim of right made in good faith. This approach leaves most property disputes between spouses to the divorce courts, but at the same time provides criminal sanctions in those situations where the separate property rights of a spouse require the protection of the criminal law.

In subsection (d) the Revised Code specifically recognizes that it is not a defense that the defendant obtained property from a person who himself obtained the property by theft. Thus, theft may be committed even though the victim himself was a thief.

IV. TD AS 11.46.130-150. THEFT IN THE FIRST, SECOND OR THIRD DEGREE

A. Existing Law

The inconsistency of the penalty provisions throughout the existing criminal code is highlighted in the theft offenses area. For example, while larceny is aggravated to a felony when the value of the property exceeds $250, (AS 11.20.140), embezzlement becomes a felony when the value exceeds $100,

(AS 11.20.290). When an animal is stolen, a felony is committed when the value of the animal exceeds $50, (AS 11.20.160), while the theft of certain minerals, regardless of value, is always a felony, (AS 11.20.190). Further, the maximum penalty for a theft of a cow worth more than $50 (and what respectable cow in Alaska is not worth $50) is ten years, (AS 11.20.160), while the maximum penalty for extortion, for example, is only five, (AS 11.20.345).

B. The Code Provision

Under the Revised Code, the consolidated offense of theft, as well as all related theft offenses except extortion, are divided into three degrees for sentencing purposes. While theft is defined in TD AS 11.46.100, the three degrees of the crime of theft are set out in TD AS 11.46.130-150.

1. Theft in the First Degree

The crime of Theft in the First Degree, a Class C felony, is committed if any of the three circumstances listed in TD AS 11.46.130(a) exists.

Paragraph (1) provides that Theft in the First Degree is committed if the value of the property stolen is $500 or more. While the setting of any dollar figure as the basis of a distinction between felony and misdemeanor theft is by necessity somewhat arbitrary, the Subcommission considered the experience of other states as well as crime statistics in Alaska in arriving at this figure. While Oregon in 1971 set the figure at $200, the more recent Proposed

Arizona Revised Code used a $1,000 breaking point. Further, a sample totalling 523 reported theft complaints in the city of Anchorage for the first eleven months of 1975 revealed that approximately 30% involved property valued over $500.

Using the Oregon figure as a starting point, and considering the rate of inflation since 1971 as well as the higher cost of living in Alaska, the $500 figure seems reasonable when applied to a Revised Code which will not be effective until after 1977. The $500 felony breaking point is also used in the existing Alaska Credit Card Crimes Act, AS 11.22.

Paragraph (2) provides that theft of a firearm or explosive is always Theft in the First Degree. This provision was included because of the frequency with which stolen firearms and explosives are used in other crimes. Further, the possibility of harm resulting from such a theft will usually exceed the value of the firearm or explosive.

Paragraph (3) provides that theft of any amount of property from the person of another is treated as first degree theft. This is consistent with existing AS 11.15.250, Larceny from a Person, which treats non-forcible theft from the person (i.e., picking a pocket) as a felony, regardless of the value of the property stolen.

Thefts involving the actual or threatened imminent use of force are treated even more severely as Robbery, TD AS 11.41.500, 510, a Class A or B felony. Similarly,

theft accomplished by a threat to inflict harm in the future is treated as Extortion, TD AS 11.46.195, infra, which is a Class B felony regardless of the value of the property taken.

2. Theft in the Second and Third Degrees

Under the Revised Code, theft of property worth less than $500 which is not aggravated by factors included in theft in the first degree, is a misdemeanor.

Theft of property worth between $50 and $500 is theft in the second degree, a Class A misdemeanor. Theft in the third degree, a B misdemeanor, is committed by taking property worth less than $50. This division was made to reflect the conclusion that there is a need for a crime below traditional petty theft to insure that a defendant is not potentially liable for a full year's imprisonment for theft involving property worth $50 or less.

3. Value of Property - TD AS 11.46.980

Because the degree of theft is primarily determined by the value of the property stolen, the Revised Code in TD AS 11.46.980 sets out specific rules to be used in determining the value of property.

Subsection (a) provides that "value" will ordinarily mean the market value of the property at the time of the theft. If this cannot reasonably be ascertained, "value" means the cost of replacing the property.

Subsection (b)(1) provides that the value of a written

instrument constituting an evidence of debt, such as a check, draft, or promissory note, shall be considered the amount due or collectible thereon. Pursuant to subsection (b)(2), the value of any other written instrument shall be considered the greatest amount of economic loss which the owner might reasonably suffer because of the theft.

Subsection (c) provides that amounts involved in criminal acts committed under one course of conduct are to be aggregated in determining the degree of theft. The following commentary from § 3201 of the Proposed Michigan Revised Code examines this provision at p. 222:

> [Subsection (c)] permits the cumulation of small amounts taken from the same or several persons pursuant to one . . . course of conduct. . . . As an example of its application, a bus driver or several bus drivers might pursue a scheme in which each day he or they would withhold not more than two or three dollars from the day's receipts. Or a transient operator might move from house to house in a neighborhood promising to seal roofs at $65 a roof, either absconding with the payment or dabbing at the roof with a few cents worth of tar. In either instance the employer, the householder and the community incur substantial financial loss. The . . . course of conduct is calculated enough that it suggests a need for a substantial term of imprisonment or a period under probation. However, so long as each taking is considered a separate offense all the acts will be in the misdemeanor category only . . . . By aggregating the amounts, the defendant may be brought into the felony range of punishments. . . .

VI. TD AS 11.46.160. THEFT OF LOST OR MISLAID PROPERTY

A. Existing Law

One of the most serious defects with the existing

criminal code is that some of its provisions cannot be enforced because of constitutional infirmities. An example of this situation is the existing statute in this area, AS 11.20.260, Retention of Lost Property. Two years ago, in State v. Campbell, 536 P.2d 105 (AK 1975), the Alaska Supreme Court held this statute unconstitutional because it did not include any requirement of criminal intent. In that case the Court cited with approval the Oregon lost property statute, ORS 164.065, which required criminal intent. The Alaska statute has not been revised since Campbell was decided.

B. The Code Provision

Pursuant to TD AS 11.46.100(2), a person commits Theft if he satisfies the requirements set out in theft of lost or mislaid property, TD AS 11.46.160.

The requirements of this statute are (1) the defendant's obtaining of property (2) knowing it to have been lost, mislaid or delivered to him by mistake and (3) failing to take reasonable measures to restore the property to its owner (4) with intent to deprive the owner of the property. Subsection (b) specifically lists notification of a peace officer or the owner as a "reasonable measure" to restore the property.

The intent requirement included by TD AS 11.46.160 cures the constitutional defect in the present theft of lost

property statute cited by the court in Campbell, supra.

The following commentary from the Model Penal Code details the type of fact situation in which the section would apply:

> Common law theory of larceny as an infringement of another's possession required a determination of the actor's state of mind at the moment of finding, for an honest state of mind at that point would preclude the felony conviction; the subsequent formation of a dishonest purpose would not be criminal since he would already be in possession. The search for an initial fraudulent intent appears to be largely make-believe. The realistic objective in this area is not to prevent the initial appropriation but to compel subsequent acts to restore to the owner. Therefore the section permits conviction even where the original taking was honest in the sense that the finder then intended to restore, but subsequently changed his mind; and it bars conviction where the finder acts with reasonable promptness to restore the property, even though he may have entertained a fraudulent purpose at some time during his possession. (Tent. Draft No. 2 at 83-84).

VII. TD AS 11.46.180. THEFT BY DECEPTION

A. Existing Law

There are at least six existing Alaska statutes providing for the punishment of obtaining property by deception or fraud.

AS 11.20.360 restates the common law crime of Larceny by False Pretenses. The crime of obtaining property by false pretenses is a statutory offense made necessary because of the strict technical requirements of common law larceny. For larceny it was necessary that possession of property be obtained. However, if the victim, even though fraudulently induced,

willingly parted with title to the property then possession went with it, and the defendant was not guilty of converting property that was in the legal possession of another. See, 2 R. Anderson, Wharton's Criminal Law and Procedure §§ 580-620 (1957).

The elements of Larceny by False Pretenses include a false representation of past or existing facts and an intent to defraud. Statements pertaining to what would occur in the future or expressions of opinion would not support a conviction. State v. Pearce, 7 Alaska 246 (1924).

AS 11.20.200, formerly Larceny by Trick or False Personation, restated the different common law crime of larceny by trick, but was amended in 1976 to include larceny accomplished by a "false or fraudulent representation or pretense." Consequently, the readers of this report will mercifully be spared the reliving of medieval arguments over the difference between Larceny by Trick and Larceny by False Pretenses.

AS 11.20.390, Fraudulent Conveyance, prohibits a particular type of false pretense - executing a conveyance of land while knowingly and falsely representing that he has a lawful interest in that land. AS 11.20.450 prohibits the obtaining of property by the particular strategem of falsely representing himself to be an agent of an organization, such as the United Way.

AS 11.20.400, Fraudulent Sale of Personalty Subject to a Security Interest, prohibits conveyances, with intent to defraud, of property which is subject to a security interest without informing the buyer of the security interest.

AS 11.20.480 prohibits the procuring of "fare, board, lodging or lodging services, food, drink or merchandise" from a "hotel, inn, boardinghouse, lodginghouse, campground or trailer court" by a false pretense.

Finally, the Alaska Consumer Protection Act, AS 45.50.471, punishes various types of deceptive practices used by business against consumers.

Most of the existing statutes cited above include as an element an "intent to defraud", which is not defined in any Alaskan statute or court decision. Presumably the courts rely on the common law definition of "intent to defraud."

B. The Code Provision

The Revised Code provides in TD AS 11.46.990(2) for a broad definition of "deception," which allows most of the current statutes in this area to be replaced by TD AS 11.46.180, Theft by Deception. This statute provides simply that a person commits theft if, acting with the requisite intent set forth in TD AS 11.46.100, commits theft if "he obtains property of another by deception." To insure that the

criminal courts are not swamped with cases which should be treated as civil breach of contract claims, subsection (b) requires that "deception" be established by more than a mere showing that the defendant's promise was not kept.

"Deception" is defined in TD AS 11.46.990(2) so as to cover five possible situations. Paragraph (i) codifies the traditional false pretenses concept of knowingly creating a false impression, and broadens the scope to include the act of confirming another's impression which the defendant does not believe to be true. The false impression may relate to law, value, intention or other state of mind. The traditional restriction to "existing fact" is rejected, as is the traditional requirement of a "false token."

If the defendant knowingly fails to correct a false impression which he has previously created he has committed "deception" under paragraph (ii).

Paragraph (iii) provides that deception also occurs when a seller knowingly prevents a buyer from acquiring relevant information.

Paragraph (iv) reaches the conduct covered currently by Fraudulent Sale of Property Subject to a Security Interest, AS 11.20.400 - conveying an interest in property failing to disclose a claim which impairs the enjoyment of the property.

Paragraph (v) provides that a person obtains property by "deception" if he promises performance which he intends or knows will not be performed. The original promise

is actually the creating of a "false impression" under paragraph (i). However, it is advisable to provide specifically for theft by a false promise to emphasize that the common law restriction to "existing facts" cannot be interpreted to exempt false promises from the coverage of the theft statute.

TD AS 11.46.990(B) provides that "deception" does not include falsity as to matters having no pecuniary significance, such as a false statement by a car salesman that he belongs to the Elks in order to sell a car to an enthusiastic Elk. Subsection (B) also provides that "deception" does not include "puffing" by statements unlikely to deceive ordinary persons in the group addressed. An example of "puffing" would be a salesman's statement that "this shampoo will make persons of the opposite sex fall all over you."

The definition of "deception" used in the consolidated theft statute insures that appropriately severe penalties will be available for the criminal prosecution of all cases involving theft accomplished by deception, especially in the area of consumer frauds.

VIII. TD AS 11.46.190. THEFT BY RECEIVING

A. Existing Law

Existing AS 11.20.350 provides for a maximum three year sentence for a person who "buys, receives, or conceals money, goods, bank notes or other thing which may be the

subject of larceny and which has been taken, embezzled, or stolen from another person, knowing it to have been taken, embezzled or stolen. . ." A person in the business of dealing in secondhand goods is rebuttably presumed to know that property is stolen if he fails to make reasonable inquiries as to whether the person from whom he buys the property had the legal right to sell it.

B. The Code Provision

Theft by receiving is the final theft-related offense included within the consolidated theft statute.

TD AS 11.46.190 supplements the existing language "buys, receives, or conceals" with "retains" and "disposes of" property of another. Subsection (b) provides examples of "receiving", emphasizing that "receiving" includes knowingly taking stolen property as security for a loan, as in a pawnshop.

The Revised Code includes the present requirement that the receiver "know" the property was stolen. The definition of "knowing" is discussed in Tentative Draft, Part 2 at 15. "Knowing" includes the deliberate avoidance of knowledge by refusing to check out facts which would prompt a reasonable person to investigate.

Subsection (c) retains the present presumption of knowledge by secondhand dealers, while subsection (d) is derived directly from AS 11.20.350(c).

Commentary from the Oregon Revised Criminal Code

emphasizes the advantages of including theft by receiving within a consolidated theft statute:

> Consolidation of receiving with other forms of theft provides the same advantages as other aspects of the unification of the theft concept. It reduces the opportunity for technical defenses based upon legal distinctions between the similar activities of stealing and receiving the fruits of the theft.
>
> It should be noted, however, that consolidation would make it impossible to convict of two offenses based on the same transaction. A person found in possession of recently stolen property may be either the thief or the receiver; but if the prosecution can prove the requisite thieving state of mind, it makes little difference whether the jury infers that the defendant took directly from the owner or acquired from the thief.

ORS § 164.095, Commentary at 173.

IX. TD AS 11.46.195. EXTORTION

A. Existing Law

The existing extortion statute, AS 11.20.345, prohibits the obtaining of property by any of the threats specified in that section. While many theft offenses in existing law provide a maximum ten year sentence, theft by extortion, which is a more serious offense in that it involves a threat against the victim, provides for a maximum sentence of only 5 years.

Subsection (b) of the existing statute provides that it is a defense to certain types of extortion that the property obtained was honestly claimed as restitution or indemnification for harm done in the circumstances to which the threat relates, or as compensation for property or lawful services. The defense is available only if the property was obtained by a threat to

(2) accuse anyone of a criminal offense;
(3) expose confidential information or a secret, whether true or false, tending to subject a person to hatred, contempt or ridicule, or to impair his credit or business repute;
(4) take or withold action as a public official, or cause a public official to take or withold action.

B. The Code Provision

While some recent code revisions have included theft by extortion within a consolidated theft statute, extortion, by reason of its closer analogy to robbery, is subject to a higher penalty than other forms of theft. Consequently, though technically part of a consolidated theft statute, exemptions are made which have the effect of removing it from the statute [e.g. ORS 164.025(1), "except for the crime of theft by extortion, conduct denominated theft. . . constitutes a single offense" and ORS 164.025(2), if an "element of the crime charged that property was taken by extortion, an accusation of theft must so specify." See, also, New York Penal Law § 155.45].

Because extortion carries a heavier penalty than theft, and because defenses which apply to theft are inapplicable to extortion (i.e., claim of right), the Revised Code treats extortion as a separate crime.

Nevertheless, if a defendant is charged with theft, but not extortion, and at trial it is established that the theft was accomplished by threat, the defendant can be found guilty of Theft. TD AS 11.46.100(1). In such a case, the defendant would be subject to the penalty structure for theft

and not the higher penalty for extortion. This would be identical to the result in states where extortion is part of a consolidated theft statute.

The kinds and varieties of threats that would amount to extortion are set forth in TD AS 11.46.990(10). The Revised Code covers essentially the same conduct as the existing provision, but includes more examples of the prohibited types of threats. Most of the newly listed threats would probably be covered by existing 11.20.345(a)(7), which prohibits obtaining property by a threat to "inflict any other harm which would not benefit the person making the threat or suggestion." A similar provision appears in TD AS 11.46.990(10)(A)(x).

Extortion may be accomplished by a threat to cause physical injury in the future which distinguishes it from Robbery, which requires a threat to use imminent physical force. TD AS 11.41.500(a).

Subsection (b) narrows the defense to extortion provided by existing law. The defense of intent to compel the threatened person to correct a wrong is available only if the threat is to accuse another of a crime. The denial of this defense to one who threatens to expose confidential information or take action as a public official reflects the decision of the Subcommission that threats in such circumstances are not legitimate weapons of negotiation.

X. TD AS 11.46.200. THEFT OF SERVICES

A. Existing Law

Theft of services is traditionally treated as a separate offense from larceny because services such as labor and the supplying of food are not considered "property." Existing Alaska law punishes the unlawful appropriation of services in at least six different statutes.

AS 11.20.200, Larceny by Trick, makes unlawful the obtaining of property or labor by the proscribed means. AS 11.20.480, the "defrauding an innkeeper" statute, covers primarily the theft of services such as hotel accommodations or food. AS 11.20.495 prohibits the obtaining of telecommunications services by fraud. AS 42.20.030(7) also prohibits the obtaining of telecommunications services, as well as electricity and gas, if it is accomplished by tapping the transmission lines or other means of diversion.

B. The Code Provision

The purpose of TD AS 11.46.200 is to protect both individuals and commercial enterprises that supply services to the public from the thievish type of conduct now only partly covered by existing statutes. Theft of services is not part of the consolidated theft statute, which applies only to the obtaining of "property."

"Services" is defined broadly in TD AS 11.46.990 to include all the types of services specifically mentioned

in the existing statutes but, in addition, it specifically covers theft of labor and professional services:

> "services" includes but is not necessarily limited to labor, professional services, transportation, telephone or other communications service, entertainment, the supplying of food, lodging or other accommodations in hotels, restaurants or elsewhere, admission to exhibitions and the supplying of equipment for use;

An additional reason for not treating theft of services in the consolidated theft statute is that the means used to steal services are different from the means used in other thefts. Theft of services is committed when the defendant obtains a service known by him to be available only for compensation, but somehow avoids payment for the service. It can also be committed by knowingly diverting services under his control to the benefit of someone not entitled to them. At trial the state must prove only that the defendant engaged in the conduct just described with the required knowledge - there is no additional requirement that "intent to appropriate or deprive" be proved.

Subsection (a)(1) covers the obtaining of services by "deception, physical force, threat or other means to avoid payment for the services." Enforceability is simplified by subsection (b), which provides that absconding without offering to pay for hotel, restaurant or other similar services is prima facie evidence that the services were obtained by deception. This subsection is based on existing AS 11.20.480(b).

Paragraph (a)(2) provides, for example, that the foreman of a painting crew who has his subordinates paint his house on company time commits Theft of Services from his employer.

Theft of Services is graded for punishment purposes according to the value of the service obtained in the same manner as the three degrees of theft discussed at § IV, supra.

XI. TD AS 11.46.210. THEFT BY FAILURE TO MAKE REQUIRED DISPOSITION OF FUNDS RECEIVED OR HELD

Existing criminal law probably does not provide for the punishment of one who receives property by promising to dispose of it in a certain way, and benefits by failing to fulfill the obligation. The most typical examples are the employer who withholds amounts from his employees' pay for taxes or the United Fund, or the storekeeper who receives contributions for charity later to be transmitted by check to the ultimate charity recipient, and simply keeps the money.

This form of conduct is not included in the consolidated definition of theft because theft by failure to make required disposition of funds received does not require a specific intent to deprive or appropriate the property. Instead, all the defendant must do is deal with the property as his own and recklessly fail to make the required payment.

The conduct described by subsection (a)(1) is criminal only if the holder of the funds knows of his legal obligation to pay. Enforcement of this section is simplified by a

rebuttable presumption in subsection (c) that an employee or officer of the "government" or a "financial institution" or a "fiduciary" knows his relevant legal obligations. The terms "financial institution" and "government" are defined in TD AS 11.46.990(4) and (5). The term fiduciary will be defined in Article 5, Business and Commercial Offenses. Such a person is also presumed to have dealt with the held funds as his own if he fails to account for the funds on lawful demand, or if an audit reveals a shortage or falsification of accounts.

Subsection (b) provides an exception to the rule that requires the stolen property to be specifically identified. A person who violates this section will not escape conviction simply because he has mingled the victim's money with his own funds.

As in the case of the three degrees of theft, punishment varies according to the value of the property affected by the criminal act.

XII. TD AS 11.46.220. CONCEALMENT OF MERCHANDISE

A. Existing Law

The shoplifting statute currently appears at AS 11.20.275. It provides that a person commits a misdemeanor with a maximum 6 month sentence if he conceals on his person property of any value in a store with intent to deprive the owner. A second or subsequent conviction may result in a maximum of one year's imprisonment.

B. The Code Provision

TD AS 11.220 restates the existing law, but punishes the crime with the identical three degree penalty structure used in theft. Thus, a shoplifter who conceals jewelry worth $500 or more is guilty of a felony under the Revised Code. The felony penalty for shoplifting property worth more than $500 is new to existing law. However, currently the prosecution may attempt to prosecute particularly outrageous shoplifting cases under AS 11.20.150, Larceny in Building, which carries a maximum 2 year sentence. The Revised Code does not aggravate larceny solely because it happens to occur in a building. Consequently, a provision allowing for a felony conviction based on shoplifting an item valued at $500 or more is required.

XII. TD AS 11.46.230. REASONABLE DETENTION AS A DEFENSE

This section is identical to present AS 11.20.277. It provides that the owner of a store, or his employee or agent, can detain a person reasonably suspected of shoplifting for a period of time sufficient to permit the person detained to make or decline to make a statement, or sufficient to examine the store's employees and records with respect to the ownership of the concealed property.

XIII. TD AS 11.46.240; 250. UNAUTHORIZED USE OR OCCUPANCY OF PROPELLED VEHICLE

A. Existing Law

Alaska currently has one "joyriding" statute for motor vehicles, AS 28.35.010, and another for boats and planes, AS 11.20.145. Both statutes punish as a misdemeanor the unauthorized temporary taking of the vehicle, and are made lesser included offenses of larceny by AS 28.35.020 and 11.20.146.

The knowing occupancy of a "borrowed" vehicle is not specifically covered by existing law unless the prosecution can show an accessory relationship among the occupants of the vehicle.

Minors, who are the most common violators of the "joyriding" statutes, are prosecutable as adults except that the minor's guardian shall be present at all proceedings.

B. The Code Provision

This section covers all "propelled vehicles", a term defined in subsection (d). This definition eliminates the need for separate statutes for cars, boats and planes, and covers all devices "upon which or by which a person or property is or may be transported". It covers all the conduct proscribed by existing law and uses substantially the same language in some subsections.

While subsection (1) covers the most typical joyriding situations, subsections (a)(2) and (3) reach conduct involving excessive misuse or withholding of a vehicle by a person who originally obtained possession of the vehicle legally.

This type of conduct is limited to two kinds of situations. The first, (a)(2), is exemplified by a garage attendant who without authorization uses a customer's car to go on a spree. The second, (a)(3), is illustrated by a person who borrows a car in Anchorage for an afternoon and drives it down the AlCan. In each case, the conduct must constitute an "unreasonable deviation" from the agreement or the agreed purpose of the bailment.

Subsection (b) is derived from existing AS 28.35.010 and 11.20.145. It eliminates a possible presumption that the owner consented to the taking or excessive use simply because he had consented on a previous occasion.

Subsection (c) retains the existing rule that joyriding minors are treated as adults, except that the minor's guardian shall be present at all proceedings.

As under present law, a first offense under TD AS 11.46.180 is a misdemeanor. Joyriding is a sufficiently widespread and serious problem that subsequent violations become C felonies under the Revised Code.

The unauthorized occupancy statute, TD AS 11.46.250, reflects the fact that joyriding is commonly undertaken by more than one person. This statute insures that the passengers who knew when they entered the car that the car was to be taken or used in violation of TD AS 11.46.240 will be as subject to criminal liability as the person who happened to be driving at the time of the arrest.

It should be emphasized that if the "joyrider" acts with an intent to deprive another of the vehicle, e.g., abandoning the car in a remote area so that it is unlikely that the owner will recover the property, he has committed Theft pursuant to TD AS 11.46.100. [See, definition of "deprive", TD AS 11.46.990(3)(A)(B)].

XIV. TD AS 11.46.260-270 - REMOVAL OF IDENTIFICATION MARKS AND UNLAWFUL POSSESSION

A. Existing Law

Removing serial numbers, or possessing property with the serial numbers removed, is not in itself a crime under existing law. Alaska law enforcement officers have stressed to the Subcommission the need for a statute prohibiting this conduct because of the problems of proof in many receiving stolen property cases.

The problem that often arises is that the State must prove beyond a reasonable doubt that the property received by the defendant is the identical property previously stolen from some identifiable victim. Karn v. U S, 11 Alas 225, 158 F.2d 568 (9 Cir 1946). If the receiver has removed or skillfully altered the serial number, the victim often finds it difficult to conclusively identify his property.

B. The Code Provision

Removal of Identification Marks, TD AS 11.46.260,

prohibits the defacing, erasing or otherwise altering of a serial number or identification mark if done "with intent to cause interruption of the ownership of another." The intent element prevents conviction of property owners who innocently alter their own property.

The unlawful possession statute, TD AS 11.46.270, prohibits the possession of property "knowing that the serial number or identification mark . . . has been erased, altered, changed or removed with the intent of changing the identity" of the property. It may be difficult to prove that a professional "fence" removed the serial number himself. However, there will be few problems in convincing a jury that a person discovered to have ten television sets in his basement, all with their serial numbers removed, possessed that property knowing it had been altered with criminal intent.

ARTICLE 2. BURGLARY AND CRIMINAL TRESPASS.

Section

Sec. 11.46.300. BURGLARY IN THE FIRST DEGREE. (a) A person commits the crime of burglary in the first degree if he violates sec. 310 of this chapter and the building is a dwelling or, if in effecting entry or while in a building or in immediate flight from the building, he

(1) is armed with a deadly weapon;

(2) causes or attempts to cause physical injury to any person; or

(3) uses or threatens to use a dangerous instrument.

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

Sec. 11.46.310. BURGLARY IN THE SECOND DEGREE. (a) 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.

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

Sec. 11.46.320. CRIMINAL TRESPASS IN THE FIRST DEGREE. (a) A person commits the crime of criminal trespass in the first degree if he enters or remains unlawfully in a dwelling.

(b) Criminal trespass in the first degree is a class A misdemeanor.

Sec. 11.46.330. CRIMINAL TRESPASS IN THE SECOND DEGREE. (a) A

person commits the crime of criminal trespass in the second degree if he enters or remains unlawfully in or upon premises.

(b) Criminal trespass in the second degree is a class B misdemeanor.

Sec. 11.46.340. DEFENSE: EMERGENCY USE OF PREMISES. (a) It is a defense to a prosecution under secs. 300 - 330 of this chapter that

(1) 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

(2) as soon as reasonably practical after the entry, use, or occupancy, the person contacts the owner of the premises, the owner's agent or, if the owner is unknown, the nearest state or local police agency, and makes a report of the time of the entry, use or occupancy and any damage to the premises or personal property, unless notice waiving necessity of the report is posted on the premises by the owner or the owner's agent.

(b) The defendant shall have the burden of injecting the issue of a defense under (a) of this section.

Sec. 11.46.350. DEFINITION. In secs. 300 - 340 of this chapter, unless the context requires otherwise, "enter or remain unlawfully" means to enter or remain in or upon premises when the premises, at the time of the entry or remaining, are not open to the public and when the actor is not otherwise licensed or privileged to do so. A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privilege unless notice against trespass is personally communicated to him by the owner of the land or some other authorized person, or unless notice is given by posting in a conspicuous manner.

ALASKA REVISED CRIMINAL CODE

Chapter 46 - Offenses Against Property

ARTICLE 2. BURGLARY AND CRIMINAL TRESPASS

COMMENTARY

The Effect of the Revised Code Provisions on the Existing Law of Burglary and Criminal Trespass

In defining the crimes of burglary and criminal trespass, the Burglary and Criminal Trespass Article of the Revised Code:

1. Eliminates the provision in existing law which classifies a burglary occurring in the nighttime as a more serious offense than a burglary occurring in the daytime. Instead of retaining this common law distinction which has little relevance in Alaska, the Revised Code provides that a burglary is made a more serious offense based on certain listed factors relating to the potential for injury to the occupants of the building.
2. Recognizes that a person may commit burglary even though he forms his intent to commit a crime after he enters the building. Existing law requires that the defendant have this intent at the time he enters the building.
3. Eliminates the limitation in existing law that

burglary in a building other than a dwelling does not occur unless the building contains property.

4. Replaces overly specific statutes covering trespass upon premises with the offense of criminal trespass which is broken into two degrees depending upon whether the trespass occurred in a dwelling or on premises.

SECTION ANALYSIS OF REVISED CODE

I. DEFINITIONS APPLICABLE TO BURGLARY AND CRIMINAL TRESPASS ARTICLE

Four key terms are used throughout the Burglary and Criminal Trespass Article - "building", "dwelling", "premises" and "enter or remain unlawfully." The first three are defined in TD AS 11.06, the General Provisions Chapter. The fourth term is defined in TD AS 11.46.350.

A. "Building"

> "Building", in addition to its usual meaning, includes any vehicle, watercraft, aircraft or structure adapted for overnight accommodation of persons or for carrying on business; when a building consists of separate units, including but not limited to, apartment units, offices or rented rooms, each unit is considered a separate building.

In providing that "building" includes, in addition to its usual meaning, "any vehicle, watercraft, aircraft or structure adapted for overnight accommodation or for carrying on business," a definition is established which is broad enough to include house trailers, mobile field offices,

house boats, vessels and even tents used as dwellings.

The definition's reference to "separate units" of a building is relevant to intrusions in hotels, apartment houses, offices with multiple tenants, ferries with private cabins, and similar structures. The result is that an intrusion into a single unit constitutes an entry into a building, which can be the basis of a burglary or criminal trespass prosecution.

B. "Dwelling".

The term "dwelling" is defined in TD AS 11.06 as "a building which is usually occupied by a person therein at night whether or not a person is actually present." This formulation is a restatement of the definition of "dwelling-house" in the current statute, AS 11.20.130. Burglary or trespass in a "dwelling" is punished more severely in the Revised Code than other burglaries and trespass.

C. "Premises".

The term "premises" is defined in TD AS 11.06 as meaning real property, including a "building." It is not redundant to define "premises" as including a "building" because the definition of "building" includes, for example, floating and mobile structures which are not ordinarily considered to be real property. By incorporating the term "building", the definition of "premises" covers not

only the ordinary concept of trespass to land, but includes criminal trespass into structures, which would not ordinarily be considered "real property."

D. "Enter or remain unlawfully" - TD AS 11.46.350

The definition of "enter or remain unlawfully" insures that an initial lawful entry, followed by an unlawful remaining, constitutes burglary if the intruder remains with an intent to commit a crime. If such intent is absent, the crime of criminal trespass has occurred.

As applied to the burglary sections, the concept of committing the crime by "remain[ing] unlawfully" represents a departure from the common law doctrine that burglary requires that the defendant have a specific intent to commit a crime at the time he "breaks and enters." Nevertheless, existing AS 11.20.120 punishes as burglary in a dwelling house the act of "breaking out" of a dwelling house after having committed or attempted to commit a crime therein (without the necessity of proving that the defendant had that intent at the time he entered), but prescribes a maximum penalty of 3 years imprisonment as compared to 15 years for burglary in a dwelling and 10 years for burglary not in a dwelling.

The word "remain" in the phrase "enter or remain unlawfully" is also designed to apply to cases in which a person enters with "license or privilege" but remains on the premises

after his license or privilege has terminated. Thus, a person who enters a department store during regular business hours and hides in a public washroom until after the store is closed "remains unlawfully" within the meaning of this definition.

The last sentence of this definition provides that a person who enters upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so lawfully unless notice against trespass is personally communicated to him by the owner of such land or other authorized person, or unless such notice is given by posting in a conspicuous manner. This provision is designed to expressly exclude from the scope of the offense of criminal trespass, a person who enters upon unimproved and apparently unused land when there is no indication of apparent prohibition against such intrusion. The innocence of a typical trespass where an individual hiker walks without consent upon the unfenced, unposted land of another, and its frequency in a state dominated by wilderness and public land interspersed with private land, prompts the conclusion that such a minimal intrusion upon the land of another should not be a criminal offense unless reasonable notice is given the trespasser not to enter or remain on such property.

II. TD AS 11.46.300; 310 - BURGLARY IN THE FIRST AND SECOND DEGREES

A. Existing Law

At common law the offense of burglary consisted of a breaking and entering of the dwelling house of another, in the nighttime, with intent to commit a felony.

The traditional definition of burglary has been gradually expanded over the years to include acts which would not have been burglary in the common law sense.

Existing law recognizes the offenses of Burglary in a Dwelling House, AS 11.20.080, Burglary Not in a Dwelling House, AS 11.20.100, and Burglary in Leaving a Dwelling House, AS 11.20.120.

Currently, daytime burglary in an unoccupied dwelling is punishable by a 1 - 10 year sentence. If the burglary is committed at nighttime, it carries a 1 - 15 year sentence. If another person is within the dwelling during a daytime or nighttime burglary, the statute provides for a 1 - 20 year sentence.

Burglary not in a dwelling house, on the other hand, does not distinguish between daytime and nighttime burglaries. While the legislature apparently considered such burglaries to be less serious than burglaries in dwellings by providing for maximum sentence of only 5 years, it somewhat inconsistently provided for a minimum sentence of 2 years instead of the 1 year minimum for burglary in a dwelling.

The crime of burglary in a dwelling house requires that the defendant enter with a specific "intent to commit a crime," while the burglary not in a dwelling statute requires an entry with an intent to "steal" or commit "a felony."

"Breaking out" of a dwelling house of another, after having committed or attempted to commit a crime therein, is now punishable under AS 11.20.120 by a maximum penalty of 3 years imprisonment.

B. The Code Provision

Both existing law and the burglary statutes of the Revised Code list aggravating factors which, when present, subject the defendant to more severe punishment than he would receive for a non-aggravated burglary. The Revised Code retains some of the existing factors, such as whether the building is a dwelling, but rejects others, such as the nighttime-daytime distinction.

Unlike existing law, the Revised Code treats daytime and nighttime burglaries alike - a change motivated in large part by the increasing occurrence of daylight burglaries occurring while Alaska residents are at work, especially during the summer months. It is interesting to note that this distinction was derived directly from Oregon law when Congress adopted a major portion of the Oregon Criminal Code as the Criminal Code for Alaska in 1899. Rather than distinguishing between daytime and nighttime burglaries, this concept as applied in Alaska has the effect of aggravating most burglaries

which happen to occur during the winter months. This distinction has been rejected in virtually all revised codes, and is particularly inappropriate in Alaska.

The basic definition of burglary appears in TD AS 11.46.310, Burglary in the Second Degree. It requires that the defendant "enter or remain unlawfully," a term defined in TD AS 11.46.350 and discussed in § I D, supra. The term does not require a "breaking" and is consistent with existing AS 11.20.080 and 110, which recognize that an "unlawful entry" is a "breaking and entering" for purposes of the burglary in a dwelling statute.

As discussed in § III B, infra, the crime of criminal trespass in the Revised Code requires that the defendant enter or remain unlawfully in or upon premises. Consequently, burglary amounts to criminal trespass with two aggravating factors: (1) the premise invaded is a "building", and (2) the intruder enters or remains with intent to commit a crime.

The Revised Code eliminates the necessity of proving intent to "steal" or to commit a "felony" in a nondwelling burglary, which is presently required by AS 11.20.100. This change makes the intent element for burglary the same as that now required for burglary in a dwelling by AS 11.20.080 -- an intent to commit any crime. The Revised Code also does away with the existing requirement that burglary not in a dwelling does not occur unless property is actually kept in

the building. Finally, as discussed in § I D, supra, the Revised Code also eliminates the present requirement that the intruder had the intent to commit the crime at the time of the entering.

Burglary in the second degree is committed under the Revised Code when a person enters or remains unlawfully in a building with intent to commit a crime therein. If the building happens to be a dwelling, the offense is of a more serious nature because of the potential for harm to the occupant, and the intruder is accordingly guilty of burglary in the first degree. Further, if the intruder, in effecting entry or while in the building or in immediate flight from any building is armed with a deadly weapon, or causes or attempts to cause physical injury to any person, or uses or threatens to use a dangerous instrument, he is likewise guilty of burglary in the first degree. Thus, the degree structure in the Revised Code emphasizes the potential for injury to the occupant of a dwelling or building as the distinction between first and second degree burglary.

III. TD AS 11.46.320; 330 - CRIMINAL TRESPASS IN THE FIRST AND SECOND DEGREES

A. Existing Law

At least four statutes in the existing criminal code prohibit trespass or unlawful entry: AS 11.20.630, Trespass (on land or premises); AS 11.20.610, Trespass on Improved Lands (wilful entering of garden, orchard, or other improved land "with intent to cut, take, carry away, destroy, or injure the trees, grain, grass, hay, fruit, or

vegetable products . . ."); AS 11.20.650, Trespass on Mining Claims ("trespass upon a mining claim, with intent to commit a felony"); and AS 11.20.135, Unauthorized Entry, Use or Occupancy of Property (entry into "dwelling, house, tent, hotel, office, store, shop, warehouse, barn, factory or other building, boat, ship, motor vehicle, railroad car or structure; or apartment, cottage, bathhouse, hunting or fishing lodge, garage or any structure").

B. The Code Provision

The Revised Code replaces this needless proliferation of statutes with two degrees of trespass, one involving trespass in or upon premises, the other involving trespass in a dwelling. The primary aim of the trespass statutes is the protection of one's property from unauthorized intrusion by others.

Trespass in the Second Degree, TD AS 11.46.330, is committed in or upon "premises" as that term is defined in TD AS 11.06 and discussed at § I C, supra. If the invaded premises is a dwelling, the crime is Criminal Trespass in the First Degree, TD AS 11.46.320. The heavier penalty is justified by the alarm caused to inhabitants by the entry, and the resulting increased likelihood of violent harm to inhabitants and intruders alike.

The element of "entering or remaining unlawfully"

(defined in TD AS 11.46.350 and discussed at § I D) required for burglary is also required for both degrees of criminal trespass. The state must prove that "at the time of the entry or remaining, the premises [were] not open to the public and the defendant [was] not otherwise licensed or privileged to do so."

IV. TD AS 11.46.340 - EMERGENCY USE OF PREMISES

A. Existing Law

Existing AS 11.20.135 provides for the misdemeanor offense of "unauthorized entry, use or occupancy of premises." This specific statute is necessary under existing law as the trespass statute, AS 11.20.630, requires that the defendant remain on property after notice is given that he is trespassing for the crime to have been committed. AS 11.20.135 does not require such notice for the crime of unauthorized entry to occur.

B. The Code Provision

The Revised Code adequately covers unauthorized entry in the criminal trespass statutes, TD AS 11.46.320, 330. However, the provision of the existing statute which provides that emergency use of premises is a defense to a charge of unauthorized entry is covered in the Code in TD AS 11.46.340.

Existing law requires that the person who used the

premises in an emergency situation notify the owner or the police of such entry within 15 days after using the facility. However, this requirement ignores the practicalities of providing such timely notice in a remote bush area as well as providing too much leeway in the event of a trespass near a population center. In place of the rigid 15 day requirement, the Code requires that notice be given "as soon as reasonably practical after the entry . . ."

ARTICLE 3. ARSON, CRIMINAL MISCHIEF AND RELATED OFFENSES.

Section

Sec. 11.46.400. ARSON IN THE FIRST DEGREE. (a) A person commits the crime of arson in the first degree if, by starting a fire or causing an explosion, he intentionally damages

(1) protected property of another; or

(2) any property, whether his own or another's, and the act recklessly places another person in danger of physical injury or protected property of another in danger of damage.

(b) Arson in the first degree is a class A felony.

Sec. 11.46.410. ARSON IN THE SECOND DEGREE. (a) A person commits the crime of arson in the second degree if, by starting a fire or causing an explosion, he intentionally damages a building of another that is not protected property.

(b) Arson in the second degree is a class B felony.

Sec. 11.46.420. RECKLESS BURNING. (a) A person commits the crime of reckless burning if he recklessly damages property of another by fire or explosion.

(b) Reckless burning is a class A misdemeanor.

Sec. 11.46.430. CRIMINALLY NEGLIGENT BURNING. (a) A person commits

the crime of criminally negligent burning when with criminal negligence he damages property of another by fire or explosion.

(b) Criminally negligent burning is a class B misdemeanor.

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

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

(2) the fire was started, although lawfully, by him or with his assent, or on property in his custody or control.

(b) Failure to control or report a dangerous fire is a class A misdemeanor.

Sec. 11.46.480. CRIMINAL MISCHIEF. [RESERVED]

Sec. 11.46.490. DEFINITIONS. In secs. 400 - 480 of this chapter, unless the context requires otherwise,

(1) "protected property" means 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;

(2) "property of another" means property in which anyone other than the actor has a possessory or proprietary interest including property belonging wholly or in part to the actor's spouse; if a building or structure is divided into separately occupied units, any unit not occupied by the actor is the property of another.

ALASKA REVISED CRIMINAL CODE

CHAPTER 46. Offenses Against Property

ARTICLE 3. ARSON, CRIMINAL MISCHIEF AND RELATED OFFENSES

COMMENTARY

The Effect of the Revised Code Provision on the Existing Law of Arson and Related Offenses

1. Provides a single location for arson and related offenses. In existing law these offenses are scattered both within and outside the Criminal Code.
2. Recognizes that the most serious form of arson involves damage to "protected property" of another or conduct which creates a risk of physical injury to any person. For example, arson of a crowded restaurant is treated as the most serious form of arson as opposed to its present classification as second degree arson.
3. Specifically provides that arson can occur by means of fire or explosion. Existing law covers arson only by means of fire.
4. Classifies forest lands as protected property for purposes of the first degree arson statute, thus providing increased protection to one of Alaska's most valuable but fragile resources.
5. Specifically provides that a person who starts

fire on his own land commits a criminal offense if he fails to take reasonable measures to control the fire.

SECTION ANALYSIS OF REVISED CODE

I. Haphazard Treatment of Arson-Related Offenses in Existing Law

One of the major defects with the existing Criminal Code is that it is extremely difficult to use. Because there has never been a comprehensive revision of the Criminal Code since Congress imposed most of Oregon's statutes on Alaska in 1899, there is little organization by subject matter in the existing statutes. Further, though new statutes have been added over the years, they can not always be found where one would expect them to be. This unfortunate situation is especially apparent in the area of arson and related offenses.

A person reading Title 11 for the first time would reasonably expect to find all arson-related offenses contained in the article entitled "Arson and Related Crimes". Indeed, four degrees of Arson, AS 11.20.010, 020, 030 and 050, and a statute covering Burning to Defraud an Insurer, AS 11.20.070 are found here. However, the provision covering Negligent Use of Combustible Materials, AS 11.15.340, is contained in the Offenses Against the Person chapter and not in the "Arson and Related Crimes" article. Further, while most arson-related offenses are contained in Title 11,

others appear completely outside the Criminal Code. For example, the Public Resources Title contains AS 41.15.150, which prohibits a person from "maliciously or wantonly set[ting] on fire timber, brush, grass or other inflammable material located or growing on lands that are not owned, possessed, or controlled by him". Violation of this statute carries a maximum 10-year sentence. Smith v. State, 531 P.2d 1273 (AK 1975). Other relevant statutes appearing outside existing Title 11 include AS 41.15.070, Disposal of Burning Materials; AS 41.15.690, Building a Fire Without Clearing Ground or Leaving Unextinguished Fire; and AS 41.15.110, Allowing Fire to Escape or Failure to Make Effort to Extinguish.

A. Analysis of Arson Provisions in Existing Title 11

Four degrees of arson are recognized in existing law with penalties ranging from 2 to 20 years for first degree arson to 1 to 2 years for fourth degree arson. To commit any degree of arson, the defendant must act "wilfully and maliciously", a term which emphasizes that the act sufficient to sustain a conviction for arson must be "criminal" and not just a result of "carelessness". State v. Paquin, 368 P.2d 85 (Or. 1962). While at common law arson was defined as the "malicious burning of a dwelling house of another", the four degrees of arson in existing Alaska law have significantly expanded this concept.

Under existing law a "burning" of the building is an essential element of the crime of arson, State v. Elwell, 209 P.616 (Or.1922). To constitute a burning there must

be an ignition of some part of the building resulting in a perceptible change in its composition, at common law called "charring". It is not necessary that the buildings should be consumed or even materially injured. This rule is retained in the Revised Code by providing that arson occurs whenever property is damaged.

The properties designated by AS 11.20.010 as the subjects of first degree arson are: (1) "a dwelling house, whether occupied, unoccupied or vacant, or (2) a kitchen, shop, barn, stable or other outhouse that is part of a dwelling, or belongs to or adjoins a dwelling, whether [the arsonist's] property or the property of another...." By including as a subject of arson the defendant's own property, the existing statute departs from the common law rule that the property burned had to be the property "of another".

Second Degree Arson, AS 11.20.020, prohibits the burning of "a building or structure of any kind" except those listed in first degree arson. Thus under existing law, the arson of an unoccupied outhouse is first degree arson, while arson of a crowded restaurant is only arson in the second degree.

AS 11.20.030 defines third degree arson. This statute contains some of the elements necessary for first and second degree arson; e.g., it punishes any person who "wilfully and maliciously" burns property, as well as any person who, with the same criminal intent, "aids, counsels or procures" the burning of property. However, third degree arson only occurs when "personal" property is burned. The

statute further requires that the property belong to someone other than the defendant.

AS 11.20.050 classifies as fourth degree arson an attempt to commit arson in the first, second or third degree, utilizing the definition of "attempted arson" appearing in AS 11.20.060.

AS 11.20.070 describes the offense of burning property with the intent to defraud an insurer.

Finally, AS 11.15.340 provides that a person ... "who negligently or recklessly causes a fire which results in physical harm to another person or damage to the property of another ..." has committed the offense of "Negligent Use of Combustible Materials".

B. The Code Provisions

The primary rationale of the revised arson article is the protection of human life and safety. The secondary rationale is the protection of property. The Revised Code provides for two degrees of arson, graded according to whether or not "protected property" is involved or whether or not there is danger to human life.

The Revised Code also includes the less serious crimes of reckless burning and criminally negligent burning, which require only that the defendant act with a "reckless" or "criminally negligent" culpable mental state as opposed to the "intentional" culpable mental state required for first and second degree arson.

While existing law provides that arson may be accomplished only by starting a fire, the Revised Code follows the lead of recent revisions to enlarge the crime of arson to expressly include damage by explosion as well as by fire.

Unlike existing law, the Revised Code treats an attempt to burn property, as it does an attempt to commit any other crime. See, Article 31, Attempt and Related Offenses. Also unlike existing law, the Revised Code does not contain a specific statute covering the destruction of property with the intent to defraud an insurer. Such activity usually amounts to either attempted or actual theft by deception from the insurance company if the damaged property belonged solely to the arsonist. However, if anyone other than the arsonist has a possessory or proprietary interest in the property, the conduct is punishable as second degree arson. Regardless of who owns the property, a burning to defraud an insurer amounts to first degree arson if another person is recklessly placed in danger of physical injury or if protected property of another is endangered.

Finally, the Revised Code will treat as criminal mischief both the intentional damaging of property of another by means other than fire or explosion, and the damaging by fire or explosion of property that is not a building or protected property, e.g., personal property, unless the conduct endangers another's life or protected property. TD AS 11.46.400(a)(2).

II. TD AS 11.46.400, 410 - ARSON IN THE FIRST AND SECOND DEGREES

TD AS 11.46.410, Arson in the Second Degree, prohibits the intentional damaging of a building of another that is not protected property by fire or explosion. Building is defined in Chapter 06 and discussed in this Tentative Draft at § I A of Article 2, Burglary and Criminal Trespass.

Because of the specific exclusion of protected property from the offense of arson in the second degree, the type of buildings covered by this section would be those that are not "customarily occupied" by people. Since this degree of arson would not ordinarily threaten human life or safety it is treated less severely than first degree arson, but nonetheless carries the heavy penalty of a Class B felony. For example, if Smith intentionally sets fire to Jones' storage shed he has committed arson in the second degree. However, if the shed were in close proximity to Jones' house, Smith could be guilty of first degree arson. TD AS 11.46.400(a)(2).

The Revised Code raises arson to first degree when the property involved is "protected property". "Protected property" is defined in TD AS 11.46.490(1) to include any "... structure, place or thing customarily occupied by people ...", regardless of whether it happened to be occupied at the time of the burning.

The commentary from the Oregon Revised Code provides the following guideline to be used in interpreting the phrase

"customarily occupied by people" as it is used within the definition of "protected property" in TD AS 11.46.490.

> In instructing jurors, in ruling on motions for judgment of acquittal, or wherever a determination must be made as to whether a certain structure, place or thing is "customarily occupied by people," we expect the following meanings to be used: for purposes of [TD AS 11.46.020] a building, structure or thing is customarily occupied by people if:
>
> (a) by reason of circumstances of time and place when the fire or explosion occurs, people are normally in the building, structure or thing, or
>
> (b) circumstances are such as to make the fact of occupancy by persons a reasonable possibility.
>
> Because it will normally be a jury question whether the state has proved that the building, structure or thing is "customarily occupied," the jury will be appropriately instructed that if they find it is customarily occupied the crime would be first degree arson; if they find it is not customarily occupied, the crime would be second degree arson.

ORS § 104.320, Commentary, at p.184.

The definition of protected property, in addition to dwellings, also specifically includes "buildings in which persons congregate for civic, political, education, religious or recreational purposes" to insure that the destruction of what is commonly thought of as "public buildings" is treated as the most serious form of arson.

Protected property also includes "land on which grass, brush, timber, and other natural vegetative material grows" which is the definition of "forested lands" appearing in AS 11.15.170. Because forest fires in Alaska ordinarily create both a high degree of risk to human safety and

substantial economic loss to the state, the intentional starting of such a fire is punished as first degree arson.

By specifically including within the definition of protected property, "property belonging wholly or in part to the actor's spouse," the Revised Code, consistent with existing AS 11.20.040, recognizes that arson occurs even though the property damaged belongs to the actor's spouse.

The Revised Code also classifies as first degree arson the intentional damaging of any property by fire or explosion when such act "recklessly places another person in danger of physical injury or protected property of another in danger of damage." TD AS 11.46.400(a)(2). This section requires that the arsonist act with the "intent" to destroy any property, but requires only that he act "recklessly" - consciously disregard a known, substantial and unjustifiable risk of harm - toward a person or "protected property of another".

III. TD AS 11.46.420, 430 - RECKLESS BURNING; CRIMINALLY NEGLIGENT USE OF COMBUSTIBLE MATERIALS

Existing AS 11.15.340, entitled Negligent Use of Combustible Materials, covers the person who "negligently or recklessly causes a fire which results in physical harm to another person or in damage to the property of another...." The offense is classified as a misdemeanor with a maximum penalty of one year's imprisonment.

Consistent with its approach in classifying offenses according to levels of blameworthiness, the Revised Code recognizes the offenses of reckless burning as well as criminally negligent burning. As noted at p.17 of Tentative Draft, Part 1, the reckless offender is more culpable than the criminally negligent defendant because he consciously disregards a known risk, while the criminally negligent offender is not aware of the risk and, hence, disregards it unconsciously. In the Revised Code, reckless burning is classified as a Class A misdemeanor while negligent burning is a Class B misdemeanor.

If the defendant does not "intend" to damage property but he is reckless, that is, he "consciously disregards a substantial and unjustifiable risk", resulting in damage to the property of another, he has committed the crime of Reckless Burning, TD AS 11.46.420. On the other hand, if the actor is merely criminally negligent, that is, he "fails to perceive a substantial and unjustifiable risk" (See, Tentative Draft, Part 2, at p.17 for commentary on definitions of "reckless" and "criminally negligent") resulting in damage to property of another, he has committed the crime of Criminally Negligent Burning, TD AS 11.46.430.

While existing AS 11.15.340 also covers conduct which negligently or recklessly causes "physical harm" to another person by fire, such conduct is more than adequately covered in the assault article of the Revised Code (See, Tentative Draft, Part 1, at p.36), and so is not covered in the arson article.

IV. TD AS 11.46.450 - FAILURE TO CONTROL OR REPORT A DANGEROUS FIRE

Existing AS 41.15.110(a) creates an affirmative duty on a person to exercise due care to prevent the uncontrolled spread of a fire when he knows of a fire or sets a fire on forest lands owned, possessed or controlled by him.

TD AS 11.46.450 broadens existing law by providing that the failure to control or report a dangerous fire is in some circumstances a criminal offense, regardless of whether it occurs on forest lands. The crime may be committed by people in either of two categories.

Subsection (a)(1) recognizes that a person " ... under an official, contractual or other legal duty to prevent or combat the fire" commits the crime if, knowing that the fire is dangerous, he either fails to take reasonable measures to control the fire or fails to give a prompt fire alarm.

Subsection (a)(2) places the same duty on any person, not just one who is under a duty to act, when the fire was started by him or with his assent, or if the fire was started on property in his custody.

ARTICLE 4. FORGERY AND RELATED OFFENSES.

Section

500 Forgery

510 Criminal Possession of a Forged Instrument

520 Criminal Possession of a Forgery Device

530 Criminal Simulation

540 Obtaining Signature by Deception

550 Offering a False Instrument for Recording

560 Defrauding a Coin Machine [RESERVED]

570 Criminal Impersonation

580 Definitions

Sec. 11.46.500. FORGERY. (a) A person commits the crime of forgery if with intent to defraud he

(1) falsely makes, completes or alters a written instrument; or

(2) utters a written instrument which he knows to be forged.

(b) Forgery is a class C felony.

Sec. 11.46.510. CRIMINAL POSSESSION OF A FORGED INSTRUMENT. (a) A person commits the crime of criminal possession of a forged instrument if, knowing it to be forged and with intent to utter it, he possesses a forged instrument.

(b) Criminal possession of a forged instrument is a class C felony.

Sec. 11.46.520. CRIMINAL POSSESSION OF A FORGERY DEVICE. (a) A person commits the crime of criminal possession of a forgery device if

(1) he makes or possesses with knowledge of its character any plate, die or other device, apparatus, equipment or article specifically designed for use in counterfeiting or otherwise forging written instruments; or

(2) with intent to use, or to 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.

(b) Criminal possession of a forgery device is a class C felony.

Sec. 11.46.530. CRIMINAL SIMULATION. (a) A person commits the crime of criminal simulation if

(1) with intent to defraud, he makes or alters any object in such a manner that it appears to have an antiquity, rarity, source or authorship that it does not in fact possess; or

(2) with knowledge of its true character and with intent to defraud, he utters or possesses an object so simulated.

(b) Criminal simulation is

(1) a class C felony if the value of what the object purports to represent is $500 or more;

(2) a class A misdemeanor if the value of what the object purports to represent is $50 or more but less than $500;

(3) a class B misdemeanor if the value of what the object purports to represent is less than $50.

Sec. 11.46.540. OBTAINING A SIGNATURE BY DECEPTION. (a) A person commits the crime of obtaining a signature by deception if with intent to defraud he causes another to sign or execute a written instrument by deception.

(b) Obtaining a signature by deception is a class A misdemeanor.

Sec. 11.46.550. OFFERING A FALSE INSTRUMENT FOR RECORDING. (a) A person commits the crime of offering a false instrument for recording if, knowing that a written instrument relating to or affecting real or personal property or directly affecting a contractual relationship contains a false statement or false information, and with intent to defraud, he presents or offers it to a public office or a public servant with the

knowledge or belief that it will be registered, filed or recorded or become a part of the records of that public office or public servant.

(b) Offering a false instrument for recording is a class A misdemean

Sec. 11.46.560. DEFRAUDING A COIN MACHINE. [RESERVED]

Sec. 11.46.570. CRIMINAL IMPERSONATION. (a) A person commits th crime of criminal impersonation if he

(1) assumes a false identity and does an act in his assumed character with intent to defraud; or

(2) pretends to be a representative of some person or organization and does an act in his pretended capacity with intent to defraud.

(b) Criminal impersonation is a class A misdemeanor.

Sec. 11.46.580. DEFINITIONS. (a) In secs. 500 - 570 of this chapter, unless the context otherwise requires

(1) to "falsely make" a written instrument means to make or draw a complete written instrument in its entirety, or an incomplete written instrument which purports to be an authentic creation of its ostensible maker, but which is not, either because the ostensible maker is fictitious or because, if real, he did not authorize the making or drawing of the instrument;

(2) to "falsely complete" a written instrument means to transform, by adding, inserting or changing matter, an incomplete writte instrument into a complete one without the authority of anyone entitled to grant it, so that the complete written instrument falsely appears or purports to be in all respects an authentic creation of its ostensibl maker or authorized by him;

(3) to "falsely alter" a written instrument means to change, without authorization by anyone entitled to grant it, a written instrument, whether complete or incomplete, by means of erasure, obliteration,

deletion, insertion of new matter, transposition of matter or in any other manner, so that the instrument so altered falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him.

(b) In secs. 500 - 570 of this chapter

(1) "complete written instrument" means one which purports to be a genuine written instrument fully drawn with respect to every essential feature;

(2) "forged instrument" means a written instrument which has been falsely made, completed or altered;

(3) "incomplete written instrument" means one which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument;

(4) "intent to defraud" means

(A) an intent to use deception or to injure someone's interest which has value; or

(B) knowledge that the defendant is facilitating a fraud or injury to be perpetrated or inflicted by someone else.

(5) "utter" means to issue, deliver, publish, circulate, disseminate, transfer or tender a written instrument or other object to another;

(6) "written instrument" means any paper, document, instrument, electronic recording or article containing written or printed matter or the equivalent, whether complete or incomplete, used for the purpose of reciting, embodying, conveying or recording information or constituting a symbol or evidence of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

ALASKA REVISED CRIMINAL CODE

CHAPTER 46. Offenses Against Property

ARTICLE 4. FORGERY AND RELATED OFFENSES

COMMENTARY

The Effect of the Revised Code Provisions on the Existing Law of Forgery and Related Offenses

1. Combines the numerous existing forgery provisions into one statute. This consolidation eliminates the unnecessary and confusing distinctions among the types of instrument that may be forged, the means by which forgery is accomplished, and the state of mind with which the prohibited acts are performed.
2. Expands the present law prohibiting the simulation and attempted sale of fake gold, ivory and jade to include the simulation of other articles such as antiques, works of art, and rare manuscripts.
3. Expands the present law prohibiting the obtaining of property by fraudulently obtaining a signature to include the attempted or actual obtaining of any benefit by deceptively obtaining a signature.
4. Specifically prohibits using an object such as a slug in a coin machine, which may not be covered by existing law.
5. Combines the various existing criminal impersonation statutes into a single section.

SECTION ANALYSIS OF REVISED CODE

INTRODUCTION

The forgery article prohibits conduct which is essentially preparatory to Theft, TD AS 11.46.100. As the draftsman of the Model Penal Code noted, a revision of the criminal law which deals effectively with theft, attempt and complicity diminishes the need for a separate offense of forgery. However, as in the case of the M.P.C.,

> [w]e retain forgery as a distinct offense partly because the concept is so embedded in statute and popular understanding that it would be inconvenient and unlikely that any legislature would completely abandon it, and partly in recognition of the special effectiveness of forgery as a means of undermining public confidence in important symbols of commerce, and of perpetrating large scale frauds.

M.P.C., Tentative Draft No. 11, Commentary at 80 (1960).

Under both existing law and the Revised Code, most forgery-related offenses are classified as felonies, reflecting the determination that they are serious crimes. That determination is based on the strong community interest in being able to rely on written instruments to be what they appear to be. Any modern economy runs on symbols of value - paper money, checks, bills of lading, deeds, credit cards, etc. - instead of tangible wealth. Forging such symbols should be strongly discouraged.

I. TD AS 11.46.500 - FORGERY

A. Existing Law

Currently, creating and passing forged articles

are covered by some sixteen statutes, which provide for various penalties depending on (1) what type of instrument is forged, (2) by what means the forging or passing was accomplished, and (3) with what culpable mental state the defendant acted when he forged or passed the instrument.

1. What Can Be Forged?

Punishable by a maximum of 20 years, with minimum sentences varying between 1 and 2 years, are forgeries of a "bank bill, promissory note, draft, check or other evidence of debt issued by a person or by [a government]," AS 11.25.020; "bank notes or other genuine instruments," AS 11.25.060; "an instrument or writing purporting to be a note, draft or other evidence of debt issued by [a] corporation," AS 11.25.090; and the following items listed in AS 11.25.010:

> a public record, certificate, return, or attestation of a clerk, notary public, or other public officer in relation to a matter in which the certificate, return or attestation may be received as legal evidence, or a note, certificate, or other evidence of debt issued by an officer of the state, or borough, town or other municipal or public corporation, authorized to issue it, or a contract, charter, letters, patent, deed, lease, bill of sale, will, testament, bond, writing obligatory, undertaking, letter of attorney, policy of insurance, bill of lading, bill of exchange, promissory note, evidence of debt, or any acceptance of a bill of exchange, endorsement or assignment of a promissory note, or a warrant, order, check, money, other property, a receipt for money or other property, an acquittance or discharge for money or other property, or a plat, draft, or survey of land...

Subsequent violations of any of these statutes carry a minimum

sentence which is the maximum sentence authorized under the particular statute, which in some cases amounts to 20 years. AS 11.25.110.

Punishable by a 1-10 year sentence is the forgery or counterfeiting of a "gold, silver or other coin which is current by law or usage in the State". AS 11.25.040. A subsequent conviction carries a minimum 10 year sentence. AS 11.25.110.

Punishable by 1-5 years is the altering or defacing of "an artificial earmark, button or brand upon a horse, mare, gelding, foal, mule, ass, jenny, bull, cow, steer, calf, sheep, swine, goat, reindeer or fox," AS 11.20.180; and the forgery of any of the following items listed in AS 11.25.070:

> a receipt or other written evidence of the delivery into a warehouse, commission house, forwarding house, mill, store, or other building occupied by him or his employer, of any grain, flour, pork, beef, wool, or other goods, wares, or merchandise which have not been received or delivered previous to the making and uttering of the receipt or other written evidence of delivery....

Punishable by imprisonment of 3 months - 1 year are forgeries of "books, papers, writings, or securities belonging to or in the possession of [a] corporation or company." AS 11.20.430; and any "written or printed statement or account relating to the liabilities, assets or property of [a] corporation or company." AS 11.20.440. A sentence of 1-6 months is provided for the forgery of "the private brand, label, stamp or trademark of another." AS 11.25.080.

2. By What Means Can Forgery be Accomplished?

The second way in which existing law distinguishes among forgeries is the means by which the making or passing of the forged instrument is accomplished.

Punishable by maximum twenty year term, with a minimum of 1 or 2 years, are forgeries accomplished by affixing a fictitious signature, AS 11.25.090, and by connecting "different parts of bank notes or other genuine instruments," AS 11.25.060. While AS 11.25.010 provides that forgery of a public record can be accomplished by "mak[ing], alter[ing], forg[ing], counterfeit[ing], print[ing] or photograph[ing]", forgery of evidence of a debt can only be accomplished by "mak[ing], alter[ing], forg[ing] or counterfeit[ing]". AS 11.25.020. Punished in the same manner are the use of forgeries "by utter[ing] or pass[ing] as true," AS 11.25.010; and "utter[ing], publish[ing], pass[ing] or tender[ing] in payment," AS 11.25.020. Punishable by a 1 - 5 year term is a forgery accomplished by "making or altering". AS 11.25.070.

The remaining means by which forgery can be accomplished are punished by 3 month - 1 year terms of imprisonment: "destroy[ing], alter[ing], mutilat[ing] or in any manner falsify[ing] or concur[ring] therein", AS 11.20.430; and "mak[ing], circulat[ing], publish[ing] or concur[ring] therein", AS 11.20.440.

3. With What Culpable Mental State Did the Defendant Act?

The distinctions among types of forged instruments and the methods by which they can be forged discussed above, while probably unnecessary and inconsistent, are at least not difficult to understand. The final way in which existing law distinguishes among the various forgery crimes, however, is confusing to anyone who tries to read meaning into differences in language, as judges and lawyers are prone to do.

The existing statutes provide for at least seven different states of mind, or "intent", with which an article can be forged or passed. AS 11.25.070 requires that the defendant act "wilfully or knowingly". Other statutes include a "wilfully and knowingly" requirement but require additionally that the defendant act "with intent to deceive", AS 11.25.080; "with intent to defraud or deceive", AS 11.20.430-440; or "with intent to convert [the altered property] to his own use", AS 11.20.180. Other statutes require an act "with intent to injure or defraud", AS 11.25.010; or "with intent to injure or defraud another", AS 11.25.020. More specifically, still other statutes require that a forgery be made or possessed "with intent to utter or pass ... as true or genuine." AS 11.25.020, 060, 090.

B. The Code Provision

All of the conduct prohibited by the dozen or more specific existing statutes on forgery is also prohibited

by Article 4 of the Revised Code, Forgery and Related Offenses.

The single most comprehensive simplification was accomplished in the basic Forgery statute, TD AS 11.46.500. The Revised Code does not make liability depend on what type of article is forged or passed, but simply punishes the forging or uttering of a "written instrument."

"Written instrument" is defined broadly in TD AS 11.46.580(b)(6) as

> any paper, document, instrument, electronic recording or article containing written or printed matter or the equivalent, whether complete or incomplete, used for the purpose of reciting, embodying, conveying or recording information or constituting a symbol or evidence of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person;

This definition not only includes all of the different documents specifically listed in AS 11.25.010, 11.25.020, 11.25.060, 11.25.070, 11.25.090, 11.20.430, and 11.20.440, but also includes such non-documentary articles as coins, 11.25.040; animal brands or identification marks, 11.20.180; and private trademarks or labels, 11.25.080. The defintion is also broad enough to cover such recent innovations as microfilm, electronic tape and computerized records. The effect of this definition is to restore the common law principle that forgery can be committed with respect to "any writing", as well as its modern day equivalents, which may be "the means of defrauding another." See, N.Y. Penal Law § 170.00, Commentary at 270.

The Code Provision eliminates the element appearing in some of the current statutes that the forgery be accomplished

by "a person being or assuming to be an officer, agent or member of a private corporation or company." AS 11.20.430, 440. Under the Revised Code, forgery can be committed by any person.

TD AS 11.56.500 also combines all the different methods of creating and passing forged instruments into a single crime. Under the Revised Code, forgery is committed if a person "falsely makes, completes, or alters a written instrument." TD AS 11.46.580(a)(1), (2) and (3) define "falsely make", "falsely complete" and "falsely alter" to include the conduct currently covered by separate statutes on using a fictitious signature, AS 11.25.090; combining parts of genuine instruments, AS 11.25.060; as well as the more general statutes on making, altering, forging or counterfeiting, AS 11.25.010, 020, 070. TD AS 11.46.580(b)(1) and (3) define "complete written instrument" and "incomplete written instrument," both of which are used in the definitions of "falsely make," "falsely complete" and "falsely alter."

Under both existing law and the Revised Code, forgery is committed not only by the person who actually creates the instrument, but also by the person who uses the instrument knowing it to be forged. The different ways of using forged instruments are combined into the requirement of TD AS 11.56.500(a)(2) that the defendant "utter" the instrument. "Utter" is defined in TD AS 11.56.580(b)(5) to include all the various methods of making use of the instrument proscribed by existing law.

Finally, the Revised Code provides for a single state of mind - "intent to defraud" - to replace the bewildering variety of mental states required by the existing statutes. TD AS 11.56.580(b)(4)(a) defines "intent to defraud" as "an intent to use deception or to injure someone's interest which has value." "Deception" is defined and discussed in the commentary to Chapter 46, Article 1, appearing in this report. TD AS 11.56.580(b)(4)(B) provides that an "intent to defraud" includes not only conduct undertaken for personal gain, but also acts performed with the knowledge that the actor is "facilitating fraud or injury to be perpetrated or inflicted by someone else." This is to make it clear that a forger commits an offense even though he does not defraud the person to whom he sells or passes the forged instrument. For example, in Fairbanks recently a charge of forging residence cards was dismissed because the forger informed his buyers that the cards were forged. Under the Revised Code, that defendant would have been guilty of forgery because he knowingly "facilitat[ed] a fraud or injury to be perpetrated or inflicted by someone else."

II. TD AS 11.56.510 - CRIMINAL POSSESSION OF A FORGED INSTRUMENT

A. Existing Law

Existing law includes at least two statutes which prohibit the mere possession of a forged instrument: AS 11.25.040, Possession of Counterfeit Coins, and AS 11.25.020, Possession of Forged Evidence of Debt. Both provisions require that the defendant know the article to be false and intend

"to utter or pass it as true and genuine." Possession of forged instruments other than those specified is not prohibited.

B. The Code Provision

The Revised Code provides that possession of any forged instrument is a criminal offense if the defendant has knowledge that the instrument was forged, and intends to utter it. In providing that the penalty for possession of a forged instrument is identical to the penalty for forgery, the Revised Code recognizes that the threat to the community is essentially the same whether or not the possessor created the forgery himself.

III. TD AS 11.46.520 - CRIMINAL POSSESSION OF A FORGERY DEVICE

A. Existing Law

Existing law punishes the possessor or maker of a tool for counterfeiting coins with a 1-10 year sentence, AS 11.25.050, but punishes the maker or possessor of a tool for forging an evidence of debt with a 1-5 year sentence, AS 11.25.030. Both statutes require that the tool be "adapted and designed" for forgery, and that the possession be "with intent to use it or cause or permit it to be used" for forging. Existing law does not prohibit the possession of tools which can be used only to forge articles which are not coins or evidences of debt.

B. The Code Provision

TD AS 11.46.520 reaches back to a point before actual forgery commences to penalize those who possess

either (1) devices with little or no use other than forgery, or (2) other devices that can be adapted and are intended to be adapted for use in committing forgery.

The statute combines the substance of the two existing provisions, but with two significant modifications: (1) the prohibition is extended to include devices for forging any "written instrument" as that term is defined in TD AS 11.46.580(6), and (2) the manufacture or possession of a device specifically designed for use in counterfeiting or forging written instruments is made a criminal act by TD AS 11.46.520(a)(1), while an intent to use the device unlawfully is required only with respect to devices "capable of or adaptable to" use in such counterfeiting or forgery. TD AS 11.46.520(a)(2).

IV. TD AS 11.46.530 - CRIMINAL SIMULATION

A. Existing Law

Provisions in existing law covering the disguising of an object for criminal purposes include AS 11.25.120 and 130, Adulterating Gold Dust and Possession of Adulterated Gold Dust, which were adopted in the days when gold dust was the principal currency in Alaska. The statutes require that the actor adulterate, pass or possess the gold dust with intent to pass it as true or genuine.

Existing law also prohibits in AS 11.20.510 the "sale or attempted sale" of

> imitation gold nuggets manufactured of any material other than gold, nuggets manufactured of gold, or imitation Alaskan jade or ivory, or jewelry containing imitation gold nuggets, or nuggets manufactured of gold or imitation Alaskan jade or ivory, without having a label affixed, setting forth in legible type or writing the material used in the nuggets, jade or ivory, or jewelry containing the nuggets, jade or ivory....

B. The Code Provision

The chief application of TD AS 11.46.530 is directed at fraudulent misrepresentation of antique or rare objects such as counterfeit paintings or other objects of art, antiques, books, manuscripts, archeological artifacts, and the like. The three provisions in existing law touch on this type of conduct, but there is no general provision covering this problem. While a completed transaction will amount to Theft, this statute allows intervention at a time even prior to the attempted passing of the simulated article. As noted in the commentary to the Proposed Michigan Revised Criminal Code,

> preparation of this sort of object shows careful advance planning, and since the monetary stakes are often very high, it appears appropriate to penalize the preparation as such, particularly when apprehension of the criminal after the final frauds have been perpetrated is often very difficult....

Proposed Michigan Revised Criminal Code § 4025, Commentary at 272.

V. TD AS 11.46.540 - OBTAINING A SIGNATURE BY DECEPTION

A. Existing Law

AS 11.20.360, Obtaining Money or Property by False

Pretenses, provides for the punishment of a person "... who obtains, or attempts to obtain, with intent to defraud, the signature of a person to a writing, the false making of which is a forgery ... " There has been no appellate decision interpreting the scope of this provision in Alaska, or in Oregon whose similar provision was repealed in 1973.

B. The Code Provision

TD AS 11.46.540 provides that a person commits a Class A misdemeanor if he "causes another to sign or execute a written instrument by deception" such as a letter of recommendation to a prospective employer. The definition of "deception" is discussed in this report in the commentary to Article 1, Theft and Related Offenses.

To fall within this section, the signature must be obtained "with intent to defraud". The phrase "intent to defraud" is discussed, supra, at § I B.

TD AS 11.46.540 is necessary because the obtaining of the signature by deception will not always be covered by other sections of the Revised Code. The conduct is not Forgery, TD AS 11.46.500, because the resulting document is not a "forged written instrument." The document is precisely what it purports to be - it just would not have been created without the defendant's deception. The conduct is also not Theft, TD AS 11.46.100, because a signature is not "property", as required by that statute.

VI. TD AS 11.46.550 - OFFERING A FALSE INSTRUMENT FOR RECORDING

A. Existing Law

Existing law prohibits the procuring or offering of a "false or forged instrument to be filed, registered or recorded in a public office...." AS 11.30.270.

B. The Code Provision

The Revised Code punishes the filing of a forged instrument in the public records just as it does any other uttering of a forged written instrument - as Forgery, TD AS 11.46.500. TD AS 11.46.550 is necessary to cover the filing of a written instrument, done with an intent to defraud, knowing that it contains false statements or information.

The coverage of this statute is limited to written instruments "relating to or affecting real or personal property or directly affecting a contractual relationship" because the files containing these documents are consulted and relied upon by the general public. False statements on an application to the government for a benefit, or on a form bearing notice that false statements within that form are punishable, are punished as Unsworn Falsification. TD AS 11.56.200. False statements on notarized forms are punished as Perjury, TD AS 11.56.210.

VIII. TD AS 11.46.570 - CRIMINAL IMPERSONATION

A. Existing Law

Assuming a false identity for a criminal purpose is prohibited by several different existing statutes. If property is obtained, the impersonator has committed Larceny by Trick or False Personation, AS 11.20.200. He may also have violated AS 11.20.450, False Pretense on Soliciting for an Organization; AS 11.20.500, Unauthorized Use of Badge or Emblem of Societies; or even AS 11.20.410, Fraudulently Producing Heir.

B. The Code Provision

The Revised Code combines the various existing statutes into one section. A defendant who assumes a false identity or falsely claims to represent someone else commits criminal impersonation when he does an act in that character with intent to defraud.

This statute can be used to arrest a professional con man as soon as he is discovered to be a fake, without having to take the risk of waiting for him to make substantial progress in his scheme.

ARTICLE 6. GENERAL PROVISIONS.

Section

980 Value of Property

990 Definitions

Sec. 11.46.980. VALUE OF PROPERTY. (a) In this chapter, whenever it is necessary to determine the value of property, that value is the market value of the property at the time and place of the criminal act, unless otherwise specified, or, if the market value cannot reasonably be ascertained, the cost of replacement of the property within a reasonable time after the crime.

(b) The value of written instruments, exclusive of public and corporate bonds and securities and other instruments having a readily ascertainable market value, shall be determined in the following manner:

(1) the value of an instrument constituting an evidence of debt, including but not limited to a check, draft or promissory note, is the amount due or collected on the instrument;

(2) the value of any other instrument that affects a valuable legal right, privilege or obligation shall be considered the greatest amount of economic loss which the owner of the instrument might reasonably incur because of the loss of the instrument.

(c) In determining the degree of an offense under this chapter, amounts involved in criminal acts committed under one course of conduct, whether from the same person or several persons, shall be aggregated.

Sec. 11.46.990. DEFINITIONS. In this chapter, unless the context otherwise requires,

(1) "appropriate" or "appropriate property of another to oneself or a third person" means to

(A) exercise control over property of another, or to aid a third person to exercise control over property of another, permanently or for so extended a period or under such circumstance as to acquire the major portion of the economic value or benefit o the property; or

(B) dispose of the property of another for the benefit of oneself or a third person;

(2) "deception"

(A) means to knowingly

(i) create or confirm another's false impression of law, value, intention or other state of mind which the defendant does not believe to be true;

(ii) fail to correct a false impression which the defendant previously has created or confirmed;

(iii) prevent another from acquiring information pertinent to the disposition of the property or service involved;

(iv) sell or otherwise transfer or encumber property failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether that impediment is or is not a matter of official record; or

(v) promise performance which the defendant does not intend to perform or knows will not be performed;

(B) does not include falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed;

(3) "deprive" or "deprive another of property" means to

(A) withhold property of another or cause property of another to be withheld from him permanently or for so extended a

period or under such circumstances that the major portion of its economic value or benefit is lost to him;

(B) dispose of the property in such manner or under such circumstances as to make it unlikely that the owner will recover the property;

(C) retain the property of another with intent to restore it to him only if he purchases or leases it back, or pays a reward or other compensation for its return;

(D) sell, give, pledge or otherwise transfer any interest in the property of another; or

(E) subject the property of another to the claim of a person other than the owner;

(4) "financial institution" means a bank, insurance company, credit union, building and loan association, investment trust or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment;

(5) "government" means the United States, any state or any municipality or other political subdivision within the United States or its territories; any department, agency or subdivision or any of the foregoing; an organization carrying out the functions of government; or any corporation or agency formed under interstate compact or international treaty.

(6) "obtain" means

(A) in relation to property, to bring about a transfer or a purported transfer of a legal interest in the property whether to the obtainer or another or to exert control over property of another; or

(B) in relation to a service, to secure performance of the service without payment for the service or by imposing payment on a third person who did not request or use the service;

(7) "property" means an article, substance or thing of value, including but not limited to money, tangible and intangible personal property, real property, choses-in-action, and evidence of debt or of contract; a commodity of a public utility such as gas, electricity, steam, and water constitutes property but the supplying of such a commodity to premises from an outside source by means of wires, pipes, conduits or other equipment shall be considered a rendition of a service rather than a sale or delivery of property;

(8) "property of another" means property in which a person has an interest which the actor is not privileged to infringe, whether or not the actor also has an interest in the property. The term does not include property in the possession of the actor in which another has only a security interest, even if legal title is in the secured party pursuant to a conditional sales contract or other security agreement. In the absence of a specific agreement to the contrary, the holder of a security interest in property is not privileged to infringe the debtor's right of possession without consent;

(9) "services" includes but is not necessarily limited to labor, professional services, transportation, telephone or other communications service, entertainment, the supplying of food, lodging or other accommodations in hotels, restaurants or elsewhere, admission to exhibitions and the supplying of equipment for use;

(10) "threat" means

(A) a menace, however, communicated, to

(i) cause physical injury in the future to a person;

(ii) cause damage to property;

(iii) subject a person to physical confinement or restraint;

(iv) engage in other conduct constituting a crime;

(v) accuse a person of a crime or cause criminal charges to be instituted against a person;

(vi) expose a secret or publicize an asserted fact, whether true or false, tending to subject a person to hatred, contempt or ridicule or to impair his credit or business repute;

(vii) testify or provide information or withhold testimony or information with respect to another's legal claim or defense;

(viii) use or abuse one's position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely;

(ix) bring about or continue a strike, boycott or other collective action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act; or

(x) inflict any other harm which would not benefit the person making the threat;

(B) the offer to protect another person from an act described in (A) of this paragraph when the offeror has no apparent means to provide the protection or when the price asked for rendering the protective service is grossly disproportionate to its cost to the offeror.

APPENDIX I.

ALASKA REVISED CRIMINAL CODE

Chapter 46 - Offenses Against Property

DERIVATIONS

ARTICLE 1 - THEFT AND RELATED OFFENSES

TD AS 11.46.100-190 - Consolidated Theft Statutes

These sections are based on ORS 164.015-065 and ORS 164.085-095.

TD AS 11.46.195 - Extortion

This section is based on ORS 164.075.

TD AS 11.46.200 - Theft of Services

This section is based on ORS 164.125.

TD AS 11.46.210 - Theft by Failure to Make Required Disposition of Funds Received

This section is based on Hawaii Penal Code § 708-830(7).

TD AS 11.46.220; 230 - Concealment of Merchandise; Reasonable Detention as a Defense

These sections are based on existing AS 11.20.275; 277.

TD AS 11.46.240 - Unauthorized Use of Propelled Vehicle

This section is based on ORS 164.135 and existing AS 28.35.010.

TD AS 11.46.250 - Unauthorized Occupancy of a Propelled Vehicle

This section is based on Proposed Michigan Revised Criminal Code § 3235.

TD AS 11.46.260; 270 - Removal of Identification Marks, Unlawful Possession

These sections are based on Hawaii Penal Code §§ 708-838; 839.

ARTICLE 2 - BURGLARY AND CRIMINAL TRESPASS

TD AS 11.46.300; 310 - Burglary in the First and Second Degrees

These sections are based on ORS 164.215; 225.

TD AS 11.46.320; 330 - Criminal Trespass in the First and Second Degrees

These sections are based on ORS 104.245; 255.

TD AS 11.46.340 - Defense: Emergency use of Premises

This section is based on existing AS 11.20.135.

TD AS 11.46.350 - Definitions

This section is based on New York Penal Law § 140.00(5).

ARTICLE 3 - ARSON, CRIMINAL MISCHIEF AND RELATED OFFENSES

TD AS 11.46.400; 410 - Arson in the First and Second Degrees

These sections are based on ORS 164.315; 325.

TD AS 11.46.420 - Reckless Burning

This section is based on ORS 164.335.

TD AS 11.46.430 - Criminally Negligent Burning

This section is based on existing AS 11.15.340.

TD AS 11.46.450 - Failure to Control or Report a Dangerous Fire

This section is based on New Jersey Proposed Penal Code § 2C:17-1(c).

TD AS 11.46.490 - Definitions

This section is based on ORS 164.305 and AS 41.15.170(3).

ARTICLE 4 - FORGERY AND RELATED OFFENSES

TD AS 11.46.500 - Forgery

This section is based on ORS 165.007.

TD AS 11.46.510 - Criminal Possession of a Forged Instrument

This section is based on ORS 165.017.

TD AS 11.46.520 - Criminal Possession of a Forgery Device

This section is based on ORS 165.032.

TD AS 11.46.530 - Criminal Simulation

This section is based on ORS 165.037.

TD AS 11.46.540 - Obtaining a Signature by Deception

This section is based on Proposed Michigan Revised Criminal Code § 4030.

TD AS 11.46.550 - Offering a False Instrument for Recording

This section is based on Proposed Michigan Revised Criminal Code § 4035.

TD AS 11.46.570 - Criminal Impersonation

This section is based on Proposed Michigan Revised Criminal Code § 4055.

TD AS 11.46.580 - Definitions

With the exception of TD AS 11.46.580(b)(4), these definitions are based on ORS 165.002. TD AS 11.46.580(b)(4) is based on Proposed Michigan Revised Criminal Code § 4001(b).

ARTICLE 6 - GENERAL PROVISIONS

TD AS 11.46.980 - Value of Property

Subsections (a) and (b) are based on ORS 164.115 (1) and (2). Subsection (c) is based on Proposed Michigan Revised Criminal Code § 3201(m).

TD AS 11.46.990 - Definitions

Subsection (1) is based on ORS 164.005(1).

Subsection (2) is based on ORS 164.085(1)(a) - (e) and (2).

Subsection (3) is based on ORS 164.005(2) and Proposed Michigan Revised Criminal Code § 3201(b).

Subsections (4) and (5) are based on Proposed Michigan Revised Criminal Code § 3201(c) and (a).

Subsection (6) is based on ORS 164.005 and Proposed Michigan Revised Criminal Code § 3201(c).

Subsection (7) is based on ORS 164.005(5) and Proposed Michigan Revised Criminal Code § 3201(i).

Subsection (8) is based on § 708-800(16) of the Hawaii Penal Code, ORS 164.105(3) and N.Y. Revised Penal Law § 155.00(5).

Subsection (9) is based on Proposed Michigan Revised Criminal Code § 3220(2).

Subsection (10)(A) is based on ORS 164.075(1)(a)-(i). Subsection (10)(B) is based on existing AS 11.20.345(c).

APPENDIX II

EXISTING LAW

ARTICLE 1. THEFT AND RELATED OFFENSES

Sec. 11.20.140. LARCENY OF MONEY OR PROPERTY. A person who steals money, goods, or chattels, or a government note, a bank note, promissory note, bill of exchange, bond, or other thing in action, or a book of accounts, order or certificate concerning money or goods due or to become due or to be delivered, or a deed or writing containing a conveyance of land or interest in land, or a bill of sale, or writing containing a conveyance of goods or chattels or interest in them, or any other valuable contract in force, or a receipt, release, or defeasance, or a writ, process, or public record, which is the property of another, is guilty of larceny. Upon conviction, if the property stolen exceeds $250 in value, a person guilty of larceny is punishable by imprisonment for not less than one nor more than 10 years. If the property stolen does not exceed $250 in value, the person, upon conviction, is punishable by imprisonment for not less than one month nor more than one year, or by a fine of not less than $25 nor more than $250, or by both.

Sec. 11.20.145. DRIVING OR TAKING WATERCRAFT OR AIRCRAFT WITHOUT THE OWNER'S CONSENT. (a) A person who drives, tows away, or takes a watercraft or an aircraft not his own without the consent of the owner, with intent temporarily to deprive the owner of possession of the watercraft or aircraft or a person who is a party or accessory to or an accomplice in the unauthorized driving, towing, or taking, is guilty of a misdemeanor, and upon conviction is punishable by imprisonment for not more than one year, or by a fine of not more than $1,000, or by both. The consent of the owner of a watercraft or an aircraft 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 watercraft or aircraft by the same or a different person.

(b) 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.

(c) In this section

(1) "watercraft" means and includes any device upon or by which a person or property is or may be transported or drawn upon water;

(2) "aircraft" means a device which was designed and meant to be used for the transportation of person or property above the surface of the earth or water;

(3) "person" 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 watercraft or an aircraft with authority under law to do so.

Sec. 11.20.146. CONVICTION IN LARCENY PROSECUTION. In a criminal prosecution for larceny, if the facts do not warrant a conviction of the defendant for larceny, he may, nevertheless, be convicted of a violation of § 145 of this chapter if the facts so warrant.

Sec. 11.20.150. LARCENY IN BUILDING OR VESSEL. A person who commits the crime of larceny in a dwelling house, banking house, office, store, shop, or warehouse, or in a ship, steamboat, or other vessel, or who breaks and enters in the night or daytime a church, courthouse, meeting house, town house, college, academy, or other building erected or used for public uses, and commits the crime of larceny in it, is punishable by imprisonment in the penitentiary for not less than one nor more than seven years.

Sec. 11.20.160. LARCENY OF ANIMALS. A person who commits the crime of larceny by stealing a horse, gelding, mare, colt, mule, ass, jenny, bull, steer, cow, calf, goat, sheep, reindeer, fox, dog or other animal, upon conviction, is punishable,

(1) if the property stolen exceeds $50 in value, by imprisonment in the penitentiary for not less than one nor more than 10 years;

(2) if the property stolen does not exceed $50 in value, by imprisonment in jail for not less than one month nor more than one year, or by a fine of not less than $25 nor more than $100.

Sec. 11.20.190. LARCENY OF MINERALS. A person who takes, removes or conceals any ore, mineral,

amalgam, precipitates, concentrates, or other mineral-bearing substance, from a mine, sampler, smelter, concentrating mill, chlorination mill, cyanide mill, or other reduction works, with the intent to steal it or to defraud the owner of it, is guilty of grand larceny, and upon conviction is punishable by imprisonment in the penitentiary for not less than one year nor more than 10 years.

Sec. 11.20.200. LARCENY BY TRICK OR FALSE PERSONATION. A person who falsely personates or represents another, and in that assumed character receives or obtains money, labor or property intended to be delivered to the person personated or represented, with intent to defraud or to convert it to his own use, or who knowingly by a false or fraudulent representation or pretense, defrauds another person of money, labor or property, is guilty of larceny and upon conviction is punishable accordingly.

Sec. 11.20.260. RETENTION OF LOST PROPERTY. A person who finds lost property and appropriates it to his own use or to the use of another person not entitled to it, without (1) immediately or within a reasonable time advertising that fact in a paper of general circulation published nearest the place where found, and setting out a full and true description of the property, with marks of identification, if any, or (2) notifying the peace officer nearest to the place where found and giving a full and true description of the property, together with the time, place and circumstances under which found, is guilty of larceny and is punishable as provided in § 140 of this chapter. The finder of the property may retain it until reimbursed for the cost of advertising and preserving or protecting the property.

Sec. 11.20.275. CONCEALMENT OF MERCHANDISE. (a) A person who, without authority, wilfully conceals upon or about his person the goods or merchandise of a retail business establishment, not theretofore purchased by the person, while still upon the premises of the retail business establishment, with intent to deprive the owner of the goods or merchandise, shall be guilty of a misdemeanor and, upon conviction, is punishable by a fine of not more than $500, or by imprisonment for not more than six months, or by both.

(b) Goods or merchandise found concealed upon or about the person and which have not theretofore been purchased by the person are prima facie evidence of a wilful concealment.

Sec. 11.20.276. SUBSEQUENT CONVICTION FOR CONCEALMENT. A person found guilty of a second or subsequent offense of wilful concealment of goods as defined in § 275 of this chapter is guilty of a misdemeanor and is punishable in the discretion of the court.

Sec. 11.20.277. REASONABLE DETENTION AS DEFENSE. (a) In a civil or criminal action brought by a person having been detained on or in the immediate vicinity of the premises of a mercantile establishment for the purpose of investigation or questioning as to the ownership of merchandise, it is a defense that the person was detained in a reasonable manner and for not more than a reasonable time to permit investigation or questioning by a peace officer or by the owner of the mercantile establishment, his authorized employee or agent, and that the peace officer, owner, employee or agent had reasonable grounds to believe that the person detained was committing or attempting to commit a crime as defined in § 275 of this chapter.

(b) In this section "reasonable grounds" includes knowledge that a person has concealed upon or about his person unpurchased merchandise of the mercantile establishment, and reasonable time means the time necessary to permit the person detained to make a statement or to refuse to make a statement, and also the time necessary to examine employees and records of the mercantile establishment relative to the ownership of the merchandise.

Sec. 11.20.280. EMBEZZLEMENT BY EMPLOYEE OR SERVANT. An officer, agent, clerk, employee, or servant who embezzles or fraudulently converts to his own use, or takes or secretes with intent to embezzle or fraudulently convert to his own use, money, property, or thing of another which may be the subject of larceny, and which has come into his possession or is under his care by virtue of his employment is guilty of embezzlement. If the property embezzled exceeds $100 in value, a person guilty of embezzlement is punishable by imprisonment in the penitentiary for not less than one year nor more than 10

years. If the property embezzled does not exceed the value of $100, a person guilty of embezzlement is punishable by imprisonment in a jail for not less than one month nor more than one year, or by a fine of not less than $25 nor more than $100.

Sec. 11.20.290. EMBEZZLEMENT BY BAILEE. (a) A bailee, with or without hire, who embezzles, or wrongfully converts to his own use, or who secretes, with intent to convert to his own use, or who fails, neglects, or refuses to deliver, keep, or account for, according to the nature of his trust, money or property of another delivered or entrusted to his care or control which may be the subject of larceny is guilty of embezzlement and is punishable as provided in § 280 of this chapter.

(b) If a bailee receives grain from different bailors, and mixes and stores it together in bulk, it is not necessary to charge in the indictment or prove on the trial that the ownership of the grain is in more than one bailor.

(c) A mortgagor of personal property having possession of property mortgaged is a bailee within the meaning of this section.

Sec. 11.20.300. EMBEZZLEMENT OF PUBLIC MONEY. A person who receives money for the state or a borough, town or other municipal or public corporation, or who has in his possession money belonging to the state, borough, town, or other municipal or public corporation, or in which any of the foregoing has an interest, and who converts it or any portion to his own use or loans it or any portion, or neglects or refuses to pay it or any portion over as required by law, or when lawfully demanded to do so, is guilty of embezzlement, and upon conviction is punishable by imprisonment in the penitentiary for not less than one year nor more than 15 years, and by a fine equal to twice the amount converted, loaned, or neglected or refused to be paid.

Sec. 11.20.310. JURY ASCERTAINS AMOUNT OF PUBLIC MONEY EMBEZZLED. In a prosecution under § 300 of this chapter the amount of the money converted, loaned, or neglected or refused to be paid shall be ascertained by the verdict of the jury as near as may be.

Sec. 11.20.320. CLAIM AGAINST STATE, ETC., NOT A DEFENSE. The defendant in a prosecution under § 300 of this chapter may not set up or prove a private demand which he may have or claim to have against the state, borough, town, or other municipal or public corporation as a defense.

Sec. 11.20.330. EMBEZZLEMENT BY TRUSTEE. A trustee of property for the benefit of another, or for a public or charitable use, who, with intent to defraud, converts the property or any portion to his own use or benefit, or to the use and benefit of another not entitled to it, is punishable in accordance with § 280 of this chapter.

Sec. 11.20.340. EMBEZZLEMENT BY FIDUCIARY. A banker, broker, merchant, attorney, or agent, entrusted with the property of another, who, with intent to defraud, converts the property or any portion to his own use or benefit, or to the use or benefit of another not entitled to it, upon conviction, is punishable in accordance with § 280 of this chapter.

Sec. 11.20.345. EXTORTION. (a) A person is guilty of extortion if he obtains the property of a person by threatening to or suggesting that he or another may

(1) inflict bodily injury on anyone, except under circumstances constituting robbery, or commit any other criminal offense;

(2) accuse anyone of a criminal offense;

(3) expose confidential information or a secret, whether true or false, tending to subject a person to hatred, contempt or ridicule, or to impair his credit or business repute;

(4) take or withhold action as a public official, or cause a public official to take or withhold action;

(5) bring about or continue a strike, boycott or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the person making the threat or suggestion purports to act;

(6) testify or provide information or withhold testimony or information with respect to a person's legal claim or defense; or

(7) inflict any other harm which would not benefit the person making the threat or suggestion.

(b) A person who is convicted of extortion is punishable by a fine of not more than $5,000, or by imprisonment for not more than five years, or by both.

(c) A threat or suggestion to perform any of the acts described in (a) of this section includes an offer to protect another from any harmful act when the offeror has no apparent means to provide the protection or where the price asked for rendering the protection service is grossly disproportionate to its cost to the offeror.

(d) It is a defense to prosecution based on (a)(2),(3) or (4) of this section that the property obtained by threat of accusation, exposure, lawsuit or other invocation of official action was honestly claimed as restitution or indemnification for harm done in the circumstances to which the accusation, exposure, lawsuit or other official action relates, or as compensation for property or lawful services.

Sec. 11.20.350. BUYING, RECEIVING, OR CONCEALING STOLEN PROPERTY. (a) A person who buys, receives, or conceals money, goods, bank notes, or other thing which may be the subject of larceny and which has been taken, embezzled, or stolen from another person, knowing it to have been taken, embezzled, or stolen, is upon conviction punishable by a fine of not more than $1,000 and by imprisonment for not less than one year nor more than three years if the property exceeds $250 in value; if the property bought, received, or concealed does not exceed $250 in value, by imprisonment for not less than one month nor more than one year or by a fine of not less than $25 nor more than $250.

(b) A person or his agent, employee, or representative whose principal business is dealing in or collecting used or secondhand merchandise or personal property, who buys or receives property which has been stolen is rebuttably presumed to have bought or received the property knowing it was stolen if a person in his capacity should have reasonably inquired as to whether the person from whom the property was bought or received had the legal right to sell or deliver it, and he failed to make the inquiry.

(c) In addition to the criminal penalty provided in (a) of this section, a person who violates this section is liable in a civil action to the owner of the stolen property for three times the amount of actual damages sustained by him by the loss of the property, as well as all costs and reasonable attorney fees.

Sec. 11.20.360. OBTAINING MONEY OR PROPERTY BY FALSE PRETENSES. A person who, by false pretenses or by a privy or false token, and with intent to defraud, obtains, or attempts to obtain money or property from another, or who obtains, or attempts to obtain, with intent to defraud, the signature of a person to a writing, the false making of which is a forgery, upon conviction, is punishable by imprisonment in the penitentiary for not less than one nor more than five years.

Sec. 11.20.370. TRANSFER OR MORTGAGE AS FALSE PRETENSE. The making of a bill of sale, assignment, or mortgage of personal property by a person not the owner for the purpose of obtaining money or credit or to secure an existing indebtedness is a false pretense within the meaning of § 360 of this chapter.

Sec. 11.20.390. FRAUDULENT CONVEYANCE. A person who falsely and knowingly represents that he is the owner of land to which he has no title, or falsely represents that he is the owner of an interest or estate in land, and executes a conveyance with intent to defraud another, upon conviction, is punishable by imprisonment in the penitentiary for not less than six months nor more than two years.

Sec. 11.20.400. FRAUDULENT SALE OF PERSONALTY SUBJECT TO SECURITY INTEREST. A person who, with intent to defraud, conveys goods, chattels, or personal property to which he does not have title or which is subject to a lien, pledge, conditional sale contract, mortgage or other security interest without informing the buyer of the existence and effect of the security interest, upon conviction, is punishable by imprisonment in a jail for not more than one year, or by a fine of not more than $500, or by both.

Sec. 11.20.450. FALSE PRETENSES ON SOLICITING FOR ORGANIZATIONS. A person who, by oral or written words, or by acts or conduct, falsely represents or pretends to be a member or authorized agent or representative of a religious, fraternal, beneficial, or charitable society, or association, or other organization of any kind, and, while engaged in making a false representation or pretense, or by means of a false representation or pretense, obtains from a person, money or written promise to pay money or other property is

guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $100, or by imprisonment in jail for not more than three months, or by both.

Sec. 11.20.480. DEFRAUDING HOTEL, BOARDINGHOUSE, CAMPGROUND, TRAILER COURT, BAR OR RESTAURANT OPERATOR. (a) A person who puts up at a hotel, inn, boardinghouse, lodginghouse, campground or trailer court and who procures a fare, board, lodging, or lodging services from the owner or operator by means of a trick, deception, or false representation, or a false show of baggage or effects, or who procures food, drink or other merchandise from any restaurant, dining room, cocktail lounge, bar or other premises where food or drink is offered to the public for sale, with the intent to cheat or defraud the owner or operator out of the pay for the fare, board, lodging, lodging services, or accommodation, or food, drink or merchandise; or who with that intent absconds from the premises, or surreptitiously removes, or causes to be removed baggage or effects from a hotel, inn, boardinghouse, lodginghouse, campground or trailer court without first paying the proper charges due is guilty of a misdemeanor. The words "fare, board, lodging or lodging services" include all charges incurred except for cash payouts to a guest.

(b) Proof that fare, board, lodging, lodging services, food, drink or merchandise were obtained by false pretenses, or that the person refused or neglected to pay for the fare, board, lodging, lodging services, food, drink or merchandise on demand, or that he gave payment for the fare, board, lodging, lodging services, food, drink or merchandise with negotiable paper or credit card voucher upon which payment was refused is prima facie evidence of the fraudulent intent required in (a) of this section.

(c) In this section

(1) "campground and trailer court" means an improved site intended for use by the public for the purpose of transient habitation on the site or providing space for transient habitation in cabins, tents, mobile homes, trailers or recreational vehicles;

(2) "lodging services" means charges for electricity, water, sewage, or other services received in a campground or trailer court.

Sec. 11.20.495. FRAUDULENT USE OF TELECOMMUNICATIONS SERVICE. A person is guilty of a misdemeanor, and upon conviction is punishable by imprisonment for not more than one year, or by a fine of not more than $1,000, or by both, if he, with intent to defraud or to aid and abet another to defraud a person of the lawful charge, in whole or in part, for a telecommunication service, including cable television, obtains or attempts to obtain, or aids and abets another to obtain or to attempt to obtain a telecommunication service

(1) by charging the service to an existing telephone number or credit card number without the authority of the subscriber to it or the legitimate holder of it;

(2) by charging the service to a nonexistent, false, fictitious, or counterfeit telephone number or credit card number or to a suspended, terminated, expired, canceled, or revoked telephone number or credit card number;

(3) by use of a code, prearranged scheme, or other similar stratagem or device by which the person, in effect, sends or receives information;

(4) by any other trick, stratagem, impersonation, false pretense, false representation, false statement, contrivance, device or means; or

(5) by the unauthorized connection of wires or cable to cable television service lines.

Sec. 11.20.525. STEALING, REMOVING OR DAMAGING PARTS OF AN AIRCRAFT. (a) A person who wilfully or maliciously steals, removes, damages or in any other manner interferes with any part of an aircraft without the consent of owner shall be punished, upon conviction, by imprisonment for not more than 10 years, or by a fine of not more than $10,000, or by both.

(b) In this section "aircraft" means a device which was designed and meant to be used for the transportation of person or property above the surface of the earth or water.

Sec. 28.35.010. 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 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.

ARTICLE 2. BURGLARY AND CRIMINAL TRESPASS

Sec. 11.20.080. BURGLARY IN DWELLING HOUSE. A person who breaks and enters a dwelling house with intent to commit a crime in it, or having entered with that intent, breaks a dwelling house or is armed with a dangerous weapon in it, or assaults a person lawfully in it is guilty of burglary, and upon conviction is punishable by imprisonment in the penitentiary for not less than one year nor more than 10 years. However, if the burglary is committed at nighttime, it is punishable by imprisonment for not less than one year nor more than 15 years. If a human being is within the dwelling at the time of the burglary during the nighttime or daytime, it is punishable by imprisonment for not less than one year nor more than 20 years.

Sec. 11.20.090. BREAKING OF DWELLING HOUSE DEFINED. An unlawful entry of a dwelling house with intent to commit a crime in it is a breaking and entering of the dwelling house for the purposes of § 80 of this chapter.

Sec. 11.20.100. BURGLARY NOT IN DWELLING HOUSE. A person who breaks and enters a building within the curtilage of a dwelling house but not forming a part of it, or who breaks and enters a building or part of it, or a booth, tent, railway car, vessel, boat, or other structure or erection in which property is kept, with intent to steal or to commit a felony in it, is guilty of burglary, and upon conviction is punishable by imprisonment in the penitentiary for not less than two nor more than five years.

Sec. 11.20.110. BREAKING DEFINED FOR PURPOSE OF § 100 OF THIS CHAPTER. Every unlawful entry of a building, booth, tent, railway car, vessel, boat, or other structure or erection mentioned in § 100 of this chapter, with intent to steal or commit a felony, is a breaking and entering within the meaning of § 100 of this chapter.

Sec. 11.20.120. BURGLARY IN LEAVING DWELLING HOUSE. A person who, having committed or attempted to commit a crime in the dwelling house of another, breaks an outer door, window shutter, or other part of the dwelling house, to get out of it, is guilty of burglary, and upon conviction is punishable by imprisonment in the penitentiary for not less than one nor more than three years.

Sec. 11.20.130. DWELLING HOUSE DEFINED. A building is a dwelling house within the meaning of §§ 80-120 of this chapter if a part of it has usually been occupied by a person lodging in it and any structure joined to or immediately connected with the building.

Sec. 11.20.135. UNAUTHORIZED ENTRY, USE OR OCCUPANCY OF PROPERTY. (a) It is unlawful for a person to enter, use or occupy any occupied or unoccupied dwelling, house, tent, hotel, office, store, shop, warehouse, barn, factory or other building, boat, ship, motor vehicle, railroad car or structure, or apartment, cottage, clubhouse, bathhouse, hunting or fishing lodge, garage or any other structure, or use any personal property therein, except with the consent of the owner of the facility or his agent. However, a person may enter, use or occupy an unoccupied structure specified in this section without the consent of the owner if

(1) the entry, use or occupancy of the facility is for an emergency in the case of immediate and dire need, and

(2) the person contacts the owner or agent within 15 days after using the facility or, if the owner is unknown, the nearest state or local police agency, and makes a report of the time of the entry, use or occupancy of the facility and any damage to the facility or personal property, unless notice waiving necessity of the report is posted in the facility by the owner or his agent.

(b) A person who violates (a) of this section is guilty of a misdemeanor.

(c) A court having jurisdiction to impose sentence for violation of (a) of this section may suspend all or part of a sentence on condition, among any other which might be lawfully ordered by the court, that the defendant make restitution for, or repair, any damage he has caused or compensate the owner for property used or consumed.

(d) The Department of Public Safety shall provide forms upon which reports required by this section can be made and shall supply the forms to all local and state police agencies in the state for public distribution. The department may adopt rules and regulations regarding reports required under this section.

(e) In this section "occupied" means that the premises are being used by one who is entitled to their enjoyment and use, and this includes actual as well as constructive occupancy.

Sec. 11.20.610. TRESPASSING ON IMPROVED LANDS. A person who wilfully enters the garden, orchard, or other improved lands of another, or in his possession, with intent to cut, take, carry away, destroy, or injure the trees, grain, grass, hay, fruit, or vegetable products growing there, upon conviction, is punishable by imprisonment in a jail for not more than six months, or by a fine of not more than $250, or by both.

Sec. 11.20.630. TRESPASS. A person other than an officer on lawful business who trespasses on lands or premises in the lawful occupation of another, and fails, neglects, or refuses to depart immediately and remain away until permitted to return upon the verbal, printed or written notice of the owner or person in the lawful occupation of the lands or premises, is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $250, and shall be committed, in default of payment of the fine and costs imposed, to one day for each $5 of the fine and costs.

Sec. 11.20.640. EVIDENCE OF NOTICE TO TRESPASSERS. A printed or written notice with the name of the owner or person in the lawful occupation of the lands or premises attached by authority, requiring all persons not to trespass and to depart, which is posted in three conspicuous places on the lands or premises, and if the perimeter of the lands or premises equals

or is greater than 330 feet, also posted along the boundaries of the lands, not less than 330 feet apart and at all roads and entrances, is prima facie evidence of the notice mentioned in § 630 of this chapter.

Sec. 11.20.650. TRESPASS ON MINING CLAIMS. A person who breaks or robs or attempts to break or rob a flume, rocker, quartz, quartz vein, or lode, bedrock, sluice, sluice box, or mining claim not his own, or who trespasses upon a mining claim, with the intent to commit a felony, upon conviction, is punishable by imprisonment in the penitentiary for not less than one year nor more than five years, or by a fine of not less than $100 nor more than $1,000, or by both.

ARTICLE 3. ARSON, CRIMINAL MISCHIEF AND RELATED OFFENSES

Sec. 11.20.010. FIRST DEGREE ARSON. A person who wilfully and maliciously sets fire to or burns or causes to be burned or who aids, counsels or procures the burning of a dwelling house, whether occupied, unoccupied or vacant, or a kitchen, shop, barn, stable or other outhouse that is a part of a dwelling, or belongs to or adjoins a dwelling, whether his property or the property of another, is guilty of arson in the first degree, and upon conviction is punishable by imprisonment for not less than two nor more than 20 years.

Sec. 11.20.020. SECOND DEGREE ARSON. A person who wilfully and maliciously sets fire to or burns or causes to be burned, or who aids, counsels or procures the burning of a guilding or structure of any kind, whether his property or the property of another, not included or described in § 10 of this chapter, is guilty of arson in the second degree, and upon conviction is punishable by imprisonment for not less than one nor more than 10 years, or by a fine of not more than $5,000, or by both.

Sec. 11.20.030. THIRD DEGREE ARSON. A person who wilfully and maliciously sets fire to or burns or causes to be burned, or who aids, counsels or procures the burning of personal property of another of the value of $100 is guilty of arson in the third degree, and upon conviction is punishable by imprisonment for not less than one nor more than three years, or by a fine of not more than $3,000, or by both.

Sec. 11.20.040. OFFENSE BY MARRIED PERSON. Sections 10-30 of this chapter extend to and include a married person who commits any of the crimes specified, though the property burned or set on fire belongs wholly or in part to the other spouse.

Sec. 11.20.050. FOURTH DEGREE ARSON. A person who wilfully and maliciously attempts to set fire to or attempts to burn or to aid, counsel or procure the burning of a building or property mentioned in §§ 10-40 of this chapter, or who commits an act preliminary to an attempt, or in furtherance of an attempt is guilty of arson in the fourth degree, and upon conviction is punishable by imprisonment for not less than one nor more than two years, or a fine not to exceed $1,000, or by both.

Sec. 11.20.060. ATTEMPTED ARSON DEFINED. The placing or distributing of a flammable, explosive or combustible material or substance, or a device in a building or property mentioned in §§ 10-50 of this chapter in an arrangement or preparation with intent to eventually, wilfully and maliciously set fire to or burn, or to procure the setting fire to or burning of the building or property is, for the purposes of this chapter, an attempt to burn the building or property.

Sec. 11.20.070. BURNING TO DEFRAUD INSURER. A person who wilfully and with intent to injure or defraud the insurer sets fire to or burns or attempts to set fire to or burn or who causes to be burned or who aids, counsels or procures the burning of a building, structure or personal property, whether his property or the property of another, which at the time is insured against loss or damage by fire, is guilty of a felony, and upon conviction is punishable by imprisonment for not less than one nor more than five years, or by a fine of not more than $3,000, or by both.

Sec. 11.15.340. NEGLIGENT USE OF COMBUSTIBLE MATERIALS. A person who negligently or recklessly causes a fire which results in physical harm to another person or in damage to the property of another is guilty of a misdemeanor, and upon conviction is punishable by imprisonment for not more than one year, or by a fine of not more than $500, or by both.

Sec. 11.20.180. MAKING, ALTERING OR DEFACING MARKS OR BRANDS. A person who wilfully and knowingly makes, alters, or defaces an artificial earmark, button or brand upon a horse, mare, gelding, foal, mule, ass, jenny, bull, cow, steer, calf, sheep, swine, goat, reindeer or fox, which is the property of another, with intent to convert it to his own use, is guilty of larceny, and upon conviction is punishable by imprisonment in the penitentiary for not less than one nor more than five years.

Sec. 11.20.380. FALSE INVOICE TO DEFRAUD INSURER. The owner of a ship, steamboat, or other vessel, or the owner of property loaded or pretended to be loaded on board a ship, steamboat or other vessel, or a person concerned or assisting in the fitting out or loading of a ship, steamboat, or other vessel, who makes out or exhibits or causes to be made out or exhibited a false or fraudulent invoice, bill of lading, bill of parcels, or other false estimate of property loaded or pretended to be loaded on board, with intent to injure or defraud an insurer of the ship, steamboat, or other vessel or property, or any part of it, upon conviction, is punishable by imprisonment in the penitentiary for not less than six months nor more than three years.

Sec. 11.20.430. FALSIFYING OR DESTROYING CORPORATE OR COMPANY RECORDS. A person, being or assuming to be an officer, agent, or member of a private corporation or company who, with intent to defraud or deceive, wilfully and knowingly destroys, alters, mutilates, or in any manner falsifies, or concurs in the destruction, alteration, mutilation, or falsification of any books, papers, writings, or securities belonging to or in the possession of the corporation or company, upon conviction, is punishable by imprisonment in a jail for not less than three months nor more than one year, or by a fine of not less than $50 nor more than $1,000.

Sec. 11.20.440. FALSE REPORTS AS TO CORPORATIONS OR COMPANIES. A person, being or assuming to be an officer, agent, or member of a private corporation or company who, with intent to defraud or deceive, wilfully and knowingly makes, circulates, publishes, or concurs in the making, circulating, or publishing of a written or printed statement or account relating to the liabilities,

assets, or property of the corporation or company, which is false in any material particular, upon conviction, is punishable as provided in § 430 of this chapter.

Sec. 11.25.010. FORGERY OF RECORD OR CERTIFICATE AND UTTERING FORGED INSTRUMENT. A person who, with intent to injure or defraud, (1) falsely makes, alters, forges, counterfeits, prints, or photographs a public record, certificate, return, or attestation of a clerk, notary public, or other public officer in relation to a matter in which the certificate, return or attestation may be received as legal evidence, or a note, certificate, or other evidence of debt issued by an officer of the state, or borough, town, or other municipal or public corporation, authorized to issue it, or a contract, charter, letters, patent, deed, lease, bill of sale, will, testament, bond, writing obligatory, undertaking, letter of attorney, policy of insurance, bill of lading, bill of exchange, promissory note, evidence of debt, or any acceptance of a bill of exchange, endorsement or assignment of a promissory note, or a warrant, order, check, money, other property, a receipt for money or other property, an acquittance or discharge for money or other property, or a plat, draft, or survey of land; or (2) intentionally utters or publishes as true and genuine a false, altered, forged, counterfeited, falsely printed, or photographed record, writing, instrument, or other matter, upon conviction, is punishable by imprisonment in the penitentiary for not less than two years nor more than 20 years.

Sec. 11.25.020. FORGERY OF EVIDENCES OF DEBT OR UTTERING FORGED EVIDENCE OF DEBT. A person who, with intent to injure or defraud another (1) makes, alters, forges, or counterfeits a bank bill, promissory note, draft, check, or other evidence of debt issued by a person or by the federal government, the state, a state or territory of the United States, or another state, government, or country, or by a corporation, company, or person authorized by law to issue evidence of debt; or (2) knowingly utters, publishes, passes, or tenders in payment as true and genuine, a false, altered, forged, or counterfeited bill, note, draft, check, or other evidence of debt, or has in his possession that evidence of debt, with intent to utter or pass it as true and genuine, knowing it to be false, altered, forged, or counterfeited is punishable by imprisonment in the penitentiary for not less than one year nor more than 20 years.

Sec. 11.25.030. MAKING OR POSSESSING TOOL OR MATERIAL DESIGNED FOR COUNTERFEITING. A person who (1) engraves, makes, or begins to engrave, make, or mend a plate, block, press, or other tool, instrument, or implement; or (2) makes, prepares, or provides paper or other material adapted and designed for forging or making a false or counterfeit evidence of debt, as specified in § 20 of this chapter; or (3) has in his possession or control a plate, block, press or other tool, instrument, or implement, or paper or other material adapted and designed for forging or making a false or counterfeit evidence of debt with intent to use it, or to cause or permit it to be used, in forging or making that false or counterfeit evidence of debt, upon conviction, is punishable by imprisonment in the penitentiary for not less than one year nor more than five years.

Sec. 11.25.040. COUNTERFEIT COINS. A person who (1) counterfeits a gold, silver, or other coin which is current by law or usage in the state, or has in his possession or control a false coin counterfeited in the similitude of a gold, silver, or other coin current by law or usage, knowing it is false and counterfeit, and with intent to utter and pass it as true and genuine; or (2) with intent to injure or defraud another, knowingly utters, passes, or tenders in payment as true and genuine a false and counterfeit coin, is punishable by imprisonment in the penitentiary for not less than one year nor more than 10 years.

Sec. 11.25.050. MAKING OR POSSESSING COUNTERFEITING TOOL. A person who stamps, engraves, makes, or mends, or begins to stamp, engrave, make, or mend, or have in his possession or control, a mold, pattern, die, puncheon, engine, press, or other tool, implement, or instrument adapted and designed for coining or making a counterfeit coin in the similitude of a gold, silver, or other coin current by law or usage in the state, with intent to use it or cause or permit it to be used in coining or making a false and counterfeit coin, upon conviction, is punishable in the manner provided in § 40 of this chapter.

Sec. 11.25.060. JOINING PARTS OF GENUINE INSTRUMENTS. A person who connects together different parts of several bank notes or other genuine instruments to produce an additional or different note or instrument, with intent to utter or pass all of them as true and genuine, commits a forgery in the same manner and with the same effect as if each of them had been falsely made or forged, and is punishable by imprisonment in the penitentiary for not less than two years or more than 20 years.

Sec. 11.25.070. MAKING FALSE OR ALTERING RECEIPTS OF GOODS IN WAREHOUSE. A person who wilfully or knowingly makes or alters a receipt or other written evidence of the delivery into a warehouse, commission house, forwarding house, mill, store, or other building occupied by him or his employer, of any grain, flour, pork, beef, wool, or other goods, wares, or merchandise which have not been received or delivered previous to the making and uttering of the receipt or other written evidence of delivery, upon conviction, is punishable by imprisonment in the penitentiary for not less than one year nor more than five years, or by imprisonment in a jail for not less than three months nor more than one year.

Sec. 11.25.080. COUNTERFEITING OR IMITATING BRANDS. A person who wilfully and knowingly uses or has used the private brand, label, stamp, or trademark of another, either by counterfeiting it or using an impression or copy of it made or prepared by the proprietor of it; or wilfully and knowingly uses or has used a colorable imitation of the private brand, label, stamp, or trademark of another, with intent to deceive, upon conviction, is punishable by imprisonment in a jail for not less than one month nor more than six months, or by a fine of not less than $20 nor more than $300.

Sec. 11.25.090. AFFIXING FICTITIOUS SIGNATURE. Affixing a fictitious or pretended signature purporting to be the signature of an officer or agent of a public or private corporation to an instrument or writing purporting to be a note, draft, or other evidence of debt issued by the corporation, with intent to utter or pass it as true and genuine, is a forgery, though the person whose signature is affixed may never have been an officer or agent of the corporation, or the corporation may never have existed. The person affixing the fictitious or pretended signature is punishable by imprisonment in the penitentiary for not less than two years or more than 20 years.

Sec. 11.25.110. PUNISHMENT ON SUBSEQUENT CONVICTION. A person convicted of a crime defined in §§ 10-100 of this chapter who is afterwards convicted of the same or other crime defined in §§ 10-100 of this chapter, is punishable by imprisonment for not less than the longest term mentioned in the section under which he may be indicted and tried.

Sec. 11.25.120. ADULTERATING GOLD DUST. A person who mixes or adulterates gold dust with a metal coin of less value than the gold dust, with intent to pass or sell or in any way dispose of the mixed or adulterated gold dust as genuine; or passes, sells or otherwise disposes of or causes to be sold, passed, or otherwise disposed of, or attempts to pass, sell, or dispose of, as genuine and pure, mixed or adulterated gold dust, knowing it to be so mixed or adulterated, is punishable by imprisonment in the penitentiary for not less than one year nor more than five years.

Sec. 11.25.130. POSSESSION OF MIXED OR ADULTERATED GOLD DUST. A person who possesses mixed or adulterated gold dust as described in § 120 of this chapter, knowing it to be mixed or adulterated, with intent to pass or sell or dispose of it as pure and genuine, or to have it sold, passed, or disposed of as pure and genuine gold dust, upon conviction, is punishable by imprisonment in the penitentiary for not less than one year nor more than five years.

Sec. 11.30.270. FILING, OR OFFERING FOR FILING, FALSE OR FORGED INSTRUMENTS. A person who knowingly procures or offers a false or forged instrument to be filed, registered, or recorded in a public office, which, if genuine, might be filed, registered, or recorded under a law of this state or the federal government, is guilty of a felony, and upon conviction is punishable by imprisonment in the penitentiary for not less than one year nor more than two years, or by a fine of not more than $2,000, or by both.

APPENDIX III

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