January 1976

Alaska Criminal Code Revision: Preliminary Report

Alaska Criminal Code Revision Commission

Suggested citation

Alaska Criminal Code Revision Commission. (1976). *Alaska Criminal Code Revision: Preliminary Report*. Anchorage, AK: Alaska Criminal Code Revision Commission.

Summary

The Alaska Criminal Code Revision Commission was established in 1975 with the responsibility to present a comprehensive revision of Alaska's criminal code for consideration by the Alaska State Legislature. This preliminary report consider the need for a revised criminal code in Alaska and presents proposed drafts, with commentary, of statutes on property-related crimes, general criminal code provisions, and sentencing. A specific recommendation is made to continue the Criminal Code Revision Commission or reconstitute it through formal legislative action in order to provide sufficient time for the complex work needed to revise the criminal code.

Additional information

As of 1975, Alaska's criminal laws were based primarily on Oregon criminal statutes as they existed at the close of the nineteenth century, with new statutes added and old statutes amended over the succeeding 75 years by Alaska territorial and state legislatures in a piecemeal approach to revision. This resulted in a criminal code containing outdated statutes, obsolete terminology, a number of overly specific statutes, a haphazard approach to *mens rea* (the culpable mental state with which a defendant must perform an act in order to be convicted of a crime) and the lack of a coherent, rational sentencing structure.

The Alaska Criminal Code Revision Commission was established in 1975 with the responsibility to present a comprehensive revision of Alaska's criminal code for consideration by the Alaska State Legislature. (The Commission was reestablished in June 1976 as a Subcommission of the newly formed Code Commission.) Staff services for the Criminal Code Revision Commission and Criminal Code Revision Subcommission were provided by the Criminal Justice Center at University of Alaska, Anchorage (John Havelock, project executive director; Barry Jeffrey Stern, reporter/staff counsel; Sheila Gallagher, Reporter/Staff Counsel; and Peter Smith Ring, research director). The tentative draft proposed by the Criminal Code Revision Subcommission was substantially amended by the Alaska State Legislature prior to its approval as the Revised Alaska Criminal Code in June 1978 (effective January 1, 1980).

Related publications

Work of the Criminal Code Revision Commission and Criminal Code Revision Subcommission are contained in these volumes:

Alaska Criminal Code Revision: Preliminary Report by Criminal Code Revision Commission (1976)

Alaska Criminal Code Revision — Tentative Draft, Part 1: Offenses against the Person (1977)

Alaska Criminal Code Revision — Tentative Draft, Part 2: General Principles of Criminal Liability; Parties to a Crime; Attempt; Solicitation; Justification; Robbery; Bribery; Perjury (1977)

Alaska Criminal Code Revision — Tentative Draft, Part 3: Offenses against Property (1977)

Alaska Criminal Code Revision — Tentative Draft, Part 4: Conspiracy; Criminal Mischief; Business and Commercial Offenses; Escape and Related Offenses; Offenses Relating to Judicial and Other Proceedings; Obstruction of Public Administration; Prostitution; Gambling (1977)

Alaska Criminal Code Revision — Tentative Draft, Part 5: General Provisions; Justification; Responsibility; Bad Checks; Littering; Business and Commercial Offenses; Credit Card Offenses; Offenses against the Family; Abuse of Public Office; Offenses against Public Order; Miscellaneous Offenses; Weapons and Explosives (1978)

Alaska Criminal Code Revision — Tentative Draft, Part 6: Sentencing: Classification of Offenses Chart; Index to Tentative Draft, Parts 1-6 (1978)

Commentary on the Alaska Revised Criminal Code (Ch. 166, SLA 1978) and Errata to the Commentary (1978)

Additional information about the criminal code revision can be found in the following articles by Subcommission's staff counsel:

Stern, Barry J. (1977). "The Proposed Alaska Revised Criminal Code." *UCLA-Alaska Law Review* 7(1): 1–74 (Fall 1977).

Stern, Barry J. (1978). "New Criminal Code Passes." *Alaska Justice Forum* 2(6): 1, 4–5 (Jul 1978).

ALASKA CRIMINAL CODE REVISION

PRELIMINARY REPORT

CRIMINAL CODE REVISION COMMISSION
HONORABLE TERRY GARDINER, CHAIRMAN
JANUARY 1976

Preliminary Report

ALASKA CRIMINAL CODE REVISION

January, 1976

Honorable Terry Gardiner
Chairman

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Preface

Organization of The Commission

The Alaska Criminal Code Revision Commission was established by the first session of the Ninth Legislature through CS for Senate Concurrent Resolution No. 5 as amended by the House:

Original sponsor: Judiciary Committee

Offered: 2/12/75
Referred: Finance

IN THE SENATE BY THE RULES COMMITTEE

CS FOR SENATE CONCURRENT RESOLUTION NO. 5 am H

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

Relating to a revision of AS 11, the substantive criminal law of the state,

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

WHEREAS the criminal code of the State of Alaska represents a considerable and vital body of law which has not undergone substantive revision and is consequently vastly out of step with constitutional and social developments of recent decades; and

WHEREAS, each year since 1965, a revised criminal code for the state has been before the legislature but has failed to garner the necessary support for passage; and

WHEREAS, once again, a criminal code revision which could serve as a basis for study by persons knowledgeable in the varying aspects of the criminal law is contained in the proposed legislation; and

WHEREAS it is impossible during the course of a legislative session to devote the necessary man-hours required to refine and digest the proposed revision and to have the necessary expertise available to review the proposal;

BE IT RESOLVED by the Alaska State Legislature that the Legislative Council in cooperation with the Attorney General is requested to form a "blue ribbon" commission to study, refine, and to submit to the Second Session of the Ninth Legislature a revision of the proposed code the commission recommends be favorably acted upon; and be it

FURTHER RESOLVED that the membership of the commission should be representative of all persons and groups vitally concerned with the administration and enforcement of the state's criminal laws, including but not limited to

representatives of the bar, the bench, penologists, correction officers, social workers, and the like; and be it

FURTHER RESOLVED that the Legislative Council is authorized to contract with a competent person or firm knowledgeable in the varying aspects of criminal law to oversee and direct the work of the commission, except that no person serving in the legislature who is a member of the bar may be so contracted with.

Pursuant to this resolution, the Alaska Legislative Council, Senator Genie Chance, Chairman, established the Commission with an initial membership as follows:

Representing the House of Representatives,

Terry Gardiner

Representing the State Senate,

Terry Miller

Representing the Alaska Bar Association,

Wendell Kay

Cathy Chandler

Representing the State Department of Public Safety,

Colonel Pat Wellington

Representing the National Association of Social Workers,

Pam McMillan

Representing the Division of Corrections,

Charles G. Adams, Jr.

Representing the State Department of Law,

Dan Hickey

Representing the Superior Court,

Judge Ralph Moody

Since many of these individuals could attend only irregularly, the following alternates were designated with full voting powers:

William H. Fuld for Mr. Kay

Ivan Lawner for Mr. Hickey

Captain Robert Penman for Colonel Wellington

Walter B. Jones for Mr. Adams

Subsequently the membership was broadened to include:

Representing the Alaska District Court,

Judge Laurel Petersen

Representing the Anchorage Police Department,

Captain Mark Hogan

Representing the Anchorage Bar Association

Bruce Bookman

Representing the Public Defender,

Beverly Cutler

The Commission later designated a technical committee to support the work of the Commission including:

Representing the Alaska District Court,

Judge Nora Guinn

Representing the Alaska Peace Officers Association,

Captain Lowell Parker

Representing the Division of Corrections,

John Pugh

Representing the Mental Health Association

Joan Katz

Ombudsman, State of Alaska,

Frank Flavin

Additional Attorneys,

Leroy Barker

James Gilmore

The Commission was not fully organized until August 21, 1975, when the Commission received a proposal for staff services to be provided by the Criminal Justice Center of the University of Alaska. A formal contract was endorsed on October 1, 1975.

Staff Support:

John Havelock	Project Executive Director
Sheila Gallagher	Reporter/Staff Counsel
Barry Stern	Associate Staff Counsel
Peter Ring	Research Director
Phyl Booth	Secretary

In addition, some technical research support has been provided by the staff of the Alaska Legislative Affairs Agency, John Doyle, Director, under the specific direction of Joel Bennett, Staff Assistant.

Introduction

Part I

Why a Criminal Code Revision?

Alaska, now possibly uniquely among the states, has never had a criminal code revision. Some twenty-two states have completed new revisions within the past five or six years. In doing so, they have been following the recommendations of Presidential Commissions which have examined broad problems in criminal justice administration in the last decade.

Most recently the National Advisory Commission on Criminal Justice Standards and Goals recommended that "States whose codes have not been revised within the past decade initiate complete revision, including, when necessary, a revamped penalty structure". The National Advisory Commission also recommended the establishment "of state criminal law commissions to review new legislative proposals bearing criminal penalties". A Federal Criminal Code revision is now before the Congress.

Many of Alaska's criminal statutes were adopted from the Oregon code around the turn of the century. Oregon completed its most recent revision two years ago. Over the past seventy years, Alaskan territorial and state legislatures have added new statutes or amended old sections, according to the inspiration of individual legislators, reacting to the

atmosphere of different times until today Alaska's criminal statutes are filled with obsolete language, inconsistent penalties and other provisions and outdated concepts. While Alaska's criminal statutes are still, for the most part, workable, they are difficult to understand and time has exposed many loopholes.

Lawyers working with the Alaska criminal code on a daily basis, being long married to it, tend to overlook its defects, particularly those which others working with the law must contend with. A problem once hurdled is soon forgotten and the general impression left is that a statute or two may need fixing up but that the code is basically sound. While workable, it is not sound. A critical analysis of the code, section by section, reveals, time after time, confusion of language or purpose, overbreadth or overnarrowness, contradiction and overlap among sections. Though references are frequently made to the body of interpretive law built up around the code, it is irregular at best. One of the advantages of code adoption is that we will gain the benefit of interpretive uniformity with other jurisdictions revising their codes, all of which have to a great degree used the Model Penal Code as a guide. A year or two of work with new provisions sharing common characteristics with other recently revised states will provide a deeper gloss of judicial interpretation than now exists from years of decisions of the Alaska Supreme Court

alone.

The problems which the existing Alaska criminal law title pose with regard to fairness in sentencing were recently noted by the Alaska Judicial Council through its report on "Sentencing in Alaska" in March, 1975. The Council's conclusions concerning the outmoded characteristics of Alaskan laws and the need for criminal code revision are set out at pages 134, 135 of this report.

Lanny Proffer, Special Assistant for Criminal Justice of the National Governor's Conference and the National Conference of State Legislatures reported in April of 1975:

> "Respect for the law derives from the understanding that people have for the law and their sense of fairness. There can be no sense of understanding and no sense of fairness unless the people know what is in the code and know what behavior is proscribed."

The accessibility of criminal law to lawyers alone is not enough.

Against a background of unanimous national clamor for more efficient, accessible and fair criminal laws, the Alaska Criminal Code Commission adopted the following purposes as the goals of the Commission:

1. Eliminate obsolete language;

2. Eliminate inconsistent penalties;

3. Eliminate archaic provisions of law which appear to be neither necessary nor desirable in today's society;

4. Rearrange substantive provisions of law in an orderly and logical grouping of subject matter;

5. Eliminate overlap and duplication of substantive

provisions;

6. Create a simplified and more workable body of criminal laws.

This report contains the product of the Commission's efforts to February 1, 1976.

Part II

The Work of the Commission

The criminal code revision effort set in motion by CS for SCR No. 5 is by no means the first effort at criminal code revision in Alaska. In 1972 a revision based on the Model Penal Code was introduced as HB 524, reintroduced as HB 424 on 4/7/73 and last year HB 14 and SB 6 both involved proposed revisions along similar lines. But the key to the success of criminal code revision efforts nationally has not been so much in the form of the bill prepared but the process by which that form was achieved.

A criminal code involves hundreds of implicit value judgments which should bear some relationship to community norms. It is not enough that a brilliant criminal law expert be given pencil and paper, a library and staff to work out the formulae of justice. The Model Penal Code, though its overall structure has probably been adopted by every state that has considered criminal code revision since its adoption in 1962, has not been adopted in its every specific by any state. There is no model code for all states, each of which has its own particular social, economic and governmental structures and for whom a serviceable criminal code is part and parcel of the fabric of the regional society.

Thus it is of critical importance that a criminal code be developed from the beginning with the active participation of legislative members particularly interested in law and issues in social control, with professionals from the law enforcement, judicial and correctional agencies who will have ultimate responsibility for

administering the code and with the interest groups and concerned citizens who feel they have a special stake in the forms and administration of the criminal law. This has never been done in Alaska and the Commission recognized early that it would try to follow this course.

This immediately posed a dilemma. The joint resolution called for a criminal code revision to be delivered to the next session of the legislature. Allowing time for the legislative leadership to extract itself from the first session and sort out its interim committee work, the Commission really had no more than four working months. Other jurisdictions recently completing criminal code revision projects had taken years to complete such a task. Oregon, a favorite model for Alaska, had established a revision committee with a four year life without raising any objection that the task could be completed with greater dispatch.

The Alaska Commission faced a dilemma and adopted a course of compromise. Since a final complete revision, including substantive, procedural and correctional law was out of the question, the committee felt it of the greatest importance that the work of the Commission and its continuity be preserved through formal legislation. The Commission would start on the easier, substantive code revision working towards a procedural revision as the last step. The Commission would plunge ahead on a substantive code revision, going as far as it could to complete

three basic units that could constitute a package: property crimes,general provisions (such as parties, special defenses, mental capacities, etc.) and a sentence structure.

Though meetings of the Commission were open to the public, time circumstances foreclosed the possibility of extensive public hearings. The best that could be done would be to harness the best expert advice that could be obtained within the Alaska criminal justice community through a technical advisory committee and enlarged Commission membership. Public hearings would be left to the regular legislative process should the legislature choose to move ahead.

Though several members felt uneasy about the effect and wisdom of piecemeal enactments - the ability to fit pieces together later on, the consequences of partial enactment for existing law, etc. - there was some reason and precedent supporting proceeding a step at a time, not the least of which was that it gives the legislature a manageable bite. Charles R. Work, LEAA Deputy Administrator for Administration recently told a conference of code revisors to "Break it into pieces. We need to avoid the possibility of having the whole thing turned down because of the unappealing nature of one or two parts of the package." Code revision specialist State Senator Luedtke of Nebraska urged, "You must remember not to give a legislature too much at one time because they will not be able to absorb it all and they will not pass it".

Split on the wisdom of a partial enactment, the Commission

decided to go as far as they could towards a final draft of a manageable portion. They would ignore for this year the criminal sanctions not contained in Title 11. Nor would they attempt to conform all of Title 11 to the proposed sentencing structure. Subsequent to these determinations, a special task force of the executive branch has put forth proposals relating to mandatory minimum sentencing, the abolition of parole in certain cases and related recommendations, thus putting a greater sense of urgency behind proposals for change in the sentencing area. For if criminal penalties are now inconsistent they become even more inconsistent combined with a minimum mandatory sentence feature The options available to the Legislature, should it determine to act this year on establishing a system of this kind, are reflected in the following section on findings and recommendations.

The Commission makes no claim for itself of omniscience in criminal justice matters. There is room for improvement in every provision and always will be. Differences in human values may bring other observers to other conclusions in one respect or another. The Commission does believe that the drafts presented here constitute a major improvement over existing Alaska Law on the subject. In the large view,criminal law should always be in a state of evolution, reflecting the changing values and needs of society, advances in justice science and the findings of social research. It is hoped that we will not postpone as long again the task of systematic oversight of such an important part of the fabric of our law and our society.

Part III

Findings and Recommendations

The usual life of State Criminal Code Revision Commissions is 4 - 6 years. In view of the considerable work on revision done in the other states in the past decade, the Alaska Commission has set a more ambitious schedule for itself, at least provisionally.

It has been proposed that the Commission attempt to produce a finished revision of the subtantive criminal law of the state by February 1, 1977 and a similar revision of the code of criminal procedure by February 1, 1978. A tentative work schedule for the first stage, substantive revision is included as a part of this report.

It is noted that work done pursuant to this schedule may suggest criminal rules revisions, a subject to be referred to the Supreme Court of Alaska and its committee on criminal rules. In addition, work relating to juvenile code revision may be undertaken concurrently or consecutively.

The Commission makes the following specific recommendations concerning the continuance of the Commission and its work to date:

1. That the Criminal Code Revision Commission be continued or reconstituted through formal legislative enactment. A draft bill for consideration by the legislature broadening the membership to some extent is included as part of this report.

2. That the legislature and the respective committees of reference for criminal law matters determine whether any part of this report concerning substantive law is to be adopted or

deferred for consideration by a later legislature. There are both pros and cons to the "piecemeal" approach. The Commission has attempted, with regard to Crimes of Property, General Provisions and Sentencing Structure to present its work in a way that lends itself to adoption as a unit should the legislature be disposed to act now.

The provisions relating to sentence structure have been shaped to apply to substantive offenses redefined under the revision. No attempt has been made to apply the classification scheme to all felonies or all felonies under Title 11. The task involved in doing so is not a substantial one from a technical perspective assuming that, for the time being, the Legislature chose to encompass all felony sentences under this structure based on their present value of seriousness. Problems arise only if one determines to reassess penalties according to contemporary views of the seriousness of the offense, a value-oriented task which the Commission thought better to postpone until it was also considering revision in the definitions of the offenses themselves.

The sentence structure could be considered for enactment only as applied to new offenses. This approach would give rise to apparent anomalies as when a person convicted of a second offense burglary would be subject to a mandatory minimum and a person convicted of burglary after a first offense assault with a deadly weapon would not be subject to the minimum. However,

this anomaly is more apparent than real since judicial discretion would still extend to permit the court to impose the same sentence, a very real probability under the circumstances prevailing if the sentence structure if partially enacted into law.

Likewise, the principles underlying the sentence structure are fairly readily applicable to misdemeanor offenses, as a technical matter, should the Legislature decide to proceed now on a new system of sentence management for misdemeanors. However, for similar reasons, the Commission determined to postpone application of a sentence revision to misdemeanors until the Commission considered the substance of more offenses defined in the misdemeanor category. Some care should be taken, however, in applying mandatory minimums to misdemeanor offenses. The volume of cases at the misdemeanor level is so great and the psychopathology of recidivism in some offense categories sufficiently clear, that the application of mandatory minimums without careful examination of the consequences could congest the system with in and out transactions and prisoners to the point of breakdown.

The principal features of the proposed revisions are reflected in the draft proposals themselves and its accompanying commentary.

Article 1. Arson and Related Crimes

Sec. 11.20.010. Arson and related offenses : definitions.

As used in §§ 010 - 060 of this Article, except as the context requires otherwise:

(1) "Protected property" means any structure, place or thing customarily occupied by people, including public buildings, defined as "a building in which persons congregate for civic, political, educational, religious, social or recreational purposes" and forest land, defined as "all lands 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. If a building or structure is divided into separately occupied units, any unit not occupied by the actor is the property of another.

Comments

(1) "Protected property". This definition is similar to the definition of building contained in the burglary and criminal trespass article so far as it relates to structures customarily occupied by people. However, it is broader in that it also includes public buildings and forest land, the intentional burning of which would constitute arson in the first degree under the provisions of § 11.20.020. This definition is broader than the M P C's "occupied structure" and broader than coverage in existing Alaska Statutes 11.20.010 - 11.20.050, which speak to "dwelling house", "building",

"structure" and "personal property".

The purpose of this definition is to protect those structures and things which typically are occupied by people, and is consistent with the primary rationale of the crime of arson: protecting human life or safety.

Forest fires ordinarily present a high degree of risk to human safety as well as causing economic loss to the state; therefore, the intentional starting of such a fire should be considered as one of the most serious arson offenses. This is a particularly relevant consideration in Alaska. There are pertinent sections in Title 41 (Public Resources).

Arson of a public building would probably endanger human life as well as causing irreparable damage to property and public records and therefore deserves a stringent treatment.

(2) "Property of Another" -- this is based upon M P C 220.1 and protects the lawful occupant of property, notwithstanding that the actor might have title or vice versa.

Sec. 11.20.020. Arson in the first degree:

(1) A person commits the crime of arson in the first degree if, by starting a fire or causing an explosion, he knowingly damages:

(a) protected property of another; or

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

(2) Arson in the first degree is a Class A felony.

Comment

Comments to §§ 020 - 050 follow § 060.

Sec. 11.20.030. Arson in the second degree.

(1) A person commits the crime of arson in the second degree if, by starting a fire or causing an explosion, he knowingly

damages any building of another that is not protected property.

(2) Arson in the second degree is a Class B felony.

Comment

Comment for this section follows § 060.

Sec. 11.20.040. Grossly negligent use of combustible materials.

(1) A person commits the crime of negligent use of combustible materials if he with gross negligence causes a fire which results in physical harm to another person or in damage to the property of another.

(2) Gross negligent use of combustible materials is a Class ____ misdemeanor.

Comment

Comment for this section follows § 060.

Sec. 11.20.050. Reckless burning.

(1) A person commits the crime of reckless burning if he recklessly damages property of another by fire or explosion or causes a fire which results in physical harm to another person.

(2) Reckless burning is a Class misdemeanor.

Comment

Comment for this section follows § 060.

Sec. 11.20.060 Offense by Married Person.

Sections 020 - 050 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 person's spouse.

COMMENTS

The primary rationale of this article is protection of human life and safety. The secondary rationale is the protection of cherished property. The draft in its present version provides for two ascending degrees of arson, graded according to whether or not "protected property" is involved or whether or not there is danger to human life. The draft also provides for the less serious crime of reckless burning.

There is no separate section dealing with destroying property with the intent to defraud an insurer. Such activity would amount to either attempted theft by deception or theft by deception if the property damaged belonged solely to the actor. However, if anyone other than the actor has a possessory or proprietary interest in the property, such an act could violate § 11.20.030 and be punishable as 2nd degree arson, or even if the property damaged by fire were the exclusive property of the actor, it could amount to 1st degree arson if another person were recklessly placed in danger or bodily injury or protected property of another endangered as provided by paragraph (b) subsec. (1) of § 11.20.020. The relatively severe penalties for arson would not apply for behavior which, while objectionable as part of a fraudulent scheme, has no element of danger to another's person or property. On the other hand, where such dangers are present, it should be punished accordingly.

The elements of the crime of reckless burning, § 050 are: (1) reckless (2) damage of (3) property of another (4) by fire or explosion. If there is no intent on the part of the actor to damage the property, but he "consciously disregards a substantial and unjustifiable risk" resulting from his conduct, he violates this section. Because there is no intent to damage property the crime does not carry the label, nor the onus, nor the penalty of arson. The reckless damage of property by means other than fire or explosion is covered by the criminal mischief sections of the draft.

The elements of the crime of arson in the 2nd degree, 11.20.030, are: (1) knowingly (2) damage of (3) a building of another (4) by fire or explosion and (5) the building is not "protected property." 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 as a less serious offense under this draft, but nonetheless is classified as a felony. carrying a maximum penalty of five years imprisonment under Oregon law. For example, if A intentionally sets fire to

B's barn he would be guilty of violating this section. If, however, the barn were in close proximity to B's house, A could be guilty of 1st degree arson under § 020 (1)(b).

The elements of the crime of arson in the 1st degree, § 020 are: (1) knowingly (2) damage by (3) fire or explosion of (4) protected property of another or (5) any property, whether the actor's or another's and this results in (6) recklessly placing another person in danger of physical injury or (7) recklessly placing protected property of another in danger of damage.

Intentionally damaging property of another by means other than fire or explosion is prohibited by the criminal mischief sections of the draft. Intentionally damaging property that is not a building or protected property, i.e., personal property, by fire or explosion is covered by § 460 of this draft, criminal mischief in the 1st degree. However, if the conduct which would otherwise be criminal mischief, because the property damaged in personal property, results in violating § 11.20.020 (1)(b) then the actor would be guilty of arson in the 1st degree.

Note that under § 020(1)(b) the mens rea with respect to the property the actor intends to burn is an intent to damage any property by fire or explosion, while the culpability of the actor with respect to another person who might be physically injured or to protected property of another that might be damaged by his act is recklessness. If, for example, A, intending to defraud his insurer, intentionally sets fire to his own car which is parked in A's driveway but just a few feet from B's house, A would be "consciously disregarding a substantial and unjustifiable risk" of placing another person in danger of physical injury or of placing the protected property of another in danger of damage and would be guilty of arson in the 1st degree. Actual physical injury to B or actual damage to B's house would not be required to prove A guilty under § 020, but the state would be required to prove that A intentionally set fire to his car and that the other risks ensued from this act.

It should be noted that § 020 deals with arson, and under the above hypothetical, if B were actually physically injured as a result of A's arsonous act, A would be guilty of 1st degree arson. Reckless conduct, not involving an intentional act of arson, that causes physical injury to another or creates a substantial risk of serious physical injury to another would be covered under an assault provision.

The aim of the draft is to protect human life and safety by enhancing the degree of arson to 1st degree when the property involved is a building, structure or thing of a kind which is typically occupied by people. The risk to human life or safety is especially great where such property is set afire. Further, it recognizes the danger from fires which occur during riots or civil disturbances, and which occur in many types of structures, buildings or things which vary greatly due to the complexity of our urban society. Some types of things such as boats, campers, etc., are customarily occupied by people at some times and places and not at others. The following guidelines from the Oregon Comments are meant to aid in interpreting the phrase "customarily occupied by people" as it is used within the definition of "protected property" in § 010 of this article.

"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 § 144 of this Code, (our § 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 by first degree arson; if they find it is not customarily occupied, the crime would be second degree arson."

§ 11.20.050 is based on Model Penal Code § 220.1, but, the Model Penal Code proposal, requires actual damage to any property instead of threatened damage to a building. § 030 is derived from ORS 164.020, second degree arson. § 020 subsection (1)(a) is Oregon Section 144, but its purpose is the same as that of the Model Penal Code, 220.1(2); however, the section requires actual "intentional damage" instead of a "purpose of destroying" and in that particular is akin to New York Revised Penal Law § 150.15. Subsection (1)(b) is based on Model Penal Code § 220.1.

Relationship to Existing Law

The crime of arson under Alaska and Oregon law requires the burning to be "wilful" and "malicious." The work "malicious" is a necessary ingredient to charge arson, and also the act must be "criminal" and not just "carelessness."

A "burning" of the building is an essential element of the crime of arson. 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 a "charring." It is not necessary that the buildings should be consumed or materially injured. It is sufficient if fire is actually communicated to any part thereof, however small. Under the proposed sections any "damage" is sufficient, so the "charring" test would continue to be applicable.

Alaska's 1st degree arson statute is A.S. 11.20.010. The statute condemns "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." The conjunctive requirement that the burning be both "wilful and malicious" is refined from common law. The showing of this criminal intent may be alleged and proved alternatively by a showing that the accused was actuated by a malicious purpose and that he set fire to the structure wilfully. The proposed Code substitutes the new terms, "knowingly" and "recklessly."

The existing statute likewise condemns anyone who "wilfully and maliciously aids, counsels or procures the burning of ... designated property." This construction merely includes within the scope of the statute those persons who, if not included specifically, would under the rules of common law be charged. State v. Case, 61 Or 265, 122 P304 (1912), recognized the proposition that a person who is not within the class of those by whom the crime may be directly perpetrated may, by aiding and abetting a person who is within the scope of the definition, render himself criminally liable. The proposed Code retains this rationale. Also in Tarnef v. State 512 P 2d 923 (1973) Alaska Supreme Court states that the legislature used the words "aids, counsels or procures" as synonymous with "aid" and "abet".

The above sections do not cover the burning of personal property as is presently in A S 11.20.030 as that will be

covered in the Criminal Mischief section unless it is customarily occupied by people, i.e. a vehicle or boat, etc. adapted for overnight accommodation of persons or for carrying on business therein. Then it can become arson.

The existing AS 11.20.070 (Burning to Defraud Insurer) is covered under the theft by deception section.

Sec. 11.20.070. Criminal Possession of Explosives.

(1) A person commits the crime of criminal possession of explosives if he possesses, manufactures, sends or transports any explosive substance or device; and

(a) intends to use that explosive or device to commit any offense: or

(b) knows that another intends to use that explosive or device to commit an offense.

(2) Criminal possession of explosives is a crime of the same degree as the result of the act or intended act would be.

Comments

This section is adapted from Illinois Criminal Code Sec. 20 - 2. Many crimes involving the use of explosives are covered under arson, homicide and assault. Because of the potential danger, it seems wise to penalize directly illicit manufacture, shipment, transportation or possession of explosives with intent to use them to commit an offense or with knowledge that someone intends to use them for the same purpose.

Sec. 11.20.080. Failure to Control or Report a Dangerous Fire.

A person who 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, commits a Class misdemeanor, 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, albeit lawfully, by him or with his assent, or on property in his custody or control.

Comment

This section is an extension of existing federal law which protects federal forest land from endangerment of persons setting fires. AS 41.15.110 is a similar provision.

Sec. 11.20.090. Causing or Risking Catastrophe.

(1) Causing Catastrophe - A person is guilty of Class A felony if he knowingly causes a catastrophe by explosion, fire, flood, avalanche, collapse of building, release of poison, radioactive material, bacteria, virus, or other dangerous and difficult-to-confine force or substance, and is guilty of a Class B felony if he does so willfully.

(2) Risking Catastrophe. A person is guilty of Class B felony if he intentionally creates a risk of catastrophe in the employment of fire, explosives or other dangerous means listed in Subsection (1), although no fire, explosion or other destruction results.

(3) Definition of Catastrophe. Catastrophe means serious bodily injury to ten or more people or substantial damage to ten or more separate habitations or structures or property loss in excess of $500,000.

Comments

This revision meets the objections of the Commission to the possible vagueness by defining catastrophe and requiring an intentional act. This section is proposed to deal with wide-spread destruction or injury caused not only by fire or explosion but also by other dangerous and difficult to confine forces and substances. As the provision deals with recklessly risking as well, it includes reckless conduct with respect to storage or handling of highly dangerous materials.

Article 2. Burglary and Criminal Trespass.

Section

Sec. 11.20.100. The following definitions are applicable to this article (§§ 100-150), except as the context requires otherwise:

(1) "Building", in addition to its ordinary meaning, includes any vehicle, watercraft, aircraft or other structure adapted for overnight accommodation of persons or for carrying on business therein; each unit of a building consisting of two or more units separately secured or occupied is a separate building.

(2) "Dwelling" means a building which is usually occupied by a person therein at night, whether or not a person is actually present.

(3) "Enter or remain unlawfully" means to enter or remain in or upon premises when the premises, at the time of such 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.

(4) "Premises" includes the term building as defined in (1) and any real property.

Comments

Subsection (1) "Building". This definition is borrowed from Connecticut Penal Code § 110 and closely resembles the definition of the term in New York Revised Penal Law § 140.00 and the definition of "occupied structure" in Model Penal Code § 221.0. Its purpose is to include those structures and vehicles which typically contain human beings for extended periods of time, in accordance with the original and basic rationale of the crime: protection against invasion of premises likely to terrorize occupants. The second sentence of the Oregon definition is simplified in this draft.

Subsection (2) "Dwelling". This definition is based on the New York statute, § 140.00, and is much the same as the definition of "dwelling house" in A S 11.20.130 -- "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.

Subsection (3) "Enter or remain unlawfully". This is another definition from New York Revised Penal Law § 140.00. As applied to the burglary sections, the concept of one committing the crime by "remaining unlawfully" represents a departure from the traditional notion that burglary requires a "breaking and entering" or an "unlawful entry". A S 11.20.080 through .110. However, A S 11.20.120 punishes as burglary the act of "breaking out" of a dwelling house after having committed or attempted to commit a crime therein, but prescribes a maximum penalty of three years imprisonment as compared to 15 years for burglary in a dwelling at night and 5 years for burglary not in the dwelling. Under the proposed definition an initial lawful entry followed by an unlawful remaining would constitute burglary if accompanied by an intent to commit a crime, and would be criminal trespass if such intent were absent.

Subsection (4) "Premises" This definition comes from New York Revised Penal Law § 140.00. The term is

used in the substantive statement of the crime of criminal trespass. By incorporating the term "building", the definition of "premises" thereby covers not only the ordinary concept of trespass to land, but includes the structures, which would not be "real property", as well. This should make for more flexibility in applying the criminal trespass statutes to fit the facts of each particular case, because criminal trespass in the second degree thereby would be a lesser included offense of the first degree offense.

Sec. 11.20.110. Burglary in the second degree.

(1) 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 therein or leaves a building having committed a crime or attempted to commit a crime.

(2) Burglary in the second degree is a Class C felony.

Comments

The basic definition of burglary and the lowest degree of the crime is dealt with by this section. It amounts to nothing more than a form of criminal trespass with two aggravating factors: (1) the premises invaded constitute a "building"; and (2) the intruder enters or remains with intent to commit a crime therein. This section corresponds to New York Revised Penal Law § 140.20.

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 statutory crime of burglary and its related "breaking and entering" offenses were probably developed in most jurisdictions to compensate for defects in the attempt law, consisting of definitions of attempts to commit other crimes. 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.

Alaska's existing burglary statutes are A S 11.20.080 to 11.20.130. The section as drafted combines these. Burglary in the second degree would occur if the intruder entered or remained unlawfully with intent to commit a crime in a non-dwelling building without any aggravating factors. The more serious crime of burglary in the first degree is defined in § 120 and differs from § 110 only in terms of aggravating factors.

The basic definition of burglary required no "breaking" and is consistent with existing law in Alaska. Smith v. State 362 P. 2d 1071 (1961) Mead v. State, 489 P. 2d 738 (1971). It eliminates the necessity of proving intent to steal or to commit a "felony" in the non-dwelling burglary as presently required under A S 11.20.100, making the intent element the same as now prescribed for burglary in a dwelling by A S 11.20.080, i.e., the intent to commit any "crime". The section also does away with the need for proving that property was kept in the building. Also eliminated is the requirement of proving that the intruder had the intent to commit the crime at the time of the entering.

Sec. 11.20.120. Burglary in the first degree.

(1) A person commits the crime of burglary in the first degree if he violates § 110 and the building is a dwelling, or if in effecting entry or while in the building or in immediate flight therefrom he:

(a) is armed with explosives or a deadly weapon; or

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

(c) uses or threatens to use a dangerous weapon.

(2) Burglary in the first degree is a Class B felony.

Comments

This section incorporates the basic definition of burglary contained in § 110 but aggravates it if the intruder is armed with explosives or a deadly weapon; or causes or attempts to cause physical injury to any person; or uses or threatens the use of a dangerous weapon.

The language used in sub § 120(1), "in effecting entry or while in the building or in immediate flight therefrom, he," is taken from the New York Revised Penal Law § 140.25. The Model Penal Code employs the phrase "in the course of committing the offense" and defines it as meaning one that "occurs in an attempt to commit the offense or in flight after the attempt or commission." The New York version seems more precise and eliminates the need for further definition. Paragraphs (a) and (b) are patterned after Model Penal Code § 221.1. Paragraph (c) is taken from New York Revised Penal Law § 140.25.

The section as drafted retains some of the features of present statutes which stamp certain kinds of "burglary" as constituting more aggravated crimes than others.

Burglary in a dwelling house, including breaking and entering while armed with a dangerous weapon or assaulting any person lawfully therein, is now punishable under A S 11.20.080 by maximum penalty of 15 years imprisonment, if at night, or 20 if person present, 10 if daytime and no human being present, as compared to 5 years maximum for a nondwelling burglary under A S 11.20.100. Alaska statutes distinguish between a daytime or nighttime burglary. The proposed section applies the aggravating factors equally to dwelling and other buildings and treats daytime and nighttime burglaries alike.

"Breaking out" of a dwelling house of another, after having committed or attempted to commit a crime therein, is now punishable under A S 11.20.120 by a maximum penalty of three years imprisonment. This statute would be repealed but this type of conduct would be covered by the draft.

Alaska Statutes do not presently speak to burglary with explosives. The addition of explosives to Sec. 11.20.120 would cover the "safecracker" for instance and reflects the possibility of greater harm.

The proposed Michigan Code does not follow the New York pattern as adopted by Oregon of aggravating burglary when physical injury is inflicted on a person within the building. Causing serious physical injury could be assault; therefore, under the Michigan rationale, it does not seem necessary to include this within burglary as well. It is even more incongruous to punish accidental or negligent infliction of any physical injury more severely than intentionally or recklessly inflicting serious injury; this is the result under the New York Revised Penal Law because first degree burglary is more severely punished than first degree assault.

To handle this objection, the Michigan Code has three degrees of burglary. Its third degree burglary section corresponds with Oregon's and this proposal's second degree.

The M P C provides for injury to the person as part of burglary as a second degree felony.

Commentators to the M P C believed that logically burglary could be eliminated as an offense because its primary function as a criminal law concept is to serve as a crystallized doctrine of attempt and this could be handled in attempt provisions of a code. However, they realized that it's so firmly a part of our law that any attempts to eliminate it would be resisted and so they continued it in the M P C. As Tentative Draft No. 11 stated

"If we were writing on a clean slate, the best solution might be to eliminate burglary as a distinct offense. . . But we are not writing on a clean slate. Centuries of history and a deeply embedded Anglo-American conception like burglary cannot be discarded. The needed reform must therefore take the direction of narrowing the offense to something like the distinctive situation for which it was originally devised: invasion of premises under circumstances specially likely to terrorize occupants."

Pursuant to Commissions request, language was added to § 110 to specifically include purview of present A S 11.20.120.

Sec. 11.20.130. Criminal Trespass in the First Degree.

(1) A person commits the crime of criminal trespass in the first degree if he knowingly enters or remains unlawfully in a dwelling.

(2) Criminal trespass in the first degree is a Class misdemeanor.

Sec. 11.20.140. Criminal Trespass in the Second Degree.

(1) A person commits the crime of criminal trespass in the second degree if he knowingly enters or remains unlawfully in or upon premises.

(2) Criminal trespass in the second degree is a Class misdemeanor.

Comment

Comment to follow AS 11.20.150.

Sec. 11.20.150. Unauthorized Entry, Use or Occupancy of Property.

(1) A person commits the crime of unauthorized entry, use or occupancy of property if he enters, uses or occupies any unoccupied dwelling, or uses any personal property therein, except with the consent of the owner of the facility or his agent, unless

(a) the entry, use or occupancy of any of the facilities described in this subsection is for an emergency in the case of immediate and dire need, and

(b) 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.

(2) A person who violates 1(a) of this section is guilty of a Class misdemeanor.

Comment

The basic rationale of the sections on criminal trespass taken from the Oregon Code is the protection of one's property from unauthorized intrusion by others. As with burglary this draft proposes two degrees of the crimes, one into premises, one into a dwelling.

This proposal does not provide for a separate degree of trespass to cover property that is fenced or otherwise enclosed in a manner designed to exclude intruders. The proposal does not draw a distinction between the trespasser who goes through a fence and one who does not. The Oregon Commentators believed that the enforceability of this section was more important than the severity of the punishment.

Both the New York Revised Penal Law and the proposed Michigan Code speak in a separate section to those intrusions upon land which is fenced, etc. Contrary to Oregon, these states feel that this shows a much more deliberate invasion of other persons' property rights and is in many cases in fact the prelude to tortious or criminal conduct. The severity of the punishment is less than that for intrusion into a dwelling but more serious than the trespass in the second degree.

Trespass is committed in or upon "premises" as that term is defined in the definitions section. If the invaded premises is a dwelling, then that is criminal trespass in the first degree. The alarm caused to inhabitants by the entry and the likelihood of violence which may injure someone, including the intruder, is the justification for a heavier penalty. A defendant who is charged with the more serious offense may properly plead to or be convicted of second degree trespass because of the broad definition of premises.

The element of entering or remaining unlawfully in or upon the premises is identical to that required for burglary, i.e. "at the time of the entry or remaining, the premises are not open to the public and the defendant is not otherwise licensed or privileged to do so".

Existing Alaska law on trespass A S 11.20.630 - 650 provides for posting which these proposed sections do not. With the large tracts of land often held in Alaska, the requirement of posting every 330' around the perimeter is onerous particularly when, as in the experience of the Anchorage School District, the signs are removed faster than they can be printed. But it seems as if there should be some posting when the premises is unimproved, unfenced land. This problem has been handled by adding to the definition of "enter or remain unlawfully" of the Model Penal Code the following language:

"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."

The M P C speaks to posting "reasonably likely to come to the attention of the intruders".

The sections defining first and second degree trespass are the Oregon Code with the addition of the word knowingly and are based upon New York Revised Penal Law 140.05, 140.15.

The proposed sections would replace existing sections A S 11.20.630 - 650 and the corresponding provisions in Title 38 regarding trespass on state land.

Again because of special circumstances arising in Alaska, and pursuant to the Commissions direction, A S 11.20.135 which speaks to "unauthorized entry, use of occupancy of property" with exemptions for emergency conditions is included as Sec. 150.

Article 3. Theft and Related Offenses

Section

Comment

This section contains definitions only which do not themselves constitute the substantive crime. A section containing definitions makes it possible to utilize a shorter and clearer description of each crime and to ensure a uniformity in meaning through several succeeding sections. All definitions apply unless there is a plain inconsistency from the context.

Sec. 11.20.160. Definitions.

In this article, unless the context requires otherwise:

Sub. (1) "Appropriate property of another to oneself or a third person" or "appropriate" 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 circumstances as to acquire the major portion of economic value or benefit of such property; or

(b) dispose of the property of another for the benefit of oneself or a third person.

Comment

"Appropriate" is the exact language of the revised Oregon Code. It also appears in the Massachusetts Code and the New York Revised Penal Law § 155 but is not defined in the M P C nor is it presently defined in Alaska Statutes.

This definition together with "deprive" retains the traditional distinction between larceny and some other offenses which, though similar, do not reach the stature of larceny because of a lesser intent to obtain temporary possession or use of the property or to cause temporary loss to the owner. These definitions are essential to a definition of larcenous intent as they connote a purpose on the part of the thief to exert permanent or virtually permanent control over the property taken or to cause permanent or virtually permanent loss to the owner of the possession and use thereof.

(2) "Deception means to knowingly:

(a) 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; or

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

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

(d) 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 not valid or is or is not a matter of official record; or

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

The term "deception" does not, however, include falsity as to matter having no pecuniary significance or puffing by statements unlikely to deceive ordinary persons in the group addressed.

Comment

"Deception" is derived from the Illinois Criminal Code § 15-4. The qualification of coverage is taken from the M P C § 223.3 as is the addition of the language of false impression of "law, value, intention or other state of mind" in the proposed draft's Sec. 2(a). It includes representations as to future as well as present or past fact, law as contrasted with fact and opinion as contrasted with fact. It is broader than the traditional concept of false pretenses because traditionally the statement must have related to a past or existing fact so that a statement of "law" or a statement referring to a future event could not qualify. The definition of deception turns on the impression which the offender's total activity has on the victim and thus eliminates non-functional distinctions based on fact as against law or opinion or present or past as opposed to future.

(3) "Deprive another of property" or "deprive" 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; or

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

(c) to retain the property with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or

(d) to sell, give, pledge or otherwise transfer any interest in the property; or

(e) to subject the property to the claim of a person other than the owner.

Comment

"Deprive" is a blending of the Illinois Criminal Code, the M P C, New York Revised Penal Law and the Oregon Code. The proposed draft's sections (a) and (b) are taken directly

from Oregon Sec. 164.005(2) (a)&(b) the M P C §223.0(1) and New York Revised Penal Law §155.00 (3). The proposed draft's Secs. 3 (c) (d) and (e) are taken from the Illinois Criminal Code §15-3. In addition to the comments set forth for "appropriate", the utility of the definition is that it provides a single concept embracing both permanent and prolonged withholding of property from the rightful owner. Without this definition it would be necessary to provide separate sections dealing with permanent deprivations and prolonged or seriously prejudicial deprivations.

(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.

Comment

"Financial institution" is adopted from the M P C § 223.0(2) and is standard in most codes.

(5) "Government" means the United States, any state or any borough, municipality, or other political unit within territory belonging to the United States or any department, agency or subdivision or any of the foregoing, or any corporation or other association carrying out the functions of government or any corporation or agency formed pursuant to interstate compact or international treaty.

Comment

"Government" is a slightly expanded version of the

MPC §223.0(3). " . corporation or agency formed pursuant to interstate compact or international treaty" was added to reflect the possibility of Alaskan entities of Canadian origin.

(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

(b) in relation to labor or service to secure performance thereof, without payment therefor or by imposing payment on a third person who did not request or use the services; or

(c) obtains or exerts control or obtains or exerts unauthorized control over property.

Comment

Sec. 6 (a) is taken from the Oregon Code § 164.005 (3), 6 (b) is taken from the MPC §223.0(5) and the Illinois Criminal Code § 15-7 with the second clause being taken from the Massachusetts Criminal Code §17 (a) (4). Sec. 6 (c) is taken from the Proposed Revised Michigan Criminal Code.

The additional language re "obtains or exerts control" eliminates any contention under the extortion section that the control was authorized because the victim voluntarily handed over his property, even though it was because of fear.

It also extends the concept of a taking to include the constructive acquisition of property and is consistent with the ensuing definition of property which includes real property. Transportation or "carrying away" of the property is not required.

(7) "Owner" means any person who has a right to possession thereof superior to that of the taker, obtainer or withholder. A secured party as defined in § 9105 (i) of the Uniform Commercial Code is not an owner in relation to a defendant who is a debtor, as defined in § 9105(d) of the Uniform Commercial Code, in respect to property in which the secured party has a secured interest as defined in §1201(37) of the UCC.

Comment

The first sentence of § 160(7) is taken from the Oregon Code. The second sentence is taken from the proposed Revised Michigan Code and serves to eliminate overlap between theft and crimes involving secured creditors. The theory of this section is also contained in the MPC §223.0(7) definition of "property of another". The term "owner" is not used in the basic Alaska larceny statute A S 11.20.140 but the phrase "the property of another" is used and under the common law definition means ownership.

(8) "Property" means any article, substance or thing of value, including, but not limited to, money, tangible and intangible personal property, real property, choses-in-action, evidence of debt or contract.

Commodities of a public utility nature such as gas, electricity, steam, and water constitute 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 deemed a rendition of a service rather than a sale

or delivery of property.

Comment

The first sentence of this section is taken from the Oregon Code and the MPC §223.0(6). The second sentence is based upon the M P C and the definition of property in the Illinois Criminal Code § 15-1 and is directly taken from the proposed Revised Michigan Criminal Code. The second paragraph is intended to avoid overlap between theft and theft of services.

By specifically including intangible property within its scope, the definition remedies the type of problem that occurred in the Oregon case of State v. Tauscher 227 Or. 1 (1961) wherein it was held that only property that is tangible and capable of being possessed may be the subject of larceny or embezzlement under the existing statutes and an agent who, without authorization and for her own purposes, drew a check on her principal's account, was guilty of neither crime. This definition is broad enough to contain all the things enumerated in A S 11.20.140.

(9) "Receiving" includes but is not limited to acquiring, possession, control or title or lending on the security of the property.

Comment

"Receiving" applies to receiving stolen property and means acquiring possession, control or title, or lending on the security of the property. The definition of receiving is taken from the Oregon Code and the MPC § 223.6(1). The essential idea to be expressed is that of acquisition of control whether in the sense of physical dominion or of legal power to dispose. The definition is broad enough to cover "constructive possession" and the activities of those who buy stolen property as well as persons who acquire title thereto otherwise than by purchase, and who make loans and advances on such property. The existing Alaska Statute on receiving A S 11.20.350 does not define receiving.

Sub. (10) "Threat" means a menace however communicated, to:

(a) cause physical harm in the future to the person threatened or to any other person; or

(b) cause damage to property; or

(c) subject the person threatened or any other person to physical confinement or restraint; or

(d) engage in other conduct constituting a crime; or

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

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

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

(h) use or abuse his position as a public official 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; or

(i) 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

(j) inflict any other harm which would not benefit the

person making the threat.

Comment

"Threat" - this definition taken from the M P C, Oregon and closely paralleling although not identical to the existing Alaska statute A S 11.20.345 on Extortion, covers most of the common situations in which property is extracted on the basis of threat. By limiting physical harm to "in the future" (not presently in A S 11.20.345) a clearer definition of the crime of extortion separate from robbery is possible.

Sub 10 (a) covers threat to injure anyone, on the theory that if the threat is in fact the effective means of compelling another to give up property, the nature of the relationship to the victim and the person he chooses to protect is immaterial. The issues are whether the threat is intended to intimidate and whether it is effective for that purpose.

Paragraph (b) is aimed at the threat to cause damage to someone's business, home or other property. A common example would be the selling of "protection" to a store owner.

Paragraph (c) re confinement is separately specified to eliminate the possibility that "physical harm" in Sub § (a) might not be held to cover kidnapping or confinement in a jail or mental institution.

The provisions of paragraph (d) of draft are taken directly from New York Revised Penal Law and are similar to the Model Penal Code which employs the language "commit any other criminal offense." Commentary to Model Penal Code indicates its purpose is to cover a situation like this: A racketeer obtains property from another racketeer by threatening to operate houses of prostitution or illegal gambling enterprises in competition with him. Threat to compete would not ordinarily be criminal because the right to compete is one which, in our society, may be bargained away. However, where the competition itself would be criminal activity, there is no need to immunize a threat to engage in that activity when it is used for the purpose of extortion. (Tent. Draft No. 2 at 76).

Paragraph (e) resembles closely the language now appearing in A. S. 11.20.345 and is common to most extortion statutes.

Paragraph (f) of draft amounts to a threat to defame. Unlike defamation actions, the truth of the matter threatened to be exposed would not constitute a defense to a prosecution under this subsection. The prohibition is directed against "selling" forbearance from defamation and not against the publication of defamation itself. It is emphasized, however,

that the subsection is not intended to make it criminal to conduct legitimate negotiation or to agree to settlement of an asserted claim as consideration for a promise to forbear from civil litigation.

Paragraph (g) is self-explanatory.

Paragraph (h) is aimed at extortion committed under cover of public office and is close to the "bribery" type of crimes now incorporated in A. S. 11.30.040 - 11.30.070.

The provisions of paragraph (i) of draft are aimed at racketeering, but do not in any way jeopardize the collective bargaining process, since even menaces are not criminal if the benefits are to be received by the group on behalf of which the "bargaining" is conducted. The group representative or official who threatens such action unless he gets a "kickback" would be reached by this subsection, however.

Paragraph (j) is a statement of the general principle on which other threats are to be included within extortion. Examples suggested by Model Penal Code are: (a) The foreman in a manufacturing plant requires the workers to pay him a percentage of their wages on pain of dismissal or other employment discrimination; (b) A close friend of the purchasing agent of a corporation obtains money from an important supplier by threatening to influence the purchasing agent to divert his business elsewhere; (c) A professor obtains property from a student by threatening to give him a failing grade.

The draft follows Model Penal Code § 223.4 and is a blend of that section and New York Revised Penal Law § 155.05 (e). The New York statute proscribes larceny of property by threat to cause physical injury to some person in the future. The Model Penal Code punishes obtaining of property by a threat to inflict bodily injury on anyone. It is submitted that the New York provision is preferable because it more clearly distinguishes between this type of theft and robbery, which is the threatening of immediate use of physical force upon another. Illinois Criminal Code and Michigan Proposed Revised Criminal Code contain comparable statutes.

A. S. 11.20.345 "extortion" law, provides that any person who threatens any injury to the person or property of another or threatens to accuse another of any crime or to compel him to do any act against his will shall be punished. The crime is committed by making the threat, and obtaining property thereby is an element. This is also the case in the proposed draft, A S 11.20.220.

There was nothing in the Oregon Commentaries to indicate why the phrase "unofficial" as contained in 10 (i) was omitted in the Oregon Code, although the M P C comment (p. 78) No. 10 speaks to why it is included in the M P C. It is possible that Oregon thought that "collective action" covered both official and unofficial as the commentaries state that the official who demands a kickback would be reached by the section.

Sub. (11) "Value means the market value of the property at the time and place of the criminal act unless otherwise specified. or, if such cannot reasonably be ascertained, the cost of replacement of the property within a reasonable time after the crime.

Whether or not they have been issued or delivered, certain written instruments, not including those having a readily ascertained market value such as some public and corporate bonds and securities shall be evaluated as follows:

(a) the value of an instrument constituting an evidence of debt, including, but not limited to, a check, draft or promissory note, shall be considered the amount due or collected thereon or thereby;

(b) the value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument;

(c) when property has value but that value cannot be ascertained pursuant to the standards set forth above, the

value shall be deemed to be an amount not exceeding $250.00.

Amounts involved in thefts committed pursuant to one course of conduct, whether from the same person or several persons, may be aggregated in determining the grade of the offense.

Comment

"Value" - this definition is taken from the New York revised Penal Code § 155.20 with the deletion of the New York provision dealing specifically with airline tickets. With this deletion, the proposed definition is identical to that of the Oregon Code. The comment to the New York Code indicated that the specific reference to airline tickets was probably not necessary therefore I deleted it. This definition is more specific than that of the M P C which establishes value as "the highest value by any reasonable standard of the property or services". Market value is customarily used by the courts in determining the value of property affected by theft. The second paragraph gives guidelines as to how to value certain intangibles which do no have an easily ascertainable market price.

The third paragraph is to cover the situation where something of value has been taken but it's impossible to arrive at a satisfactory evaluation of what has been taken. This ensures that the taking is criminal although no specific value is given to the property. $250.00 is suggested to allow a balance between the need to protect owners of certain specialized kinds of property against deprivation and the avoidance of excessive punishment.

The main change is in allowing the aggregation of small amounts taken from the same or several persons pursuant to one scheme or course of conduct. It is possible that an employer, citizen and the community could incur substantial financial loss. Aggregation of amounts allows the felony range of punishments.

This provision is taken from the M P C and is not part of the Oregon Code.

Sec. 11.20.170. Theft described.

A person commits theft when, with intent to deprive another of property or to appropriate property to himself or to a third person, he:

(1) takes, appropriates, obtains or withholds such property from an owner thereof; or

(2) commits theft of property lost, mislaid or delivered by mistake as provided in § 210; or

(3) commits theft by extortion as provided in § 220; or

(4) commits theft by deception, § 230; or

(5) commits theft by receiving as provided in § 240.

Comments to § 170 follow § 180.

Sec. 11.20.180. Consolidation of Theft Offenses; pleading and proof.

(1) Except for the crime of theft by extortion, conduct denominated as theft under § 170 constitutes a single offense.

(2) If it is an element of the crime that property was taken by extortion, an accusation of theft must so specify. In all other cases 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.

(3) Prcof that the defendant engaged in conduct constituting

theft as defined in AS 11.20.170 is sufficient to support a conviction based upon any indictment, information or complaint for theft other than one charging theft by extortion, subject only to the power of the Court to ensure fair trial by granting a continuance or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or surprise. A conviction based upon an accusation of theft by extortion must be supported by proof at trial establishing theft by extortion.

Comment

Source

These sections are taken from the Oregon Code with this additional language from the M P C "subject only to the power of the court to ensure fair trial by granting a continuance or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or surprise". The additional language met with the approval of the majority of the technical committee as it was felt that it states what in fact would be the law.

Purpose

The chief aims in drafting these sections and those which follow have been (1) to eliminate the confusing distinctions between larceny, larceny by trick, larceny by conversion, embezzlement of different kinds, and obtaining property by false pretenses perpetuated in the present statutes, (2) to define with greater clarity and in light of modern economic circumstances the line between criminal and non-criminal acquisitive conduct and (3) to lay the ground work for a more rational classification of offenders in the property crimes area to reduce unwarranted disparity in punishments.

Advantage over Existing Law

The chief advantage is that by the simple definition of theft in § 170, incorporating as it does the definitions of "deprive", "obtain", "appropriate", the artificial distinctions between the several kinds of larceny, embezzlement and obtaining property by false pretenses are swept away. The gravamen of the offense will be the obtaining of control over property in which another has an interest and the deliberate diversion of it for the offender's own purposes. A unitary definition will enable the courts to examine predatory conduct against property much more realistically than has the multitude of overlapping and inconsistent statutes which now exist in Alaska.

The use of a single definition of theft also will work a procedural advantage both to the state and to the defendant. The state will be protected to a substantial degree against a finding of a variance when a conviction is appealed. The defendant, however, will no longer be in the position of having to defend against an array of statutory crimes when any one of them is alleged against him.

Sec. 11.20.190. Defenses to Theft.

(1) In a prosecution for theft, it is a defense that the person acted under an honest claim of right in that:

(a) he is unaware that the property is that of another; or

(b) he believes that he is entitled to the property or that he is authorized to dispose of it as he does; or

(c) he takes property exposed for sale, intending to purchase and pay for it promptly, or reasonably believing that the owner, if present, would have consented.

(2) In a prosecution for theft by extortion committed by instilling in the victim a fear that he or another person would be charged with a crime, it is a defense that the defendant reasonably believed the threatened charge to be true and that

his sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of the threatened charge.

(3) In a prosecution for theft by receiving, it is a defense that the defendant received, retained, concealed or disposed of the property with the intent of restoring it to the owner.

(4) If the owner of the property is the actor's spouse, no prosecution for theft may be maintained unless:

a) the property which is obtained or over which unauthorized control is exerted does not constitute household belongings; or

b) the property constitutes household belongings but is taken or subjected to unauthorized control while the parties are maintaining separate households and without a claim of it made in good faith.

"Household belongings" means furniture, personal effects, vehicles, money or its equivalent in amounts customarily used for household purposes and other property usually found in and about the common dwelling and accessible to its occupants.

(5) It is not a defense in a prosecution for theft to have an interest in property when the owner also has an interest to which the defendant is not entitled.

Comment

This section is taken from the Oregon Code with an

additional provision 4(1)(c) taken from the M P C. 4(1)(a&b) states existing law. 4(4) has the objective of removing domestic squabbles from the criminal court yet allows redress for a confidence man who fleeces his new bride. 4(5) clarifies that a person can have criminal responsibility for theft even though he has a part interest in the property affected. It embodies the policy that co-owners should be as well protected against depredations by other co-owners as they are against outsiders. This concept is again referenced in AS 11.20.250.

4(4) does not change existing Alaska law.

Sec. 11.20.200. Grading of Theft Offenses

(1) Theft constitutes a Class C felony if the amount involved exceeds $500 or if the property stolen is a firearm or explosive or is taken from the person of another or by threat.

(2) Theft not within the preceding paragraph constitutes a Class ____ misdemeanor, except that if the property was not taken from the person or by threat, and the amount involved was less than $50, the offense constitutes a Class ____ misdemeanor.

(3) The amount involved in a theft shall be deemed to be the value of the property or services which the actor stole or attempted to steal at the time or place of the criminal act unless otherwise specified.

Comments

Source

The source of this provision is 223.1(2) of the M P C with the substitution of the figure of $500 pursuant to Commission direction and the addition of explosives which

is an addition from the Revised Code of Massachusetts. Automobiles have been deleted and will be treated according to value or as in 11.20.280 and 11.20.460, .470.

In 1962, the M P C used $500 as the dividing line; Oregon, in 1971 retained $250. Massachusetts, in 1972, used $1,000. The Commission set the figure of $500 as the dividing line at the meeting of January 6 and 7, 1976, based in part upon the per cent of crimes that fall within the $0 - 500 range. In a sample of 523 reported complaints, only 43 reported a value over $1,000 and about 20% were $500.

Existing Alaska law has diverse dividing lines, i.e. 11.20.140 is $100, 11.20.160, and 11.20.240, $50 for example.

Differentiation of theft into degrees takes account of the diverse circumstances involved in individual theft offenses and permits the severity of the sanctions authorized to be correlated with the aggravating circumstances. Value is still the basis for the penalties with the addition of firearms and explosives, where the potential for harm exceeds the value of the article stolen.

Sec. 11.20.210. Theft of Lost, Mislaid Property.

(1) A person who comes into control of property of another that he knows to have been lost, mislaid or delivered under a mistake as to the nature or amount of the property or the identity of the recipient, commits theft if, with intent to deprive the owner thereof, he fails to take reasonable measures to restore the property to the owner.

(2) "Reasonable measures" includes but is not necessarily limited to notifying the identified owner or any peac officer.

(3) Theft of lost property constitutes a Class _____ misdemeanor unless the value of the property exceeds $500, in which case, it is a Class C felony.

Comment

This section is taken from the Oregon Code with the

addition of (2) which is a simplification of the "reasonable measures" which is presently in AS 11.20.260. § 260 uses value to determine penalty. Most codes ascribe a lesser penalty to this offense regardless of value because of the difference in attitude and degree of dangerousness between the individual who decides to take advantage of unexpected opportunity and the premeditating thief.

However, most Commission members wished to retain value as a dividing line between misdemeanor/felony so the section has been revised to reflect that thinking. No dividing line value has been included as it should be the same as for the standard theft provision. Note has been taken of the police's problem in disposal of property. A separate statute is being drafted to handle this problem.

Sec. 11.20.220. Theft by Extortion.

(1) Extortion means to obtain by threat control over property of the owner with intent to deprive the owner permanently of the property.

(2) Theft by extortion is a Class B felony.

(3) No person commits a crime based upon a threat as defined in AS 11.20.160 (10)(e) if he reasonably believed the threatened charge to be true and that his sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of the threatened charge.

Comment

This section draws a clearer line between robbery and extortion as previously pointed out in the comment regarding the definition of threat and is based upon the M P C, Oregon Criminal Code and AS 11.20.345.

The Commission has questions regarding 11.20.220(3) as to what "honestly claims" means. "Honestly claims" is not referred to at all in the M P C comments, nor is it defined in the general definitions section of the M P C. Oregon's defense to extortion is framed as "reasonably believed" and

relates only to the proposed § 11.20.160(10)(e) in definitions while AS 11.20.345 refers again to "honestly claims".

The proposed Michigan Code uses "Honestly claims" but in the comments talks in terms of "believing he is legally justified". An honest claim has been defined in the Restatement on Restitution as "a claim which the claimant does not know is unsubstantial or such that he does not know facts which show that his claim is a bad one".

It is a policy question as to whether anyone should be allowed a defense in §§ 11.20.160(10)(e), (f), (h) as the M P C does. The revised proposal tracks the Oregon statute regarding a defense to extortion for the reason that a person should not be coerced into handing over property by most of the varieties of threat listed in § 160(10). The defendant should not be permitted to use this kind of leverage whether or not he may believe he is legally justified in receiving or holding the property he demands. This revised proposal, as Oregon, allows a defense only to a threat, to "accuse any person of a crime or cause criminal charges to be instituted against any person". Because civil litigation can give rise to acrimony which in turn can lead to threats of one kind or another, and because statements made as a prelude to an out-of-court settlement might later be characterized by the losing party as threats, it appears appropriate to authorize a defense when the offense falls within 11.20.160 (10)(e).

Sec. 11.20.230. Theft by Deception

(1) A person is guilty of theft if he obtains property of another by deception.

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

(3) Theft by deception constitutes a Class ____ misdemeanor unless the value of the property exceeds $500, in which case it is a Class C felony.

Comment

§ 230, together with the definition of deception in § 160 (2) (a-e), defines the crime of theft by deception. This section is based upon Oregon law with the elimination of the bad check provisions and the M P C. Subsection (2) is existing law and is taken from the M P C § 223.3 and the New York Revised Penal Law § 155.05.

Sections 230 and 160 (2)(a-e) define the crime of theft by deception. The section is restricted to include only those instances wherein there exists an intent to defraud and to exclude cases essentially civil in nature and mounting to little more than breaches of contract.

Section 160(2)(a) retains the traditional false pretenses concept of creating a false impression, and broadens the scope to include the act of confirming another's false impression which the actor does not believe to be true. If the actor confirms the false impression for the purpose of inducing consent and obtains property thereby, he will commit theft. The false impression may relate to law, value, intention or other state of mind of the victim. The traditional restriction to "existing fact" is rejected. There is no "false token' requirement retained.

If the actor fails to correct a false impression which he previously created or confirmed and obtains property thereby, he would commit theft under 11.20.160 (2)(b).

A person who prevents another from acquiring information pertinent to the disposition of the property would commit theft if he does so with fraudulent intent and obtains property of another as the result. 11.20.160 (2)(c)

If with like intent and with like result the actor sells, transfers or otherwise encumbers property and fails to disclose a lien or other legal impediment to the enjoyment of the property he would be guilty of theft under the provisions of § 160 (2)(d). (AS 11.20.400)

AS 11.20.160 (2)(e) covers theft committed by "false promise" and represents a significant departure from the familiar limitation to misrepresentation of fact and includes promises of future performance which the actor does not intend to perform or knows will not be performed. However, mere non-performance alone would not be sufficient to establish that the actor intended or believed that a promise would not be performed. 11.20.230 (2).

The exception contained in 11.20.160 (2) is designed to deal with the problem of mass advertising and "commendation of wares" that would be considered unlikely to deceive ordinary persons, and to institutions wherein a misrepresentation may be made during the "bargaining" but the person deceived nonetheless gets everything he bargained for. For example, a salesman who misrepresents his political or lodge affiliations to make a sale.

AS 11.20.230 and 11.20.160(2)(a-e) are from Oregon and are derived from Illinois Criminal Code § 15-4 and Michigan Proposed Revised Criminal Code § 3201.

In Paragraph (a) the phrase,"of law, value, intention or other state of mind," which modifies the word "impression", is taken from Model Penal Code § 223.3. This language seems desirable because it clearly indicates the intent to eliminate needless distinctions based on "fact" as contrasted with "opinion" or "present or past fact" as opposed to future events."

The exception contained in 11.20.160(2)(e) is taken from the Model Penal Code § 223.3.

Subsection .230 is similar to provisions contained in Model Penal Code § 223.3 (a).

The section brings what is now the crime of obtaining property by false pretenses, A. S. 11.20.360, within the ambit of theft and greatly broadens the scope of the offense to include conduct not now covered.

Deception would include, also, the type of fraudulent activity which presently would be prosecuted as "larceny by trick". Eliminated is the tricky question of whether "title" as opposed to "possession" passes. Obtaining property by means of a bad check also could be prosecuted as theft by deception.

In response to questions regarding the possible overlap of this section and A. S. 45.50.471, the Consumer Protection Division of the Attorney General's office was queried and the response was that this section would be most helpful in Consumer Protection prosecution as presently Title 45 provides only a misdemeanor penalty for the criminal offense under the statute. Most of their actions now are through the civil side but more criminal prosecutions would be brought if they had a felony penalty clout with increased possibilities for extradition.

Another question raised by the Commission was whether businesses would be unjustly subjected to criminal liability where they make contracts, intending in the alternative, to perform or to pay liquidated damages or such damages as the law allows the promisee. This fear appears to be unfounded. Not every promise implies an unequivocal intention to perform. A provision for liquidated damages would obviously be relevant evidence to show that the actor had not purposefully created the false impression that he would in all events perform. Among businesspersons, especially in certain trades, there would be a general understanding that words of promise mean only that the promisor will perform or pay damages. In that event, the promisor could be held guilty only if he did not intend to do either. In short, the actor is to be understood in the sense in which he expected and desired his hearer to understand him, and it is only where he did not believe what he purposefully caused his victim to believe that he can be convicted of theft.

Sec. 11.20.240. Theft by Receiving.

(1) A person commits theft by receiving if he buys, receives, retains, conceals or disposes of property of another knowing or having good reason to know that the property was the subject of theft, unless the property is received, retained, concealed or disposed of with the purpose to restore it to the owner.

(2) 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.

(3) The fact that the person who stole the property has not been convicted, apprehended or identified is not a defense to a charge of receiving stolen property.

(4) Theft by receiving constitutes a Class misdemeanor unless the value of the property exceeds $500, in which case it is a Class C felony.

(5) 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 dollars sustained by him for the loss of the property, as well as all costs and reasonable attorney's fees.

(This language from existing AS 11.20.350.)

Comment

This section is based upon existing Alaska law (11.20.350) and the MPC § 223.6. Sub § (b) is aimed at the professional fence and reflects that a higher burden should be placed on dealers than on casual receivers. This incorpoates the traditional distinct crime of receiving stolen property as part of the new comprehensive "theft offense". It is not unlikely that the crime of receiving stolen property owed its separate existence to circumstances which no longer exist, especially the historic restriction of larceny to cases of "trespass" against another's possessions. The receiver acquires the property by voluntary delivery of the original thief.

From a practical standpoint it is important to punish receivers in order to discourage theft. The existence and functioning of a fence, a dealer who provides a market for stolen property is an assurance , especially to professional thieves, of ability to realize the unlawful gain.

Consolidation of receiving with other forms of theft provides the same advantages as other aspects of the unification of theft concept. It reduces the opportunity for technical defenses based upon legal distinctions between the similar activities of stealing and receiving the fruit of the theft.

Consolidation is favorable to the defendant by making it impossible to convict of two offenses based on the same transaction.

The Oregon commentaries reflect that the "having good reason to know" is tougher than the M P C's actual awareness but says under the M P C version, proof of reason to believe would authorize a jury to draw an inference of actual knowledge so difference is academic.

Sec. 11.20.250. Right of Possession

Right of possession of property is as follows:

(1) For purposes of this chapter, a person who has obtained possession of property by theft or other illegal means shall be deemed to have a right of possession superior to that of a person who takes, obtains or withholds the property from him by means of theft.

(2) A joint or common owner of property shall not be deemed to have a right of possession of the property superior to that of any other joint or common owner of the property.

(3) In the absence of a specific agreement to the contrary, a person in lawful possession of property shall be deemed to have a right of possession superior to that of a person having only a security interest in the property, even if legal title to the property lies with the holder of the security interest pursuant to a conditional sales contract or other security agreement.

Comment

This section is taken from Oregon and spells out the right of possession of property. Sub § (1) is consistent

with the definition of "owner" contained in § 160 (7) by providing that one who obtained possession of property by theft or other illegal means has a right of possession superior to that of one who takes, obtains or withholds it from him by means of theft. This is a codification of a generally accepted principle in the larceny area.

Subsec. (2) defines the rights of joint or common owners, such as partners and is a restatement of the generally accepted principle that one cannot "steal" from the other if the taker has a right to possession at the time of the taking.

Subsec. (3) deals with the difficult cases in which there is some sort of security agreement between the parties, and provides that in the absence of a specific agreement to the contrary, a person in lawful possession of property has a right of possession superior to one having only a security interest therein. The gist of the subsection is to protect lawful possession. This section represents basically a codification of existing common law principles.

Sec. 11.20.260. Theft of Services.

(1) A person commits the crime of theft of services if:

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

(b) 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 thereto.

(2) "Services" includes but is not necessarily limited to labor, professional services, transportation, telephone or other public services, accommodation in hotels, restaurants or elsewhere, admission to exhibitions and the supplying of equipment for use.

(3) 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.

(4) Theft of services is a Class _____ misdemeanor unless the value of the services exceeds $500, in which case it is a Class C felony.

Comments

The starting point of this section is the M P C § 223.7. The purpose of this section is to protect commercial enterprises. The definition of property in Section 11.20.160(8) prevents overlap between this section and ordinary theft. To aid enforceability, absconding without payment is prima facie evidence deception. Some commentators have suggested that the punishment for this theft should be less because often the actual loss incurred is small. In addition, many of the complaining businesses do not exercise diligence and wish to profit from their lack of safeguards. Because of this, many jurisdictions treat it as a one degree crime. Pursuant to Commission direction, this concept was rejected and the degree of crime will depend upon the value of services stolen.

Sec. 11.20.270. Theft by Failure to Make Required Disposition of Funds Received.

(1) A person commits the crime of failure to make required disposition of funds received or held when

(a) he knowingly 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

(b) when he deals with the property as his own and knowingly or recklessly fails to make the required payment or disposition.

(2) It does not matter 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 or disposition.

(3) An officer or employee of the government or of a financial institution is presumed

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

(b) 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.

(4) Theft by failure to make required disposition of funds received or held is a Class ____ misdemeanor unless the value exceeds $500.00 , in which case it is a Class C felony.

Comment

This section has no equivalent in Alaska law. The content derives from the MPC 223.8 and is necessary because traditional law

provides no protection against one who receives property not by deception, but subject to an obligation to dispose of it or an equivalent in a given way, and one who fails to fulfill his obligation to his own benefit (i.e., employer who withholds taxes or United Fund contributions). This section makes it criminal to either purposefully or recklessly fail to make the required payment or disposition. A mistake of law defense is not available to officers or employees of the government or a financial institution because people in this position should be under a duty to determine the legal requirements affecting their conduct when citizens' or depositors' money is at stake. There is no presumption here against private fiduciaries.

The presumption based on failure to pay or account arises only on lawful demand and subsequent refusal. As set out here, punishment would vary according to the value affected by the criminal act although one might wish to consider setting out specific, stringent penalties regardless of value because of the breach of trust.

Because of Commissioners' questions as to whether Sec. 270 is needed, this comment contains additional reasons why it is a valuable section. There is no common-law coverage of the situation in which a man receives title to property or other funds subject to an agreement to make certain disbursements at a future time. Nor did the common law anticipate the use of paychecks instead of cash and the device of "withholding" in which no property as such ever changes hands. If the particular transaction could be viewed as a bailment of specific property, then sometimes embezzlement or larceny by conversion might lie; but very often it was clear that no fraud had been practiced, title to property had been unconditionally transferred in return for a promise of counter-performance and thereafter the obligor for reasons of his own decided to refrain from compliance to his own advantage. The withholding situation amounted to a general debtor-creditor relationship only. A finding of these facts would not support a conviction of larceny, embezzlement or obtaining property by false pretenses either because of doctrines of "possession" or because no property was involved.

This section does not really overlap the theft provision because it is relatively rare for specific property to be received on the understanding that the same property is to be disposed of in a particular way.

In the usual instance, there will be only a general debtor-creditor relationship, as in the case of the employer who "withholds", the merchant who sells "on consignment", the contractor who must "reserve" money to pay subcontractors or the property owner who must "retain intact" a stated per cent of the contract or contract price pending final certification of completion by an architect.

The chief difference between this proposal and the M P C 223.8 is that the latter refers only to property while this draft refers to "property from anyone or personal services from his employees". It is not clear that "property" as defined in either M P C 223.0 (6) or Sec.160(8) of this draft, includes for example, the value of labor or service performed for the economic benefit of an employer. Therefore the phrase "from his employee" was added to prevent overlap with the theft of services section.

Sec. 11.20.280. Unauthorized Use of a Propelled Vehicle.

(1) A person commits the crime of unauthorized use of a propelled vehicle if:

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

(b) having custody of a propelled vehicle pursuant to an agreement between himself or another and the owner thereof whereby he or another is to perform for compensation a specific service for the owner involving the maintenance, repair or use of such a vehicle, he intentionally uses or operates it, without the consent of the owner, for his own purpose in a manner constituting a gross deviation from the agreed purpose; or

(c) having custody of a propelled vehicle pursuant to an agreement with the owner thereof whereby it is to be returned

to the owner at a specified time, he knowingly retains or withholds possession thereof without the consent of the owner for so lengthy a period beyond the specified time as to render the retention or possession a gross deviation from the agreement.

(2) 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.

(3) Definition of propelled vehicle. 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. It shall include but not be limited to autos, vessels, airplanes, motorcycles, snow machines, ATV's, sailboats and construction equipment.

(4) Unauthorized use of a propelled vehicle is a Class misdemeanor. A second or subsequent violation of this section shall be a Class C felony.

(5) 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.

Comment

Comment follows § 11.20.290.

Sec. 11.20.290. Unauthorized Occupancy of a Propelled Vehicle.

(1) A person commits the crime of unauthorized occupancy of a propelled vehicle if he knowingly rides in a propelled

vehicle which at the time he entered the vehicle, he knew or had been informed had been stolen or was being used or was to be used in violation of § 280.

(2) Unauthorized occupancy of a propelled vehicle is a misdemeanor.

Comment

Section 280 defines the offense known as "joyriding" which has the intent of borrowing rather than that of depriving or appropriating as in theft. Sec. 1(a) covers the ordinary taking of a vehicle. The situation where one or more persons who may or may not have originally taken it are found riding in it is covered in § 290.

Sec. 1(b) and (c) define offenses of the embezzlement variety, involving excessive misuse or withholding of a vehicle by a person who originally obtained possession or custody thereof legally. In order to exclude frivolous charges, this type of offense has been limited to two kinds of situations. The first, 1(b), is exemplified by a garage attendant who without authorization uses a patron's car to go on a spree. The second, 1(c), 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 a "gross deviation" from the agreement or the agreed purpose of the bailment.

In this proposal, a first offense is classified as a misdemeanor. Genuine theft cases would be prosecutable as felonies depending upon the value of the vehicle.

This proposed section is taken from New York Revised Penal Law §165.05. Secs. (2) (5) and the felony provisions of (4) are taken from the proposed revision prepared by the Alaska Traffic Code Revision Committee.

Existing Alaska Law A S 28.35.010 and 11.20.145 provide a misdemeanor penalty. Unauthorized use would be a lesser included offense to theft of an automobile. A S 11.20.146 presently provides for this.

Damage to the vehicle is covered under §§ 460 -480 of this draft, Criminal Mischief.

Sec. 11.20.300. Removal of Identification Marks.

(1) A person commits the offense of removal of identification marks if he, with intent to cause interruption of the ownership of another, defaces, erases, or otherwise alters any serial number or identification mark placed or inscribed on any bicycle, firearm, moveable or immoveable construction tool or equipment, appliances, merchandise or other article or its component parts. A person removes identification marks if he attempts to, or succeeds in erasing, defacing, altering, or removing a serial number or identification mark or part thereof, on the property of another.

(2) Removal of the identification marks is a Class ___ misdemeanor.

Comment

Comment of this section follows Section 11.20.310.

Sec. 11.20.310. Unlawful Possession.

(1) It shall be unlawful for any person to possess any bicycle, firearm, moveable construction tool or equipment, appliance, merchandise or other article, ar any part thereof knowing the serial number or identification mark placed on the same by the manufacturer or owner for the purpose of identification has been erased, altered, changed or removed for the purpose of changing the identity of the foregoing items.

(2) Unlawful possession is a Class ____ misdemeanor.

Comment

The type of statute reflected in AS 11.20.300 and 11.20.310, modeled on Hawaii, is present in at least Michigan, New York, and Ohio Statutes. The strict liability concept where possession of the vehicle or mechanical device is proof of a violation even with no knowledge or motivation specified, has been upheld in Michigan.

It is a felony in New York but a misdemeanor in Hawaii, Ohio and Michigan.

The Hawaii alternative appears to answer some of the Commission's problem regarding handling of one's own property as it speaks to "with intent to cause interruption of ownership of another" in the section on removal of marks. It still makes possession of any property including one's own a misdemeanor if

(1) there is knowledge that the marks have been removed and
(2) the purpose was to change the identity of the item.

There is no Alaska Statute directly on point. As stated in the New York Commentaries and the comments to the first proposal, the statute is in response to the fact that vehicles, certain kinds of machinery and other particular articles are vulnerable to organized rings who steal, attempt to render unidentifiable and resell.

If there is still concern that the statute is overbroad, the following provision based on the New York statute covers more specific articles of commerce:

Alternate Sec. 11.20.300. Forgery of a vehicle identification number.
(1) A person is guilty of forgery of a vehicle identification number when:
(a) he knowingly destroys, covers, defaces, alters or otherwise changes the form or appearance of a vehicle identification number on any motor vehicle or motorcycle or component part thereof, except tires; or
(b) he removes any such number from a motor vehicle or motorcycle or component part thereof, except as required by the provisions of the vehicle and traffic law; or
(c) he affixes a vehicle identification number to a motor vehicle or motorcycle except in accordance with the provisions of the vehicle and traffic law.
(2) Forgery of a vehicle identification number is a Class C felony.

Alternate Sec. 11.20.310. Illegal Possession of a Vehicle Identification Number Plate.

(1) A person is guilty of illegal possession of a vehicle identification number plate when:

(a) he knowingly possesses a vehicle identification number plate which has been removed from the motor vehicle or motorcycle to which such plate was affixed by the manufacturer or in accordance with the provisions of the vehicle and traffic law; or

(b) he knowingly possesses a motor vehicle or motorcycle to which is attached a vehicle identification number plate which has been destroyed, covered, defaced, altered, or otherwise changed; or

(c) he knowingly possesses a motor vehicle or motorcycle with a vehicle identification number plate which was not affixed by the manufacturer or in accordance with the provisions of the vehicle and traffic law.

(2) Illegal possession of a vehicle identification number plate is a Class C felony.

Practice Comments from the New York Code. The provisions of §170.65 and 170.70 are part of a plan "designed to crack down on professional auto thieves in New York State. The first bill is directed at the use of ownership documents and vehicle identification numbers from junked and wrecked vehicles to obtain apparently "clean" ownership documents for stolen vehicles. This is one of the two principal ways in which professional car thieves are able to get stolen cars registered in this state. This section should make this mode of operation much more difficult by requiring the surrender of the vehicle identification number plate and the proofs of ownership of junked vehicles to the Superintendent of State Police and by requiring the notification of the State Police as to the disposition and destruction of vehicles sold or referred as junk or salvage . In addition it is a Class E felony to tamper with or remove a motor vehicle identification number or affix an improper vehicle identification number to a motor vehicle, or to knowingly possess a vehicle identification number plate or to knowingly possess a vehicle with a tampered vehicle identification number plate".

Sec. 11.20.320 Bad Checks

(1) A person is guilty of issuing a bad check if he:

a) issues a check as a drawer or representative drawer, knowing that he or his principal, as the case may be, has insufficient funds with the drawee to cover the check, and he **knows** at the time of issuance that payment will be refused by the drawee upon presentation; or

b) passes a check, knowing that the drawer thereof has insufficient funds with the drawee to cover the check, and he **knows** at the time the check is passed that payment will be refused by the drawee upon presentation and payment in fact is refused by the drawee upon presentation.

(2) An issuer is presumed to believe that the check or order, other than a post-dated check or order, will be refused by the drawee upon presentation, if payment was refused by the drawee for insufficient funds, upon presentation within thirty days after issue and the issuer failed to make full satisfaction of the amount of the check within ten days after receiving notice of such refusal.

* (3) It shall be an affirmative defense to prosecution for issuing a bad check that the defendant or a person acting in his behalf made full satisfaction of the amount of the check with cost and fees within ten days after dishonor by the drawee.

(4) As used in this section:

a) "drawer" means a person whose name appears on a

*This provision must be correlated with the affirmative defense provision in the General Provision Section.

check as the primary obligor, whether the actual signature be that of himself or of a person purportedly authorized to draw the check in his behalf;

b) "representative drawer" means a person who signs a check as drawer in a representative capacity or as agent of the person whose name appears thereon as the principal drawer or obligor;

c) "insufficient funds' means funds with the drawee in an amount less that that of the check;

d) a person "issues" a check when, as a drawer or representative drawer thereof, he delivers it or causes it to be delivered to a person who thereby acquired a right against the drawer with respect to such check; provided, however, that one who draws a check with intent that it be so delivered is deemed to have issued it if the delivery occurs;

e) a person "passes" a check when, being a payee, holder or bearer of a check which previously has been or purports to have been drawn and issued by another, he delivers it, for a purpose other than collection, to a third person who thereby acquired a right with respect thereto.

(5) The offense shall be punishable as a Class ___ misdemeanor.

Comment

This section is primarily the Massachusetts law and is designed to cover the issuance or passing of bad checks where no property or services are obtained and which therefore does not amount to theft. The definition of deception in § 160(8) makes it possible to prosecute the typical bad check passer on the basis of the money or property obtained in return for the check.

The punishment could depend upon the amount (including aggregation) or, as here, on the number of checks passed within a stated time.

The presumption of knowledge is probably the most important practical reason for retaining bad check provisions. Consider the merchant who finds that a check he cashed is drawn on a fictitious or inadequate account. It is possible but highly improbable that the transaction was innocent: the drawer may absentmindedly have put the name of the wrong bank on a blank check or he may have intended to open an account before the check was presented. In the case of checks on real but inadequate accounts, the chance of innocence is greater but is negated by a refusal to make the check good promptly.

Based upon Commission discussion, no specific stale check provision was adopted as the consensus was that it was implicit in the proposed language. Also the Massachusetts provision making a bad check violation a felony if there were three previous convictions has been dropped.

The existing Alaska Statutes are AS 11.20.210 - .250.

Sec. 11.20.330. Robbery.

(1) A person is guilty of robbery if in the course of committing a theft, he knowingly takes property from the person or the immediate presence and control of a person and uses force or the threat of causing immediate bodily injury

a) to prevent or overcome resistance to the taking of the property or to the retention of the property immediately after the taking; or

b) to compel the other person to deliver up the property or to engage in other conduct which aids in the taking or carrying away of the property.

(2) Robbery is a Class A felony if in the course of committing or attempting to commit it, or in immediate flight after such attempt or commission, either the defendant or another participant

a) is armed with a dangerous weapon or represents that he or another participant is then and there so armed; or

b) causes or attempts to cause bodily injury to another person.

(3) Robbery, if not punishable as Class A felony, is punishable as a Class B felony.

(4) The Court or jury before which any person indicted for robbery is tried may find him guilty of theft in any degree.

Comment

This definition of robbery, based primarily upon Massachusetts and Oregon law, draws the line clearly between robbery and extortion and also provides for increased penalties by reason of increased danger to the victim. The line is clear because, in robbery, it involves threat of immediate force whereas threat in extortions cover a threat to cause future harm. The entire section emphasizes the concern for physical danger or the appearance of physical danger to the citizen as opposed to the actual taking of property. That is why the common law defense of claim of right was eliminated in the previous draft since the danger to the citizen is present no matter what the origin of the claim by the defendant may be. Pursuant to Commission direction, the claim of right language has been eliminated as it was felt by the Commission that it would be an invitation to prosecutors to charge robbery and perhaps it should be allowed as a defense.

Relationship to existing law:

A S 11.15.160 (assault with intent to commit robbery)
11.15.240 (robbery)
11.15.250 (larceny from person)

The present statutes prohibit forcible taking of property from another and unless property is actually taken from the person or presence of the victim, there is no robbery. If the actor tries to rob and is unsuccessful, it must now be treated as attempted robbery or assault with intent to rob.

This emphasizes the property aspects of the crime and treats it as an aggravated form of theft. This proposed section emphasizes danger to victim and adopts the view that the repression of violence is the principal reason for being guilty of robbery.

2(a) covers the robber who creates the impression that he is armed. This covers the type of robbery in which the actor is in fact unarmed but conveys to the victim the impression that he has a weapon. While such a threat may not create any greater risk to the person of the victim, it does heighten the terror and is also persuasive in overcoming resistance to the robbery. (This covers a note with hand in pocket or fake weapon.)

Sec. 11.20.340. Theft from the Person

A person who, other than by force and violence or by putting in fear, steals and takes from the person of another anything of value is guilty of a Class C felony.

Comment

Pursuant to Commission direction, the existing Alaska statute 11.15.250 (larceny from person) has been specifically placed in this draft as § 340. Other jurisdictions treat it as follows:

Massachusetts and Oregon - under general theft provisions with value of property stolen determining whether misdemeanor or felony.

New York § 155.30 - Grand Larceny in 3rd Degree to steal property from the person (a class E felony).

Illinois § 16-1 - A specific subsection under theft and carries a felony penalty.

Article 4. Forgery and Fraud

Sec. 11.20.350. Definitions

As used in this section unless the context requires otherwise:

(1) "written instrument" means any paper, document, instrument or article containing written or printed matter or the equivalent thereof, 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;

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

(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) 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 thereof;

(5) to "falsely complete" a written instrument means to transform, by adding, inserting or changing matter, an incomplete 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 ostensible maker or authorized by him;

(6) 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 or 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;

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

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

(9) "intent to defraud" means

a) a purpose to use deception as defined in Sec. 160 (2) or to injure someone's interest which has value as defined in

§ 160 (1) (11); or

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

(10) property is defined in Sec. 11.20.160(8);

(11) services . . . §160(11)(b);

(12) government is defined in §160(5).

Comments

The definitional section defines terms only, not criminal activity itself. The definitions are taken from O R S 165.002 and are based upon the M P C. Sec. 9, (a) & (b) is based upon a phrase in M P C 224.1. The reasoning for setting out forgery as a separate offense distinct from theft was stated by the drafters of the M P C as follows:

"In drafting a Model Penal Code, it is necessary to ask ourselves why this expanded concern for authenticity is not satisfied by the penal law dealing with false pretense and fraud. In earlier days the law of false pretense might well have been necessary to prove that property was obtained by the misrepresentation, which would not be the case if a forged deed were given as a gift. In addition, the limitations of traditional attempt law would have prevented punishment of a forger or counterfeiter apprehended after the false documents had been made, but before any attempt to pass them off. It is obviously even more important to convict the forger, often a highly skilled professional criminal, than the individuals to whom he sells or gives the forgeries to be palmed off by them.

"If the shortcomings of other branches of the criminal law are remedied in a modern code that deals effectively with fraud, attempt, complicity, and professional criminality, the need for a separate forgery offense is much diminished. We 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 . . " [Tentative Draft No. 11, pp. 79-80 (1960)].

Sec. 11.20.360. Forgery.

A person commits the crime of forgery as a Class C felony if, with intent to injure or defraud he:

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

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

AS 11.25.010, 020 presently make forgery a felony. The original proposal derives from the Oregon Code and the Model Penal Code (224.1).

In some cases forgery and uttering may have been considered two separate crimes. This makes it clear that forgery is a single crime that may be committed by falsely making, completing or altering a written instrument or by uttering a forged instrument with knowledge it is forged. This section combines the existing AS 11.25.010 and 020.

Sec. 11.20.370. Criminal possession of a forged instrument with intent to utter.

A person commits the crime of criminal possession of a forged instrument as a Class C felony if, knowing it to be forged and with intent to utter same, he possesses a forged instrument.

Comments §§ 360, 370

These sections continue the traditional separation between forgery on the one hand and possession and uttering on the other. The M P C combines all of these but since as far as pleading and proof they would be treated separately, they are set out in separate sections. This recognizes the transition from a preparatory stage to an advanced one or the completed offense. It also recognizes the possibility that the forger and the person who uses the forged instrument may not be accomplices. This also recognizes that the threat to the community is essentially the same in either forgery or possession. These sections are Oregon law.

Sec. 11.20.380. Criminal possession of a forgery device

(1) A person commits the crime of criminal possession of a forgery device if:

a) 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

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

(2) Criminal possession of a forgery device is a Class C felony.

Comment

This section reaches back to a point before actual forgery begins. Here again this is an area for professional criminals. The proposed section is broader than the existing Alaska Statute (AS 11.25.030). § 380 (1)(a) designates the manufacture or possession of devices or articles specifically designed for criminal use as criminal per se.

(1)(b) requires the additional element of an intent to use unlawfully with respect to items designed for legitimate use but adaptable to criminal purposes.

In (1)(a) the state must prove knowledge by the defendant but need not prove an intent to use as is required in (1)(b).

AS 11.25.030 speaks to possession or making of tools or material designed for counterfeiting and AS 11.25.050 speaks to making or possession of tools. This section combines these.

Sec. 11.20.390. Criminal simulation.

(1) A person commits the crime of criminal simulation if:

(a) 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

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

(2) Criminal simulation is a Class ____ misdemeanor if the value of what it purports to represent is under $500, otherwise it is a Class C felony.

Comment

This section is Oregon law and is based on the M P C. Its chief application is to art objects, manuscripts, etc. It reaches preparation for what may ultimately prove to be theft by deception when the thing to which the deception relates is not a written instrument.

This kind of crime shows careful advance planning and often the monetary stakes are high. This is additional justification for making this a separate offense. The dividing line between misdemeanor/felony corresponds to the other theft provision in the draft.

Sec. 11.20.400. Obtaining signature by deception.

(a) A person commits the crime of obtaining a signature by deception if with intent to defraud or to acquire a substantial benefit for himself or another and by deception he causes another to sign or execute a written instrument.

(b) Obtaining a signature by deception is a Class ____ misdemeanor.

Comment

This section covers conduct which is not forgery but

which is in most instances preparatory to the commission of theft by deception, or if not, is conduct which should be punished in its own right.

A signature is not "property" within the meaning of § 11.20.160(8) so that obtaining a signature by fraud is probably not either theft or extortion. Forgery does not cover the resulting written instrument because it is precisely what it purports to be - a document executed by one who has the authority to do so. The deception merely means that under other circumstances the authentic instrument would not have been made or signed. A phrase in AS 11.20.360 appears to be the only Alaska Statute directed to the problem.

The source of this provision is the Oregon Code.

Sec. 11.20.410. Offering a false instrument for recording.

(1) 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 materially false statement or materially false information and with intent to defraud, he presents or offers it to a public office or a public employee 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 employee.

(2) Offering a false instrument for recording is a Class ____ misdemeanor.

Comment

This section covers the presentation of an instrument containing false statements or information to a public agency for filing if the instrument relates to real or personal property or contractual relationships and requires intent to defraud. This is a combination of the N Y Revised and Michigan proposed codes.

Examples of this - a corporation official might offer false information in a report submitted to a state official with

the expectation of using the material to mislead future purchasers of stock in the corporation. A property owner might file a deed containing a misdescription of property subject to a lien intending to mislead a future purchaser. The ultimate fraud, if successful, constitutes theft but otherwise there is no crime until the perpetration. This intends to cover the preparatory stages. Because it is limited to property or contractual relationships, it would not reach someone lying about his age on a driver's license.

A S 11.20.440 speaks in part to this except it does not include recording.

Sec. 11.20.420. Unlawfully using slugs.

(1) A person commits the crime of unlawfully using slugs if:

(a) with intent to defraud the supplier of property or a service sold or offered by means of a coin machine, he inserts, deposits or otherwise uses a slug in such machine; or

(b) he makes, possesses, offers for sale or disposes of a slug with intent to enable a person to use it fraudulently in a coin machine

(2) As used in this section:

(a) "coin machine" means a coin box, turnstile, vending machine, or other mechanical or electronic device or receptacle designed to receive a coin or bill of a certain denomination or a token made for such purpose, and in return for the insertion or deposit thereof, automatically to offer, provide, assist in providing or permit the acquisition or use of some property or service.

(b) "slug" means an object, article or device which, by virtue of its size, shape or any other quality is capable of being inserted, deposited, or otherwise used in a coin machine as a fraudulent substitute for a genuine coin, bill or token.

(c) "value" of the slug means the value of the coin, bill or token for which it is substituted.

(3) Unlawfully using slugs is a Class ____ misdemeanor if the value is under $500; a Class C felony if greater than $500.

Comment

This section again is primarily Oregon and was utilized as a section separate from theft because of the problem of no face-to-face dealing with the owner or supplier.

The purpose of this section is to prevent the use of slugs and the manufacture of slugs or other devices. AS 11.25.040 speaks to counterfeit coins but Alaska does not have any statute dealing specifically with slugs other than AS 11.20.495 -- fraudulent use of telecommunication service.

Sec. 11.20.430. Criminal impersonation.

(1) A person commits the crime of criminal impersonation if he:

(a) assumes a false identity and does an act in his assumed character with intent to gain a pecuniary benefit for himself or another or to injure or defraud another; or

(b) pretends to be a representative of some person or organization and does act in his pretended capacity with intent to gain a pecuniary benefit for himself or another or to injure or defraud another.

(2) Criminal impersonation is a Class ____ misdemeanor.

Comment

This section prevents misrepresentation of identity which is exposed to light before theft is committed or which does not produce something which is property or services. This type of statute appears to be aimed at preventing either activities preliminary to fraud or the assumption of status that waters down the public image of a veterans group or fraternal organization. There must be an intent to gain a pecuniary benefit and not just unauthorized use. This provision is based on the New York Revised Statutes and the Michigan Proposed Statutes.

A S 11.20.450 - false pretenses on soliciting for organizations.

A S 11.20.460 - definition of false representation in .450.

A S 11.20.500 - unauthorized use of badge or emblem of societies - does not require pecuniary benefit.

The Commission discussed the possibility of including a subsection regarding impersonation of a police officer but decided to reserve that situation to a separate section in the offenses against Public Justice.

Reference was made to A S 11.30.220 but it was concluded that this is a very narrow circumstance and that a more general section was needed.

Sec. 11.20.440. Fraudulent Use of a Credit Card.

(1) A person commits the crime of fraudulent use of a credit card if, with intent to injure or defraud, he uses a credit card for the purpose of obtaining property or services with knowledge that:

(a) the card is stolen or forged; or

(b) the card has been revoked or canceled; or

(c) for any other reason his use of the card is unauthorized by either the issuer or the person to whom the credit card is issued.

(2) "Credit card" means a card, booklet or other identifying symbol or instrument evidencing an undertaking to pay for property or services delivered or rendered to or upon the order

of a designated person or bearer.

(3) Fraudulent use of a credit card is:

(a) a Class ___ misdemeanor if the total amount of property or services the person obtains or attempts to obtain is under $500.00;

(b) a Class C felony if the total amount is $500 or more.

(4) Unauthorized possession of a credit card is a Class ____ misdemeanor.

(5) The unauthorized sale of a credit card is a Class C felony. Sale shall include the exchange, barter, gift or offer thereof.

Comments

§ 440 is intended to cover instances that probably do not constitute either theft or theft of services, and in which it is not the actual supplier of goods or services, but some organization remote in time and place, that incurs the actual loss.

The content of the section is taken from the MPC 224.6. Commentary to Sec. 224.6 indicates the reasons for having a separate section on the subject:

"This is a new section to fill a gap in the law relating to false pretense and fraudulent practices. Secs. 223.3 and 223.7 cover theft of property or services by deception. It is doubtful whether they reach the credit card situation because the user of a stolen or cancelled credit card does not obtain goods by any deception practiced upon or victimizing the seller. The seller will collect from the issuer of the credit card, because credit card issuers assume the risk of misuse of cards in order to encourage sellers to honor the cards readily. Thus it is the non-deceived issuer who is the victim of the practice."

Though one may question whether in fact use of credit cards to obtain goods or services cannot possibly amount to theft of services, it is true that a local merchant may never know of the deception practiced on him, or may not care even if he does learn of it later, if the credit card issuer has paid the amount of the sale. Therefore, there is probably no great danger of overlap between this section and sections involving theft by deception and theft of services.

A S 11.22.010 - 11.22.140 are the Alaska Credit Card Crimes Act. These sections overlap existing sections in the proposed draft of theft and forgery, i.e., the card itself would constitute "property"; consequently stealing it would be "theft". Possession of a stolen card would probably amount to "theft by receiving." Forging a credit card or possession of a forged card is prohibited by the forgery sections of the draft. Therefore, there are not separate sections relating specifically to theft or forgery of credit cards.

§ 440 encompasses basically A S 11.22.070. There is an intent to defraud in both. The dividing line between a misdemeanor and a felony should correspond to the line the Commission draws in the general theft sections. The M P C and Alaska law presently draw the line at $500 with an additional proviso in the Alaska law of "within a six month period". The total amount under the proposed draft, involved in the fraudulent use of a credit card committed pursuant to one scheme or course of conduct could be aggregated in determining the grade of the offense.

The sections regarding unauthorized possession without use and the sale or trade of a credit card have been added pursuant to Commission suggestion.

Article 5. Criminal Mischief and Criminal Tampering

Sec. 11.20.450.Criminal Mischief Definitions. The definitions contained in AS 11.20.160 (Theft and Related Offenses) are applicable in this article unless the context otherwise requires.

Sec. 11.20.460. Criminal Mischief in the first degree.

(1) A person commits the crime of criminal mischief in the first degree, who, knowingly, intentionally or recklessly

having no right to do so, damages any property:

(a) valued in an amount exceeding $500.00; or

(b) by means of an explosive.

(2) Criminal Mischief in the first degree is a Class C felony.

Comment

Comment follows AS 11.20.480.

Sec. 11.20.470. Criminal Mischief in the second degree.

(1) A person commits the crime of criminal mischief in the second degree who, knowingly, intentionally or recklessly, having no right to do so, damages any property valued in an amount less than $500.00 but exceeding $50.00.

(2) Criminal Mischief in the second degree is a Class misdemeanor.

Sec. 11.20.480. Criminal Mischief in the third degree.

(1) A person commits the crime of criminal mischief in the third degree who, knowingly, recklessly or intentionally, having no right to do so damages property of any value not exceeding $50.00.

(2) Criminal mischief in the third degree is a Class misdemeanor.

Sec. 11.20.490. Intentional Injury to Animals.

(1) A person commits the crime of intentional injury to animals who knowingly, recklessly or intentionally wounds,

disfigures or injures any animal which is the property of another or the state or wilfully administers poison to any animal or maliciously exposes poison with intent that it be taken by an animal.

(2) Intentional injury to animals is a Class ___ misdemeanor.

Comments

The many sections in AS 11.20.520 - 590, AS 11.20.620, all repealed by the 1975 legislature, and AS 11.20.670 - 690 and in other titles of the statutes are replaced here by three sections under the general heading of criminal mischief. AS 11.20.515 is covered in substance but the form was changed to conform to other provisions of the draft. § 460 penalizes one who either intentionally or recklessly damages property when he has no right to do so, and no reasonable basis to believe that he has such a right. Careless or negligent destruction of property is not criminal under this definition. Reckless destruction is the lowest degree of criminal mischief because there is no intent to damage the property of another. Under this draft, one who honestly but unreasonably believes he has a right to deal with property in the way he does is covered.

Under § 470, the penalty for criminal mischief is aggravated if the intent is to destroy property without a right or reasonable belief in the existence of a right to do so when the value of property exceeds a certain amount. This value should be coordinated with the dividing lines in the theft section. This standard reflects the objective of these sections to protect property owners against deliberate destruction of their property, a destruction not substantially different from loss through theft.

§ 480 would provide for a greater increase in penalties because of value of property or if damaged through explosives. Destruction or injury by explosives is singled out because of the greater danger to human life which that method poses in comparison to other means.

The definition of property and the standards for valuation in § 160 (Theft) are incorporated by reference to show the functional relationship that the sections bear to theft in protecting property owners against loss.

These sections are all derived from the New York Revised Penal Law § 145 et seq and are almost identical to the Oregon Code with the exception that the Oregon Code attempts to combine criminal tampering in its Criminal Mischief sections and this proposal will set out special sections for criminal tampering.

In addition, this proposal incorporates specifically A S 11.20.520 as § 490. This section was enacted by the legislature last year and because of this it was set out specifically although the definition of property is probably broad enough to cover animals.

M P C 220.3 covers Criminal Mischief. It makes it a third degree felony if the loss exceed $5000 or a substantial interruption or impairment of public utilities results. Otherwise it's a misdemeanor in excess of $100, petty misdemeanor in excess of $25 and violation below.

Sec. 11.20.500. Criminal Tampering, Definitions.

The following definitions apply to §§ 11.20.510 and 520.

(1) "To tamper" means to interfere with something improperly, meddle with it, or make unwarranted alterations in its existing condition.

(2) "Utility" means an enterprise which provides gas, electric, steam, water, sewer, communications services, or other public service and any common carrier; it may be either publicly or privately owned or operated.

Comment

Comment follows AS 11.20.520.

Sec. 11.20.510. Criminal Tampering in the first degree.

(1) A person commits the crime of criminal tampering in the 1st degree if, having no right to do so or any reasonable ground to believe that he has such a right, and with intent

to cause a substantial interruption or impairment of a service rendered to the public by a utility or by an institution providing health or safety protection, he damages or tampers with property or facilities of such a utility or institution, and thereby causes substantial interruption or impairment of service.

(2) Criminal tampering in the first degree is a Class B felony.

Comment

Comment follows AS 11.20.520.

Sec. 11.20.520. Criminal Tampering in the second degree.

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

(a) tampers with property of another person with intent to cause substantial inconvenience to that person or to another; or

(b) tampers or makes connection with property of a utility.

(2) Criminal tampering in the second degree is a Class ___ misdemeanor.

Comment AS 11.20.500 - 520

This section is adapted from the New York Revised Penal Law § 145.15 and 145.20. Some of the activities covered in these sections fall within the common law concept of criminal mischief. Interference which results in physical damage to or destruction of property also amounts to malicious destruction of property. There is some overlap with §§ 460 - 480. However, not all acts of tampering or interference produce physical damage or destruction, and in some instances in which minor physical damage is inflicted, it is actually the interference with services rendered to the public which is the primary basis for concern.

Some of the Alaska Statutes cited in the previous section overlap here, i.e. 11.20.580 (repealed in 1975). All of these sections are drawn together into just two degrees of criminal tampering. Tampering must be intentionally done; the only basis for criminality based upon a form of negligence is an unreasonable belief that one has a right to do the act which he is about to do. To tamper means to interfere with under circumstances in which the equipment is not damaged; pulling a power switch is an example.

AS 11.20.510 is a felony under New York law, the proposed Michigan Code and the M P C because of the potential harm that could be done.

The Oregon Code as stated earlier does not set forth specific criminal tampering, believing that property rights were amply protected by their proposal. The phrase "tampers with" appears in Sec. 145 of the Oregon Code. Because of the disruption that could be caused, particularly in the area of public utilities, the Commission felt it important enough to set out separate tampering sections.

AS 11.20.515(b) speaks to tampering. The Alaska section does not speak specifically to utilities and in fact repealed the sections which dealt specifically with utilities. No provision in Title 42 would conflict with these provisions.

Oregon in its last legislative session amended their criminal mischief section to set out specifically an offense of tampering or interfering with utilities. Because of the widespread impact of utilities and the affect on the general populace that tampering with a utility would have, specific reference to utilities should be retained.

DRAFT GENERAL PROVISIONS

The following draft general provisions have been reviewed by the Commission. They do not include all the general provisions which would constitute a finished code but have been selected first for their relevance to the crimes already under review. Some, such as the mens rea definitions, are indispensible to the adoption of many crimes of property and related crimes.

If they are adopted and their application confined to use with the other new statutes proposed to be adopted herewith, no difficulties should be posed for present law or future law making and a number of valuable landmarks of use to future draftsmen will have been established.

Section 1--Short Title

This Act shall be known and may be cited as "Alaska Criminal Code of 19___."

COMMENT

This section refers to revised Title 11 as the "Alaska Criminal Code of 1976." Currently, there is no comprehensive Criminal Code in Alaska. Instead, Title 11 is for the most part taken from the Oregon statutes originally enacted in the 1850's. These statutes were substantially revised by the Oregon Legislature during a complete revision of their statutes in 1971.

Section 2--General Purposes

Section 2(1). The general purposes of the Alaska Criminal Code of 1976 are:

(a) To insure the public safety by preventing the commission of offenses through the deterrent influence of the sentences authorized, the correction and rehabilitation of those convicted, and their confinement when required in the interest of public protection.

(b) To prescribe conduct that unjustifiably and inexcusably causes or threatens substantial harm to individual or public interest.

(c) To give fair warning of the nature of the conduct declared to constitute an offense and of the sentences authorized upon conviction.

(d) To define the act of omission and accompanying mental state that constitute each offense and limit the condemnation of conduct as criminal when it is without fault.

(e) To differentiate on reasonable grounds between

serious and minor offenses and to prescribe proportionate penalties for each.

(f) To avoid excessive, disproportionate or arbitrary punishments.

COMMENT

This section, taken with minor changes from ORS 161.025, is intended to state the general philosophy on which the Criminal Code is founded. The statement is included as an explanation of the underlying legislative premises and also as an aid in the interpretation of particular provisions and in the exericse of the discretionary powers vested in the courts and in the organs of correctional administration.

There is no comparable formulation in the current Alaska statutes. However, in the large part the section may be said to be based on Article I §12 of the Constitution, which provides as follows:

> Penal administration shall be based on the principle of reformation and upon the need for protecting the public.

Section 5--Application of Criminal Code

(1) The provisions of this Code shall govern the construction of and punishment for any offense defined in this Code and committed after the effective date hereof, as well as the construction and application of any defense to a prosecution for such an offense.

(2) Except as otherwise expressly provided, or unless the context requires otherwise, the provisions of this Code shall govern the construction of and punishment for any offense defined outside this Code and committed after the effective date thereof, as well as the construction and application of any defense to a prosecution for such offense.

(3) The provisions of this Code do not apply to or govern the construction of and punishment for any offense committed

prior to the effective date of this Code, or the construction and application of any defense to the prosecution for such an offense. Such an offense shall be construed and punished according to the law existing at the time of the commission of the offense in the same manner as if this Code has not been enacted.

(4) When all or part of criminal statute is amended or repealed, the criminal statute or part thereof so amended or repealed remains in force for the purpose of authorizing the accusation, prosecution, conviction and punishment of a person who violated the statute or part thereof before the effective date of the amending or repealing act.

COMMENT

This section is taken from ORS 161.035. Subsections (1) and (2) are intended to make clear that there is no ex post facto application of the Code, but that after the effective date of the Code it is the Code that is to control matters of criminal law in the Code itself and in other provisions that define crime. While there is currently no provision in the Alaska Statutes similar to subsection (2), the current "general provisions" have been applied to criminal offenses defined outside Title 11.

Subsections (3) and (4) are restatements of AS 01.05.021:

> Section 01.05.021. Effect of repeal on prior offenses and punishments. (a) No fine, forfeiture, or penalty incurred under laws existing before the time the Alaska Statutes take effect is affected by repeal of the existing law, but the recovery of the fines and forfeitures and the enforcement of the penalties are effected as if the law repealed had still remained in effect.
>
> (b) In the case of an offense committed before the time the Alaska Statutes take effect, the offender is punished under the law in effect when the offense was committed.

Section 6--Limitations of Applicability

(1) This Code does not bar, suspend or otherwise affect any right or liability to damages, penalty, forfeiture or other remedy authorized by law to be recovered or enforced in a civil action, regardless of whether the conduct involved in the proceeding constitutes an offense defined in this Code.

(2) No conviction of a person for an offense works a forfeiture of his property, except in cases where a forfeiture is expressly provided by law.

COMMENT

This section sets forth additional limitations of the proposed Code.

Subsection (1) is taken from ORS 161.045(3). The substance of this section is currently found in AS 11.75.110 which provides as follows:

> The omission to specify or affirm in this title liability for damages, penalty, or forfeiture, or other remedy imposed by law for an act or omission punishable in this title and to allow damages, penalty, forfeiture or other remedy imposed by law to be recovered or enforced in a civil action or proceeding does not affect the right to recover or enforce the liability.

Subsection (2) is taken from ORS 161.045(4). The substance of this section appears in AS 11.05.130:

> A conviction of a person for a crime does not work a forfeiture of property, except in cases where a forfeiture is expressly provided by law. However, in all cases of the commission or attempt to commit a felony the state has a lien, from the time of the commission or attempt, upon all the property of the defendant for the purpose of satisfying a judgment which may be given against him for a fine and for the costs and disbursements in the proceeding against him for the crime.

The portion of this statute allowing the state to have a lien for costs against a defendant appears to be in conflict with AS 12.80.030 which provides:

> No costs may be taxed to the defendant in a criminal action or proceeding begun or pro-

secuted in any of the courts of the state unless otherwise ordered by supreme court rule.

The issue of whether costs should be assessed under such circumstances will be examined in the sentencing provision of this Code.

Section 9--Definitions with Respect to Culpability

As used in this Code, unless the context requires otherwise:

(1) "Act" means a bodily movement, and includes the possession of property.

(2) "Voluntary act" means a bodily movement performed consciously as a result of effort or determination, and includes the possession of property, if the actor was aware of his physical possession or control thereof for a sufficient period to have been able to terminate it.

(3) "Omission" means a failure to perform an act the performance of which is required by law.

(4) "Conduct" means an act or omission and its accompanying mental state.

(5) "To act" means either to perform an act or to omit to perform an act.

(6) "Culpable mental state" means intentionally, knowingly, recklessly or with criminal negligence as these terms are defined in subsections (7), (8), (9), and (10) of this section.

(7) "Intentionally" or "with intent," when used with respect to a result or to conduct described by a statute defining an offense, means that a person acts with a conscious objective to cause the result or to engage in the conduct so

described.

(8) "Knowingly" or "with knowledge," when used with respect to conduct or to a circumstance described by a statute defining an offense, means that a person acts with an awareness that his conduct is of a nature so described or that a circumstance so described exists.

(9) "Recklessly," when used with respect to a result or to a circumstance described by a statute defining an offense, means that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

(10) "Criminal negligence" or "criminally negligent," when used with respect to a result or to a circumstance described by a statute defining an offense, means that a person fails to be aware of a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to be aware of it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

COMMENT

Traditional criminal law has required both an act and an accompanying state of mind before criminal penalties may be imposed, though there are no definitional provisions which define these terms in the current statutes. Because the Criminal Code is intended to be comprehensive, the Draft follows the lead of recent codifications and includes definitions of these terms. Subsections (1) and (2) are taken from New York Revised Penal Law §15.00. The remaining definitions are taken from ORS 161.085.

Subsection (1) requires bodily movement, but includes possession of property as an act in legal contemplation. Subsection (2) defines a voluntary act to be a bodily movement done volitionally and consciously. Possession is included in the concept, provided the person knew he had physical control long enough to have been able to terminate that control had he chosen to do so. This means, for example, that one who picks up the wrong coat, and does not know that there are narcotics in the pocket does not "possess" the narcotics until or unless he discovers them. Whether "discovery" means knowledge that he has an object of unknown composition or knowledge that it contains narcotics does not turn on the language in this subsection, but on the definitions of culpable mental states and on the mental culpability requirements in the statute under which the prosecution is maintained.

Subsection (3) makes it clear that omissions are included, a matter stressed also in subsection (4) defining "conduct" and in subsection (5) defining "to act."

Subsection (6) indicates that the only formal classifications of mental states are those in Paragraphs (7) - (10).

Subsections (7) - (10) change Alaska law concerning what constitutes "mens rea" only in the sense that it no longer gives currency to inherently misleading terms like "malice" or "willfulness" -- misleading, at least, if viewed in their 20th and not their 16th century popular meanings. (For example, see California Jury Instruction §1.22 which defines malice as "wish to vex, annoy or injure another person, or an intent to do a wrongful act.") Whether the four terms change the mens rea content of a particular crime can be determined only be looking at the particular section of the Draft to see what term is used, and by comparing that section with existing legislation or case law. Only these terms are used in the Code to promote clarity and uniformity in giving jury instructions and in interpreting individual sections in relation to other sections bearing on the same subject matter.

One of the main defects of the former Alaska Statutes defining offenses involving culpability was their use of a host of largely undefined and frequently hazy adverbial terms, such as "willfully," "maliciously," "wrongfully," and "with culpable negligence." The revised section designates only four culpable mental states, defines each, and stipulates that, unless an offense is one of strict liability, at least one of these particular mental states is essential for commission of the offense; the four terms in question are "intentionally," "knowlingly," "recklessly" and "criminal negligence."

In defining the kinds of culpability, a distinction is drawn between acting intentionally and knowlingly. Knowledge that the requisite external circumstances exist is a common element in both conceptions. "What is essential is not an

awareness that a given conduct is a "wrongdoing" in the sense that it is prescribed by law, but rather an awareness that one is committing the specific acts which are defined by law as a "wrongdoing." Caley v. State, 484 P.2d 677 (AK 1971). However, action is not intentional with respect to the nature or the result of the actor's conduct unless it was his conscious objective to perform an action or to cause such a result. This is similar to "purpose" as appearing in the current first degree murder statute.

It is to be noted, however, that the term "knowingly" is restricted to awareness of the nature of one's conduct or of the existence of specified facts or circumstances (e.g., that property is stolen, that one has no right to enter a building, etc.) Under the forumlations of the Model Penal Code (§2.02[2bii]) and the Illinois Criminal Code (§4-5[b]), "knowingly" is, in one phase, almost synonymous with "intentionally" in that a person achieves a given result "knowingly" when he "is practically certain" that his conduct will cause that result. The distinction between "knowingly" and "intentionally" in that context appears highly technical or semantic, and the statute does not employ the word "knowingly" in defining result offenses.

Conceptually more intricate are the terms "recklessly" and "criminal negligence," which are designed to crystalize an area of culpability long fraught with uncertainty. The common denominators of these two terms are that the underlying conduct must, in each instance, involve (1) "a substantial and unjustifiable risk" that a result or circumstance described by a penal statute will occur or exists as the case may be, and (2) "a gross deviation," (and not the "mere inadvertence or simple neglect" criticized as a basis for liability in Alex v. State, 484 P.2d 677 (AK 1971), from the standard of conduct or care that a reasonable person would observe. The reckless offender is aware of that risk and "consciously disregards" it. The criminally negligent offender, on the other hand, is not aware of the risk created and, hence, cannot be guilty of consciously disregarding it. His liability stems from a culpable failure to perceive it. His culpability, though obviously less than that of the reckless offender, is appreciably greater than that required for ordinary civil negligence by virtue of the "substantial and unjustifiable" character of the risk involved and the factor of "gross deviation" from the ordinary standard of care.

Section 11--Requirements of Culpability

(1) The minimal requirement for criminal liability is the performance by a person of conduct which includes a voluntary act or the omission to perform an act which he is capable of performing.

(2) Except as provided in §19(a) a person is not guilty of an offense defined in this Code unless he acts with a culpable mental state with respect to each material element of the offense that necessarily requires a culpable mental state.

COMMENT

This section is taken from ORS 161.095.

Subsection (1) requires that criminal liability be based on conduct, and that conduct which gives rise to liability includes a voluntary act or the omission to perform an act which was physically possible to have performed. This excludes all "involuntary" acts such as reflex actions, acts committed during hypnosis, etc.

Subsection (2) states that a culpable mental state is required for each material element "that necessarily requires a culpable mental state." The quoted phrase was included at the suggestion of the Commission and is designed to make it clear that the draft does not require scienter with respect to an element relating solely to the statute of limitations, jurisdiction, venue and the like. The effect of this section would be to eliminate all "strict liability" offenses from the Code.

This section does not address itself to the following issues:

(1) If the Commission established non-criminal offenses in a Revised Code, will the prosecution be required to show that the defendant acted with a culpable mental state in violating the statute.

(2) Should crimes defined outside the Code be made subject to subsection (2).

Section 12--Construction of Statutes with Respect to Culpability Requirements

(1) If a statute defining an offense describes a culpable mental state but does not specify the element to which it applies, the prescribed culpable mental state applies to each material element of the offense that necessarily requires a culpable mental state.

(2) If a definition of an offense prescribes criminal negligence as the culpable mental state, it is also established if a person acts intentionally, knowingly or recklessly. When recklessness suffices to establish a culpable mental state, it is also established if a person acts intentionally or knowingly. When acting knowingly suffices to establish a culpable mental state, it is also established if a person acts intentionally.

(3) Knowledge that conduct constitutes an offense, or knowledge of the existence, meaning or application of the statute defining an offense, is not not an element of an offense unless the statute clearly so provides.

COMMENT

This section is derived from ORS 161.115. It provides a statutory framework for constructing penal statutes as regards their culpability content, and the application of the culpable mental state requirement to specific offenses.

GENERAL PURPOSES OF §16-23

The objective of the following sections is to declare that criminal liability is based upon behavior and to delineate all situations in which criminal liability may be based in whole or part upon behavior of another. The section defines those general principles of liability which determine legal accountability for actions of another. The main areas of existing law thus covered are those where liability for the substantive crime rests on (1) the behavior of an innocent or irresponsible agent [§18] and (2) joint criminality or accessorial participation [§19]. The field of accessories after the fact (currently covered by AS 12.15.020), is not included; such behavior is an interference with the administration of justice and should be

dealt with as such, not as a basis of complicity in crimes that by hypothesis have been previously committted before the actor takes part. Special problems involved in the liability of corporations are considered in Sections 22 and 23.

Section 16--Liability Based upon Behavior

A person is guilty of an offense if it is committed by his own conduct or by the conduct of another person for which he is made legally accountable, or both.

COMMENT

This section is based on ORS 161.150. The section affirms the basic principle that liability is based upon behavior, coupled with the equal affirmation that one may be accountable for the behavior of another. When such accountability exists, it is and should be immaterial whether defendant's own behavior, the behavior of a person for which he is accountable, or both in combination, present the elements of the charge. This is consistent with present Alaska law, insofar as the distinction between accessories before the fact and principles has been abolished. [See AS 12.15.101]

AS 11.10.060 provides as follows:

> A person is not punishable for an omission to perform an act where the act has been performed by another person acting in his behalf, and competent by law to perform it.

It is felt that the retention of this statute is not necessary in the Code. In most situations, liability would not exist unless an offense has been committed. If the act is in fact done by a "person acting" in the person's behalf, no omission, and hence no offense has occurred. However, there may be situations in which the Legislature may wish to impose criminal liability upon a person for his failure to personally perform an act. In the event of such a situation, the legislative intention should not be frustrated by the presence of this statute.

Section 19--Liability Based upon the Behavior of Another; Complicity

A person is legally accountable for the behavior of another person constituting an offense if:

(a) He is made legally accountable by the statute defining the offense; or

(b) With intent to promote or facilitate the commission of the offense:

(i) he solicits such other person to commit the offense;

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

(iii) having a legal duty to prevent the commission of the offense, he fails to make an effort he is legally required to make.

COMMENT

There is no comparable statute to §19 in Title 11 which sets forth the basis of accomplice liability. However, a substantial number of cases have been decided in Alaska which have examined this subject. This section, which is substantially based on ORS 161.155, and the Alaska cases on this subject, sets forth the mode and extent of complicity in criminal behavior by another, delineating both the type of action or omission required and the mental state necessary.

Subsection (a) (originally presented to the Commission as Section (17) of Tentative Draft (A)) allows the Legislature to impose an extraordinary measure of accountability for the behavior of another. Insofar as this would allow liability to be imposed without the requirement of proving that the person acted with a culpable mental state, an exception has been made in §11(2) to allow liability to be imposed under such circumstances. An example of such a statute would be one which places vicarious criminal liability on a tavern owner for the act of an employee resulting in sale of liquor to a minor.

Subsection (b) confines the scope of liability to those crimes that the accomplice had the intent of promoting or facilitating. This is consistent with current case law which recognizes accomplice liability only in the event that the accomplice has "criminal intent." See Gordon v. State, 533 P.2d 25 (AK 1975). This does not mean that the precise means used in the commission of the crime must have been fixed or contemplated. Neither does it mean that liability is limited to the precise crime contemplated. One who intentionally aids the achievement of an illegal end may be said to have intended whatever means may be employed, insofar as they constitute

or result in the commission of an offense clearly envisaged in the achievement of the illegal end. But when a wholly different crime has been committed, involving conduct not in the range of contemplation, the accomplice is not liable for such conduct. The assumption here is that if some activity was reasonably foreseeable as a likely incident to achieving the objective sought, then the accomplice can be assumed to have intended to facilitate the particular activity.

Paragraphs (i) - (iii) define the nature of the activities which ought to suffice for liability as an accomplice. Currently, accomplice has been defined in the case law "one who in some manner, knowingly and with criminal intent, aids, abets, assists or participates in a criminal act." See Galauska v. State, 527 P.2d 459 (AK 1974); Teller v. State, 391 P.2d 950 (AK 1964).

Paragraph (i) provides for accomplice liability in the event that one "solicits" another person to commit an offense. While it is possible that the use of the term "abet" would be broad enough to encompass solicitation as a basis for accomplice liability, it is nevertheless felt that a specific reference to solicitation should be made in paragraph (i). What is criminal solicitation in §41 and will provide guidelines for determining accomplice liability.

Considering the fact that the draft will recognize the crime of solicitation (the current statutes provide for the separate crime of solicitation in AS 11.10.070), the question might arise why it is necessary to provide for accomplice liability in addition. It is felt that although the crime of solicitation could be utilized as a basis for prosecution even where the substantive crime was actually committed, it is anticipated that solicitation will be employed primarily where the solicitation was unsuccessful and that prosecution as an accomplice will be the normal course in cases where the solicitation did lead to the commission of the crime.

With regard to Subsection (ii), the terms "aids" and "abets" have been included without definition since they have been interpreted in a number of cases. [See, for example, Beavers v. State, 492 P.2d 88 (AK 1971)].

It should also be noted that Subsection (ii) as originally presented to the Commission would have included as an accomplice one who "agrees or attempts to aid or abet." The Model Penal Code, in approaching this issue, observed as follows:

> The inclusion of attempts to aid may go in part beyond the present law, but attempting complicity or to be criminal and to distinguish it from effective complicity appears unnecessary when the crime has been committed. Where complicity is based upon agreement or encouragement, one does not ask for

evidence that they were actually operative psychologically on the person who committed the offense; there ought to be no difference in the case of aid.

The Commission agreed with the observation of the Model Penal Code drafters that the language of their propsoal "may go in part beyond the present law," but concluded that the imposition of accomplice liability based in such activity could not be justified.

Paragraph (iii) refers to the failure to act by one having a legal duty to do so. In such situations, if the omission is undertaken with the intent to facilitate the commision of a crime, it should make the individual as much as accomplice as one who gives affirmative aid. This subsection would cover the facutal situation set forth in a case such as People v. Chapman, 28 NW 896 (Mich. 1886), where a husband seeking grounds for a divorce, hired a man to commit adultery with his wife. The wife did not cooperate and instead was raped by the husband's accomplice. The husband was in the next room but made no effort to come to the aid of the wife. Paragraph (iii) would make the husband liable as an accomplice for the wife's rape.

Section 18--Liability Based upon the Behavior of Another; Conduct of an Innocent Person

(1) A person is legally accountable for the conduct of another person when, if acting with the culpable mental state sufficient for the commission of the offense, he causes an innocent person to engage in such conduct.

(2) As used in this Section, an "innocent person" includes any person who is not guilty of the offense in question, despite his behavior, because of:

(a) Criminal irresponsibility or other legal incapacity or exemption.

(b) Unawareness of the criminal nature of the conduct in question or of the defendant's criminal purpose.

(c) Any other factor precluding the mental state sufficient for the commission of the offense.

COMMENT

Paragraph (1) is substantially derived from MPC §2.06(2)(a). The definition of "innocent person" is taken from New York Revised Penal Law, §20.05.

This section is based upon the principle that one is no less guilty of the commission of a crime because he uses the overt behavior of an innocent or irresponsible agent. A person in this situation should be accountable as if the behavior were his own. In most jurisdictions, as in Alaska, there are no statutes specifically adopting this principle. It is, however, well recognized at common law [See, e.g., United States v. Kenofskey, 37 S.Ct. 438, 243 U.S. 440, 61 L.Ed. 836 (1917) (mail fraud; mailing by innocent person); People v. Monks, 133 Cal.App. 440, 24 P.2d 508 (1933), (incompetent induced to draw check against insufficient funds)]

While it would be possible to treat the defendant in such a case as an accessory on the ground that he had "procured" the commission of the crime, this reasoning is not persuasive. It is somewhat paradoxical to talk of procuring the commission of a crime when the activity of the innocent or irresponsible person by hypothesis is not in itself criminal. Indeed, §19, the general complicity section, requires as a preliminary basis to accomplice liability that a crime be committed. It seems preferable to treat this type of situation apart from the usual question of accomplice liability. This is done in this section which sets up a separate basis of accountability apart from §19 dealing with complicity.

It should be noted that there is no requirement of an intent to cause the resulting criminal act. It will be sufficient that the responsible person had whatever culpable mental state that was needed for the crime. Thus, one who recklessly leaves car keys with an irresponsible, known to have a penchant for mad driving, should be accountable for a homicide due to such driving if the irresponsible uses the car in that way.

On the other hand, if the defendant's culpable mental state is less than that of the irresponsible agent, then his liability should only extend as far as his own mental state will permit. One who directs a child to kill is guilty of intentional homicide if death results, because he himself meant to kill. Yet, if the defendant recklessly caused the child to kill intentionally, the child's intent to kill is not imputed to him; he may be guilty of manslaughter for his recklessness, but he is accountable for nothing more. In other words, even if the defendant is accountable for the behavior of an innocent or irresponsible person, he must have caused the action of that person with the intent, knowledge, recklessness or negligence that the law requires to commit the crime with which he has been charged. The defendant's liability is thus determined by his own state of mind, coupled with the

overt behavior he has caused another person to perform. As noted by the Model Penal Code, "this. . .probably is now the law; even more clearly it should be the law." [Model Penal Code, Tentative Draft No. 1, page 18].

The definition of "innocent person" appearing in paragraph 2 of this section is designed to encompass those who are not responsible either because of mental disease or youth, and those who are responsible but act without the necessary culpable mental state because they lack information to appreciate the criminality of their action.

Section 20--Exemptions to Criminal Liability for Conduct of Another

Except as otherwise provided by the statute defining the offense, a person is not legally accountable for the conduct of another constituting an offense if:

(1) he is the victim of that offense; or

(2) the crime is so defined that his conduct is inevitably incidental to its commission;

(3) he terminated his complicity prior to the commission of the crime and

(a) wholly deprived it of effectiveness in the commission of the crime; or

(b) gave timely warning to the law enforcement authorities or otherwise made proper effort to prevent the commission of the crime.

COMMENT

Subsections (1) and (2) of this section are based on ORS 161.165. Paragraph (3) is taken directly from MPC §2.06. A very similar provision appears in New York Revised Penal Law §40.10(1).

This section deals with various exceptions to the general principles suggested in §16-19. These are cases in which there should be an exemption from liability. The first two exemptions are well recognized in general common law throughout the United States. The third deals with a problem on which there is a greater division.

The justification for subsection (1) is well stated in the commentary to the first draft of the Model Penal Code:

> It seems clear that the victim of a crime should not be held as an accomplice in its preparation, though his conduct in a sense assists in the commission of the crime. The businessman who yields to the extortion of a racketeer, the parent who pays ransom to the kidnapper, may be unwise or even may be thought immoral; [but] to view them as involved in the commission of the crime confounds the policy embodied in the prohibition; it is laid down, wholly or in part, for their protection. So, too, to hold the female an accomplice in a statutory rape upon her person would be inconsistent with the legislative purpose to protect against her own weakness in consenting, the very theory of the crime. [Model Penal Code Commentary, Tentative Draft No. 1, supra at 35].

The justification for paragraph (2) also is well stated in the Model Penal Code commentary:

> Exclusion of the victim does not wholly meet the problems that arise. Should the man who has intercourse with a prostitute be viewed as an accomplice in the act of prostitution, the purchaser an accomplice in the unlawful sale, the unmarried party to a bigamous marriage an accomplice of the bigamist, the bribe-giver an accomplice of the taker.

The commentary to the Model Penal Code concluded that the question of whether accomplice liability should exist in such instances is a legislative decision to be made when the crime is defined.

> If legislators know that buyers will not be viewed as accomplices in sales unless the statute indicates that this behavior is included in the prohibition, they will focus on the problem as they frame the definition of the crime. And since the exception is confined to behavior "inevitably incident to" the commission of the crime, the problem we repeat, inescapably presents itself in defining the crime. [Model Penal Code, supra at 35-36].

It is felt that the Model Penal Code and Oregon approach to this subject is the proper one. Indeed, the Alaska case law recognizes that in certain instances conduct "inevitably incident" to the commission of the crime is not necessarily an offense. See, Howard v. State, 496 P.2d 657 (AK 1972).

Paragraph (3) is based on the premise that even though action that suffices for complicity may have occurred, the law should contemplate that liability may be averted if the reason for its imposition disappears before the crime has been committed. In other words, a renunciation combined with appropriate steps to deprive one's complicity of all its effectiveness should be effective to relieve one of liability. Of course, the requisite action needed in order to achieve that purpose will vary with the accessorial behavior. For example, if the accomplice provided guns, a statement of withdrawal ought not be sufficient. What is important is that he get back the arms.

It is contemplated that there will be some situations where the only way that the accomplice can deprive his conduct of its effectiveness is to make independent efforts to prevent the crime. This section provides that if the accomplice gives "timely" warning to the police he will avoid liability for the crime. "Timely" warning refers to notification to the police before the commission of the crime. The specific time period will vary with each particular crime, but warning must be given early enough to allow the police to prevent the commission of the crime if they act upon the information.

Finally, an accomplice may also avoid liability by making "proper effort to prevent the commission of the crime." For example, the accomplice who supplies a gun to be used in a planned bank robbery can avoid liability by notifying the bank manager of the planned crime a day before it is to occur. Of course, a warning ten minutes before the robbery would not be sufficient.

The basic rationale supporting the adoption of a renunciation provision, as well as its relationship to existing law, is discussed at length in the commentary to §39(b), applying a similar provision in the area of attempts. The discussion there is equally applicable to §20(3).

Section 21--Liability Based upon the Conduct of Another: No Defense.

In any prosecution for an offense in which criminal liability is based upon the conduct of another person pursuant to this chapter, it is no defense that:

(1) Such other person has not been prosecuted for or convicted of any offense based upon the conduct in question or has been convicted of a different offense or degree of crime or

(2) The offense, as defined, can be committed only be a

particular class or classes of persons to which the defendant does not belong, and he is for that reason legally incapable of committing the crime in an individual capacity.

COMMENT

This section is taken from ORS 161.160. Similar provisions appear in the New York Revised Penal Law §20.05(2) and MPC §2.06(5).

Paragraph (1) eliminates the accessor's common law defense of the lack of the prior conviction of the principal. Alaska, like most jurisdictions, had previously abolished the distinction between principal and accessories before the fact and with it this form of defense [See AS 12.15.010]. It should be noted that the absence of this defense does not relieve the prosecution of the requirement of showing that the crime was actually committed by one person or the other.

Paragraph (2) merely points to the generally accepted principle that a person who is not capable in his individual capacity of committing an offense may nevertheless be liable for the behavior of another who has the capacity to commit that crime. For example, even though a husband has no legal liability for the forcible rape of his wife, he may be liable for the rape of his wife by another whom he aided and abetted.

Section 22--Criminal Liability of Corporations

(1) A corporation is guilty of an offense if:

(a) The conduct constituting the offense is engaged in by an agent of the corporation while acting within the scope of his employment and in behalf of the corporation and the offense is a misdemeanor or a violation, or the offense is one defined by a statute that clearly indicates a legislative intent to impose criminal liability on a corporation; or

(b) The conduct constituting the offense consists of an omission to discharge a specific duty of affirmative performances imposed on corporations by law; or

(c) The conduct constituting the offense is engaged in, authorized, solicited, requested, commanded or knowingly

tolerated by the board of directors or by a high managerial agent acting within the scope of his employment and in behalf of the corporation.

(2) As used in this section:

(a) "Agent" means any director, officer or employee of a corporation, or any other person who is authorized to act in behalf of the corporation.

(b) "High managerial agent" means an officer of a corporation who exercises authority with respect to the formulation of corporate policy or the supervision in a managerial capacity of subordinate employees, or any other agent in a position of comparable authority.

Section 23--Criminal Liability of an Individual for Corporate Conduct

A person is criminally liable for conduct constituting an offense which he performs or causes to be performed in the name of or in behalf of a corporation to the same extent as if such conduct were performed in his own name or behalf.

COMMENT--Sections 22 and 23

Section 22 is taken directly from ORS 161.170. Similar provisions appear in New York Revised Penal Law §70.20, and Model Penal Code §2.07.

Section 23 is taken directly from ORS 161.175 and New York Revised Penal Law §20.15.

Section 22 indicates the circumstances under which a corporation may be held criminally liable.

Paragraph (a) of subsection (1) indicates the offenses for which a corporation may be held criminally liable for the conduct of an agent acting within the scope of his employment. It adopts the agency principle of respondeat superior, qualified by the additional requirement that the conduct be "in behalf of the corporation." Liability based upon respondeat superior is

limited to offenses that are misdemeanors or violations. The only exceptions to this limitation would need to be clearly indicated by the Legislature in the statute defining a felony that imposed corporate liability.

Paragraph (b) affirms the responsibility of corporations for the commission of an offense through omission of a duty specifically imposed on corporations by law.

Paragraph (c) also states a basis for liability that relates more to the actual responsibility of the corporation than the theory of respondeat superior. It applies to those activities which were known specifically to high corporate executives.

Section 17 assures that a person is not exempted from personal criminal liability performed through or in the name of a corporation.

The policy issues to be considered are well stated in Model Penal Code, Tentative Draft No. 4, at 148-150 (1955).

At present there is no specific statutory provisions dealing generally with corporate criminal liability. However, AS 11.75.070 contains definitions of terms used in statutes relating to crimes and criminal procedure and includes "(11) 'Person' includes corporations as well as natural persons."

Section 31--Duress

(1) In any prosecution for an offense, it is a defense that the defendant engaged in the proscribed conduct because he was coerced to do so by the use or threatened use of unlawful physical force upon him or a third person, which force or threatened force a reasonable person in his situation would have been unable to resist.

(2) The defense of duress as defined in Subdivision (1) of this section is not available when a person intentionally or recklessly places himself in a situation in which it is probable that he will be subject to duress.

COMMENT

This section is a modified version of New York Penal Law §40.00. Currently, there is no Alaska statute that recognizes the defense of duress, though Commission members cited cases where the defense was raised at trial. It is clear then that the defense of duress is recognized in Alaska, but neither the statutes or the case law provide any clue that such is the case. This section codifies the defense.

In recognizing the duress defense the Code will serve to limit its applicability to the circumstances defined in this section.

The Commission has limited the duress defense to situations where a person was coerced to act by "the use or threatened use of unlawful physical force upon him or a third person." Beyond this limitation to coercive force or threats against the person, the Commission perceived no valid reason for demanding that the threat be one of death or even of great bodily harm, that the imperiled victim be the actor rather than another, or that the injury portended be immediate in point of time.

The Commission felt that these factors would be given evidential weight along with other circumstances in determining whether a "reasonable person" in the situation of the actor would have been unable to resist the commission of the crime.

The Commission also felt that the defense should not be limited by the type of crime committed. For example, ORS 161.270 provides that "the commission of acts which would otherwise constitute an offense, other than murder" [emphasis added] may be justified by showing duress. The Commission agreed with the New York formulation and concluded that the defense should apply to all crimes.

Subsection (2) is probably a sufficient guarantee against the claim of justification being raised by a criminal acting in concert, e.g., when one criminal says that he fired a weapon during a hold-up only because another criminal threatened to shoot him if he did not, and that in most instances the jury would conclude that the defendant had intentionally or recklessly placed himself in that situation.

If the Commission decides to recognize affirmative defenses, and if duress is treated as such a defense, an appropriate change will be required in subsection (1).

Section 36--Intoxication: Drug Use as a Defense

(1) Voluntary intoxication, or the use of a drug is not, as such, a defense to a criminal charge; but in any prosecution

for an offense, evidence of intoxication or drug use may be offered whenever it is relevant to negative an element of the crime that requires a culpable mental state.

(2) When recklessness establishes an element of the offense, if the defendant, due to voluntary intoxication or the use of a drug, is unaware of a risk of which he would have been aware had he been sober, such unawareness is immaterial.

COMMENT

This section restates the rule now contained in AS 11.70.030 in terms consistent with the language used in the Code.

The statute currently provides:

> (a) An act committed by a person while in a state of voluntary intoxication is no less criminal because he was intoxicated. However, when the existence of a particular motive, purpose or intent is a necessary element to constitute a particular species, or degree of crime, the jury may take into consideration the fact that the defendant was intoxicated at the time in determining the purpose, motive or intent with which he committed the act.
>
> (b) As used in this section, "intoxication" refers to intoxication from the use of a drug in violation of AS 17.10 or AS 17.12 as well as to intoxication from alcohol.

One substantive change is made in the proposed section from the current statute. Presently, a drug use defense could not be raised unless the drug was used in violation of AS 17.10 or AS 17.12. The Commission does not believe that the defense should be so limited. If the drug use negatives an element of the crime that requires a culpable mental state, the defense should be available regardless of the legality of the drug use.

Subsection (2) provides, in effect, that a defendant may be guilty of reckless conduct, although he is unaware of a risk, if his unawareness is the result of voluntary intoxication. The reckless offender is aware of and "consciously disregards" it (§9(9). The criminally negligent offender is not aware of the risk created; therefore he cannot be guilty of disregarding it (§9(10). The New York commentary suggests this illustration of how an offender can act with both forms of culpability: "The driver of a car who stops at a bar, drinks heavily, continues on his way and then runs over a pedestrian whom he fails to see in his intoxicated condition and whom he undoubtedly would have seen had he been sober. Here, his culpability goes well

beyond his failure of perception at the time of the accident. By getting drunk in the course of his automobile trip, he consciously disregarded a substantial and unjustifiable risk of accident and, hence, in the overall setting, he acted 'recklessly'."

Section 32--Entrapment

(1) A public law enforcement official or a person acting in cooperation with such an official perpetrates an entrapment if for the purpose of obtaining evidence of the commission of an offense, he solicits or encourages another person to engage in conduct constituting such offense by employing methods of persuasion or inducement which create a substantial risk that such an offense will be committed by persons other than those who are ready to commit it.

(2) A person prosecuted for an offense shall have the charge brought against him dismissed if the entrapment defense is sucessfully raised. The issue of entrapment shall be tried by the court in the absence of the jury.

COMMENT

This section is based on Model Penal Code §2.13. Though there is currently no Alaska statute on entrapment, the Alaska Supreme Court recognized the defense in Grossman v. State, 457 P.2d 226 (1969), where the Court, (at p. 229) adopted the "objective" approach to entrapment:

> Unlawful entrapment occurs when a public law enforcement official, or a person working in cooperation with him, in order to obtain evidence of the commission of an offense, induces another person to commit such an offense by persuasion or inducement which would be effective to persuade an average person, other than one who is ready and willing to commit such an offense.

In Grossman, the court observed that the minority opinion in Sherman v. U.S., 356 U.S. 369 (1950), written by Mr. Justice Frankfurter, dealt with both the policy behind the law of entrapment and the way in which that policy can best be effectuated. The Alaska court, (at p. 228), quoted from that opinion:

> The courts refuse to convict an entrapped defendant, not because his conduct falls outside the proscription of the statute, but because, even if his guilt be admitted, the methods employed on behalf of the Government to bring about conviction cannot be countenanced. Insofar as they are used as instrumentalities in the administration of criminal justice, the federal courts have an obligation to set their face against enforcement of the law by lawless means or means that violate rationally vindicated standards of justice, and to refuse to sustain such methods by effectuating them. They do this in the excercise of a recognized jurisdiction to formulate and apply 'proper standards for the enforcement of the federal criminal law in the federal courts,' McNabb v. United States, 318 U.S. 332, 341, 87 L.Ed 819, 824, 63 S.Ct. 608, 613, 356 U.S., at 380, 78 S.Ct., at 824.
>
> The minority then stated that the better way to further this policy is to focus the determination upon the character of the police conduct rather than upon the defendant's predisposition. To rest the determination on the origin of intent is irrelevant because, 'In every case of this kind the intention that the particular crime be committed originates with the police, and without their inducement the crime would not have occurred.' 356 U.S., at 382, 78 S.Ct., at 825.

The Grossman Court then concluded:

> We feel that the proper solution is the objective test which focuses the determination upon the particular conduct of the police in the case presented. Inducements should be limited to those measures which, objectively considered, are likely to provoke to the commission of crime only those persons, and not others, who are ready and willing to commit a criminal offense.

The Commission is in agreement with the Alaska Supreme Court's approval of the minority opinion in Sherman, and have therefore adopted the "objective" approach to entrapment. The language of this section is almost identical to that formulated by the Alaska Supreme Court in Grossman.

Subsection (2) provides that the defendant who sucessfully raises the entrapment defense "shall have the charge brought

against him dismissed." This is in conformity with current procedure in Alaska. See, Grossman, (at p. 231.)

Subsection (2) also provides that the entrapment defense "shall be tried by the court in the absence of the jury." This also restates current Alaska procedure. See, Grossman, (at page 230) where the court held:

> It is obvious that the issue of entrapment can be litigated either before or during trial and should be determined by the court and not the jury.

Section 39--Attempt

(1) Unless otherwise provided in this Code, a person is guilty of an attempt to commit a crime when with intent to commit a crime, he engages in conduct which constitutes a substantial step toward the commission of the crime.

(2) [Classification of Crime of Attempt]

COMMENT

This section is partially taken from New York Revised Penal Law §110.00 and partially from ORS 161.405. The current Alaska statute on attempt appears in AS 11.05.020 and provides as follows:

> 'A person who attempts to commit a crime, and in the attempt does any act toward the commission of the crime, is prevented or intercepted in the perpetration of the crime, when no other provision is made by law for the punishment of the attempt, upon conviction, is punishable as follows.' [punishment is then listed]

Culpable Mental State Required

One major problem with the present statute is that it fails to make reference to the culpable mental state required for the crime. However, the statute was taken directly from the now repealed Oregon provision, ORS 161.090. Under this statute, the crime of attempt was defined as necessarily including an intent to commit the attempted crime. State v. Duffy, 295 P. 953 (Ore. 1931). Thus, the Duffy formulation would support both the Revised New York and proposed Alaska statutes. Nevertheless, the drafters of the Revised Oregon Code felt that their revised attempt statute, now appearing

in ORS 161.405, was "generally in accord with existing Oregon law." The Duffy decision was not cited. ORS 161.405 defines attempt in the following manner:

> A person is guilty of an attempt to commit a crime when he intentionally engages in conduct which constitutes a substantial step towards the commission of the crime.

The Commission has concluded that generally the crime of attempt should require the showing of a "specific intent" to commit a crime and has adopted the New York language on this matter. Thus, pursuant to this section, where criminal liability rests on the causation of a prohibitive result, the actor must have an intent to achieve that result even though violation of the substantive offense may require some lesser culpable mental state. For example, reckless driving would not constitute attempted manslaughter. A person charged with the substantive crime of manslaughter may be liable as a result of negligence or recklessness causing death, but the same recklessness would not be sufficient if the victim did not die and the actor were only charged with attempt; here, the State would have to show an intent to achieve the prohibited end result - death of the victim.

The Oregon drafters felt that this approach was an oversimplification to the method of dealing with the problem of attempt and cited the comments of the tentative version of the Proposed California Code in support of their formulation:

> The intent requirement should be satisfied where the defendant intends to engage in the conduct which will constitute the crime. He need not necessarily contemplate all the surrounding circumstances included in the definition of the crime. Assume the raping of a 15-year-old girl. Assume also that negligence as to the age of the victim suffices for that element of the crime. Is there not an aggravated attempt where a 15-year-old is attacked, even if it can be shown that the defendant was only negligent as to the age of the victim?
>
> The draft deals with this problem by requiring an intent to engage in conduct which constitutes the crime not in a specific intent to commit the crime. Doing this, it follows the Model Penal Code and the Wisconsin statute (§939.32) which requires that the defendant intend 'to perform acts which attain a result which, if accomplished, would constitute the crime.' The other new codes ignore this problem. California Tent. Draft, 2 (1968).

The Alaska Commission felt that this concern was a valid one. However, the Commission also felt that the Oregion proposal presented a major problem by only requiring the prosecution to show in an attempt prosectuion that the actor "intentionally engaged in conduct." Under this formulation an attempt conviction could be obtained under circumstances not now sufficient for a conviction. For example, in Gargan v. State, 436 P.2d 968 (AK 1968), the Court held that a necessary element for conviction of attempted larceny was "intent to commit the crime of larceny." Under the revised Oregon statute, the prosecution would only be required to show that the actor "intentionally engaged" in the conduct which amounted to an attempt to commit larceny. Apparently it would not be required to show that the actor also intended to commit the crime.

Nevertheless, while disagreeing with the Oregon approach, the Commission felt that under some circumstances the prosecution should not be required to prove that the defendant intended to commit a crime in order to obtain a conviction for attempt. Therefore, this section specifically provides that a conviction for attempt may be based on an alternative showing if provision is specifically made elsewhere in the Code - presumably in the statute defining the crime.

Act Requirement

This Section also deals with the always troublesome problem of distinguishing acts of preparation from an attempt. In Gargan, supra, the court cited Lemke v. United States, 211 F.2d 73 (9th Cir.) for the elementary proposition that "mere preparation to commit a crime, not followed by an overt act done towards its commission, does not constitute an attempt."

The Oregon statute handles this problem by requiring that conduct must be a "substantial step" towards the commission of the offense to constitute an attempt. This approach leaves with the Court or the jury the duty to decide what actions qualify as "a substantial step." The Commission believes that specificity beyond this point would be self-defeating. However, in §5.01(2), the Model Penal Code supplies a partial explanation of what is meant by a "substantial step."

The Model Penal Code requires that the Act relied upon to show an attempt must be "strongly corroborative of the actor's criminal purpose." The Code then lists the kind of act which could be held to be substantial steps in light of the "strongly corroborative" provision. The Commission believes that the listing of these acts more properly belongs in the section comments as a matter of legislative history. In keeping with this view, the Model Penal Code examples of acts which should not be held insufficient as a matter of law to constitute a substantial step are approved and are set out as follows:

(a) lying in wait, searching for or following the contemplated victim of the crime;

(b) enticing or seeking to entice the contemplated victim of the crime to go to the place contemplated for its commission;

(c) reconnoitering the place contemplated for the commission of the crime;

(d) unlawful entry of a structure, vehicle or enclosure in which it is contemplated that the crime will be committed;

(e) possession of materials to be employed in the commission of the crime, which are specially designed for such unlawful use or which can serve no lawful purpose of the actor under the circumstances;

(f) possession, collection or fabrication of materials to be employed in the commission of the crime, at or near the place contemplated for its commission, where such possession, collection or fabrication serves no lawful purpose of the actor under the circumstances;

(g) soliciting an innocent agent to engage in conduct constituting an element of the crime.

Currently the Alaska Statute addresses itself to the act requirement by requiring the prosecution to prove "any act towards the commission of the crime." It is felt that this definition is not satisfactory since it does not emphasize that the act must go beyond "mere preparation."

It should be noted that under this formulation the attempt to commit the principal offense need not fail as a prerequisite to conviction of an attempt charge. Currently, AS 11.05.020 requires that the attempt fail in order for a conviction of attempt to result. This rule arose historically out of the unrelated problems of merger of misdemeanors in felonies. These early English merger restrictions have long since lost their relevancy to the modern law of attempt. See Perkins, Criminal Law, 552-57 (1969). This rule, if in fact it is the law in Alaska, is abolished by this section.

The Commission concluded that to require the prosecution to prove that the attempt failed would put an unnecessary, and unjustifiable, burden upon it. For example, under the current statute the prosecution is faced with a real dilemma should it decide to prosecute an individual for a crime that may or may not have been completed, but for which there is no doubt that "a substantial step" sufficient for an attempt conviction has occurred. The rape example was discussed where there is a reasonable doubt whether the penetration necessary for conviction of the substantive crime has occurred. Under

such circumstances the prosecution should be allowed to prosecute for the crime of attempted rape without being required to show beyond a reasonable doubt that crime failed because of lack of penetration, especially when there is already "reasonable doubt" as to this issue.

Under the present attempt statute the defendant is likely to escape conviction of rape because the prosecution cannot prove that the crime was completed, while at the same time will escape conviction of attempt to commit rape because the prosecution cannot show that the crime failed. Under this section, and under both the Oregon and New York Codes, the defendant will not have the benefit of this advantage. The prosecution will not be required to prove the failure of the rape if it decides to seek an attempt conviction against the defendant. Further, an attempt conviction may be obtained even though the substantive crime was committed. (Sec. 43)

Section 39--Attempt to Commit a Crime--No Defense

(2) If the conduct in which a person engages otherwise constitutes an attempt to commit a crime pursuant to (1), it is no defense to a prosecution for such attempt that the crime charged to have been attempted was, under the attendant circumstances, factually or legally impossible of commission, if such crime could have been committed had the attendant circumstances been as such person believed them to be.

COMMENT

This subsection, taken from New York Penal Law §110.10, recognizes that neither legal or factual impossibility is a defense to attempt.

Though there is currently no Alaska statute addressing itself to this issue, the Alaska Supreme Court has specifically recognized that "factual impossibility" is not a defense to an attempt prosecution. See, Gargan v. State,436 P.2d 968, 971 (AK 1968).

The law of attempt is now recognized as being more properly directed at the dangerousness of the actor--the threat of the actor's personality to society at large. The emphasis of the old view was that the nature of the act should be determinant of the guilt of the actor. Pursuant to this view it has been held, for instance, that if an actor tried to receive property he believed stolen when the property was in fact not stolen, his act was not legally criminal because it was

impossible to commit the crime of attempt to conceal that which was not stolen. His act was viewed objectively as no threat to society because it was "a legal impossibility." Yet viewed from the subjective standpoint of the actor, the intent and purpose were criminal and but for the actor's mistaken understanding of the circumstances the crime would have been committed.

"Impossibility" is said to be of two kinds; factual and legal. The classic example of factual possibility is posed by an attempt to pick a pocket which is in fact empty. The Alaska Supreme Court has recognized that such conduct would constitute attempted larceny. In Gargan v. State, supra, the court adopted the so-called "empty pocket doctrine." However, the court's holding was limited to "factual impossibility." as distinguished from legal impossibility and it is not clear whether the Alaska court would hold that "legal impossibility" is a defense.

In a number of jurisdictions, "legal impossibility" has been made a defense. The commentary to the Model Penal Code in §5.01, Tent. Draft No. 10 at 30-31 provided examples of the effect of a jurisdiction recognizing the legal impossibility defense:

> [In several jurisdictions] attempt convictions have been set aside on the ground that it was legally impossible for the actor to have committed the crime contemplated. These decisions held:
>
> > (1) That a person accepting goods which he believed to have been stolen, but which were not then 'stolen' goods, was not guilty of an attempt to receive stolen goods;
> >
> > (2) That an actor who offered a bribe to a person believed to be a juror, but was not a juror, could not be said to have attempted to bribe a juror . . .

The basic rationale of these decisions is that, judging the actor's conduct in the light of the actual facts, what he intended to do did not amount to a crime. This approach, however, is unsound in that it seeks to evaluate a mental frame of reference, but to a situation wholly at variance with the actor's beliefs. In so doing, the courts exonerate defendants in situations where attempt liability most certainly should be imposed. In all of these cases (1) criminal purpose has been clearly demonstrated, (2) the actor has gone as far as he could in implementing that purpose, and (3) as a result, the actor's dangerousness is plainly manifested.

In eliminating "impossibility" as a defense, the proposed section follows the lead of all the new code revisions, including New York, Oregon and Illinois code revisions, as well as the Model Penal Code.

Though the Alaska law that factual impossibility is no defense seems to be settled by the Gargan case, no Alaska decision was found dealing with legal impossibility. As seen, the two are not really different as a policy matter. This section, like all the other modern codes, treats legal impossibility the same as factual impossibility and allows neither as a defense.

Section 39--Renunciation as a Defense to Attempt

(3) A person is not liable under (1) if, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, he avoids the commission of the crime attempted by abandoning his criminal effort and, if the mere abandonment is insufficient to accomplish this avoidance, doing everything necessary to prevent the commission of the attempted crime and in fact the attempted crime is avoided.

(4) A renunciation is not "voluntary and complete" within the meaning of this section if it is motivated in whole or in part by (a) a belief that circumstances exist which increase the probability of detection or apprehension of the defendant or another participant in the criminal enterprise, or which render more difficult the accomplishment of the criminal purpose, or (b) a decision to postpone the criminal conduct until another time or to transfer the criminal effort to another victim or another but similar objective.

COMMENT

Subsection (3) is partially taken from ORS 161.430. The language "and in fact the attempted crime is avoided" was added at the suggestion of the Commission. Subsection (4) is taken from New York Revised Criminal Law 40.10(5). There is currently no Alaska statute on this subject, and the issue

has never been decided in the Alaska courts. This subsection provides that a "voluntary and complete abandonment of the course of criminal conduct after it has reached the stage where it constitutes an attempt is a defense to an attempt prosecution.

In accepting the policy that renunciation is to be a defense to the crime of attempt, the Commission considered the view in the Model Penal Code which suggests there are two basic reasons for allowing the defense.

> First, renunciation of criminal purpose tends to negative dangerousness. As previously indicated, much of the effort devoted to excluding early 'preparatory' conduct from criminal attempt liability is based on the desire not to punish where there is an insufficient showing that the actor has a firm purpose to commit the crime contemplated. In cases where the actor has gone beyond the line drawn for preparation, indicating prima facie sufficient firmness of purpose, he should be allowed to rebut such a conclusion by showing that he has plainly demonstrated his lack of firm purpose by completely renouncing his purpose to commit the crime .
>
> 'A second reason for allowing renunciation of criminal purpose as a defense to an attempt charge is to encourage actors to desist from pressing forward with their criminal designs, thereby diminishing the risk that the substantive crime will be committed.'
>
> 'On balance, it is concluded that renunciation of criminal purpose should be a defense to a criminal attempt charge because, as to the early stages of an attempt, it significantly negatives dangerousness of character, and, as to later stages, the value of encouraging desistance outweighs the net dangerousness shown by the abandoned criminal effort. And, because of the importance of encouraging desistance in the final stages of the attempt, the defense is allowed even where the last proximate act has occurred but the criminal result can be avoided--e.g., where the fuse has been lit but can still be stamped out. If, however, the actor has gone so far that he has put in motion forces which he is powerless to stop, then the attempt has been completed and cannot be abandoned. . .

The Commission concluded that the Model Penal Code's justifications for the renunciation defense were persuasive. However, the Commission observed that the rationale for such a defense could easily be extended to situations where a

substantive crime was in fact committed. The example of a kidnapper voluntarily returning his victim was raised. Such a renunciation certainly "negatives dangerousness of character" and encourages "actors to desist from pressing forward with their criminal designs." Yet, (with the exception of accomplice renunciation pursuant to §20) no member of the commission felt that renunciation should be a defense to conviction of a substantive crime.

After much discussion, it was concluded that the most persuasive rationale in support of the defense was that it coincided with both the actor's and the prosecution's perception that such conduct was not criminal. An individual who "voluntarily and completely" abandoned his attempt and met the further requirements of the subsection would probably not consider himself guilty of criminal conduct. (Of course, if his "substantial step" toward the commission of the crime were itself a crime the actor would be guilty of that crime [i.e., possession of explosives], but not of an attempt to commit the crime [i.e., arson in a building]. More importantly, the members of the commission concluded that currently, even without this section, an individual who effectively abandoned his attempt would not be prosecuted for an attempt. Thus, while partially based on the Model Penal Code's rationale for the defense, this section more importantly represents what should be, and what in fact is, the current treatment of this defense in Alaska.

It should be noted that the Commission has emphasized by the inclusion of the phrase "and in fact the attempted crime is avoided" that a renunciation will not be effective unless the attempted crime is in fact prevented. Thus, if the crime occurs despite the actor "doing everything necessary to prevent" it, the defense cannot be raised should the prosecution seek an attempt conviction.

It should also be noted that the requirement of avoidance of the substantive crime is not present in the renunciation defense to accomplice liability pursuant to §20. Indeed, to have required the crime to have been avoided under §20 would have made that section meaningless since the defense by its very nature will only be raised when the crime is committed. Thus, while under §20 the renunciation defense will only be raised when a crime is committed, the defense under the section can only be successfully raised when a crime is avoided.

Subdivision 4, which is self-explanatory, denies the renunciation defense to one whose preventive efforts were motivated by considerations of self interest or practicality and do not serve to mitigate his culpability. For example, it is not sufficient if the actor is frightened into abandoning his conduct because of the imminence of police interference, or because he decides to wait until a later time to continue his activity, or because a means he has chosen for accomplishing the crime has proved inadequate.

Section 43--Multiple Convictions Barred in Inchoate Crimes

(1) It is no defense to a prosecution under Section 39 or 41 of this Code that the offense the defendant either attempted to commit or solicited to commit was actually committed pursuant to such attempt or solicitation.

(2) A person shall not be convicted of more than one offense defined by Sections 39 and 41 of this Code for conduct designed to commit or to culminate in commission of the same crime.

(3) A person shall not be convicted on the basis of the same course of conduct of both the actual commission of an offense and an attempt to commit that offense or solicitation of that offense.

(4) Nothing in this section shall be construed to bar inclusion of multiple counts charging violation of the substantive crime and Sections 39 and 41 of this Code in a single indictment or information, provided the penal conviction is consistent with subsections (2) and (3) of this section.

COMMENT

This section is taken from ORS 161.485. Though there is no Alaska statute on this subject, under the common law the two inchoate crimes defined in this section were deemed to merge into the completed crime. The effect was that there could not be cumulative conviction for the inchoate and the substantive crime. This rule of law continues in most jurisdictions with respect to the inchoate crimes of attempt and solicitation. As the common law specifically applies in Alaska, this section probably represents the Alaska treatment of the subject.

The effect of this section is well stated in the Oregon commentary.

Subsection (1) of this section is designed to permit prosecution for inchoate crimes even if the substantive crime

has been completed. It should be noted here that although prosecution for the inchoate crime, as well as for the substantive offense, is permitted by the section, subsection (3) prohibits conviction for both the inchoate crime and the substantive offense.

Subsection (2) precludes conviction of more than one inchoate crime defined by this article for conduct designed to commit or to culminate in the commission of the same crime. The provision reflects the policy, frequently stated in these comments, of finding the evil of preparatory action in the danger that it may culminate in the substantive offense that is its object. Thus conceived, there is no warrant for cumulating convictions of attempt and solicitation to commit the same offense.

Subsection (3) precludes conviction of both an inchoate crime and the substantive offense.

Subsection (4) is included to emphasize that subsections (2) and (3) deal only with convictions, not with prosecutions. It should be clear, therefore, that the prosecution may be for one or more inchoate offenses as well as for the substantive offense.

With few guidelines and many judges we are effectively, in the area of sentencing, a government of men, not laws.

Criminal Sentences
Judge Marvin Frankel
New York, 1973 p.17.

SENTENCING

Introduction

Review and revision of the definitions of crime constitutes but a part of Criminal Code revision efforts. The work of revision also required that the Commission consider three other topics in connection with sentencing: 1. the classification of crimes as felonies and misdemeanors; 2. the degrees of seriousness within those categories; and 3. the appropriate sentences for crimes which had been revised by the Commission or would be considered by it in the future.

The Commission is not the first group to delve into sentencing in Alaska. In 1974 the Judicial Council initiated a study of sentencing patterns in felony cases. In the course of preparing for the study the Council's staff interviewed many of the active practitioners of criminal justice in the state. All parties agreed unanimously that the existing Criminal Code was outmoded.*

Addressing sentencing as it related to the existing code, the study's Final Report noted:

> "The present code is not neatly categorized, and proscribes hundreds of criminal actions in a confusing and often inconsistent manner. The code has not had a major revision for almost a century despite numerous recent proposals to do so. As a result of the present code, attorneys, police and judges often juggle existing provisions and sentence authorizations, to obtain results that appear to them more consistent with the situation at hand.

*Cutler, Beverly, Sentencing in Alaska, A Description of the Process and Summary of Statistical Data for 1973. Alaska Judicial Council. March, 1975. p.20.

> Specific problems with the code presently are being studied in the Legislature. It might be noted, however, that the chief characteristics of the criminal code that affect the sentencing process are (1) the breadth and length of sentences authorized to the discretion of the judge (many offenses carry a range of one to ten, one to fifteen, or one to twenty years); (2) the numerous overlapping categories of crimes which result in prosecuting officials choosing crimes with very different sentence authorizations even in similar circumstances; and (3) the many outmoded or irrational patterns of sentences authorized, such as the maximum penalty for forgery exceeding the penalties for robbery burglary, and assault with intent to kill--or the penalty authorized for concealing stolen property grossly exceeding that for shoplifting the same property." **

On the basis of its review of property crimes this Commission concluded that the specific problems identified in the Judicial Council study still exist and deserve the attention of the Legislature.

At about the same time that the Commission first began to explore issues relating to sentencing the Corrections Task Force appointed by the Governor issued its report on conditions existing within the Division. One of its recommendations concerned a basic change in sentencing procedures and called for the imposition of mandatory minimum jail terms for repeat offenders.

The Commission directed its staff to explore this issue and to include recommendations on mandatory sentences in the sentencing proposals to be considered by the Commission at its January meeting.

In searching for solutions to the problems associated with existing sentencing provisions the Commission also concluded that

** Ibid, pp. 20-21

practical considerations such as the institutional capacity of the Division of Corrections to house sentenced prisoners could not be ignored. Consequently, it directed its staff to investigate that capacity and to determine what impact a new sentencing structure might have on existing capacity.

Time precluded in-depth research of the question of capacity. None-the-less, from existing data and information the staff was able to draw some tenative conclusions on the matter. The process used entailed looking at data on capacity reported in the 1976 Alaska Criminal Justice Plan and drawing inferences from the data on 1973 sentencing patterns provided in Sentencing in Alaska, supra.

The Capacity of the Correction System

In-state Alaska correctional facilities have an emergency capacity of 833 units. Of this total, 119 are considered "special service holding units" which are of a temporary nature only, including drunk tanks, infirmaries, isolation units, admission and orientation sections, etc., and are not ordinarily used as housing units capable of handling long range, non-emergency situations. Another 148 units are designed for handling juvenile offenders, leaving a total of 566 units for adults. These 566 units hold a combination of sentenced and detention populations.

The 566 units which are available for adult offenders have a "rated capacity" of 514. "Rated capacity" is defined as the extent

to which institutions can operate efficiently and, at the same time, provide programs and rehabilitation for the prevention and reduction of crime. It also incorporates the elasticity necessary to allow the entry, transfer, and discharge of prisoners. The courts cannot specify a sentence beginning on the exact day a cell comes open. Alaska's ratio of 90.81% reflects a higher efficiency than accepted National norms of 80%.

In FY '75 Alaska institutions had a used capacity of 519, up from 483 in FY '74, indicating that existing in-state correctional facilities' populations have already reached levels of maximum operating efficiency, at least on an annualized basis.

In addition to in-state facilities for adult offenders, approximately 17 institutions outside the state are eligible to accept Alaska transfers. These transfers normally take place for one of four reasons:

1. The offender has proven to be dangerous, or a management problem within state facilities;

2. The offender has an extremely long sentence which would preclude placement in an Alaskan institution;

3. The offender has special needs that cannot be met by programs presently available in Alaska institutions, and;

4. The offender will be better able to maintain family ties and establish a parole plan for re-entry into an outside community.

In 1975 approximately 37 adult Alaskan offenders were serving sentences in institutions outside the State. However, the

Division of Corrections has, over the past few years, embarked on a policy of reducing the numbers of prisoners housed outside the state.

A review of Sentencing in Alaska, provided some interesting insights into sentencing practices in Alaska.

The study analyzed the 749 offenders charged with felonies in Alaska in 1973. Of that number 43% were involved in property crimes, 29% violent crimes, 25% drug related crimes and 3% other crimes. Less than one-fourth (24%) of these defendants had prior felony convictions; 19% had prior misdemeanor convictions; 38% had no prior records; while for 7% the record was unknown.

Those charged with drug offenses were least likely not to have had a prior criminal record. Those most likely to have had prior felony convictions were persons charged with check and fraud crimes. Offenders charged with either property crimes or with robbery constituted the next largest groups with prior felony convictions. Of the total of 749 offenders studied, 286 - or 38.18%, had no prior convictions of any kind.

Lack of prior convictions is not a clear indicator of the absence of prior criminal activity. But, convictions are the gravemen of mandatory sentencing schemes for repeat offenders.

Suspended imposition of sentence was resorted to by judges in 54% of all sentences imposed for convicted felony defendants in 1973. However, many of these individuals did go to jail, albeit for a very brief period of time. Fewer than one-half the convicted felons in the state (47%) went to jail for more than 30 days. Only

8% went to jail for more than 5 years. Sentences of one year or less were given to the vast majority of property offenders (82%); check and fraud offenders (83%); and, violent crime offenders (69%). Only 32% of robbery offenders, on the other hand, received less than a year.

As might have been expected, prior record played a significant role in sentencing. A total of sixty defendants had a record of committing the same or very similar felony at least once before, including 18 with four or more prior felony convictions. Of these 60, only 12 (20%) were sentenced to serve 5 or more years. They represented 30% of all those sentenced to 5 years or more. However, persons with no prior convictions represented 35% of defendants sentenced to terms of five years or more.

After reviewing this information and discussing it in some detail the Commission concluded that any change in existing sentencing practices which would result a rapid and substantial increase in prison population could not take effect without a corresponding increase in correctional facilities, unless the State was willing to run the risk of experiencing the types of prison disorders which had occurred in other jurisdictions when efficient operating capacities were overloaded.

The Staff presented a sentencing package which contained recommendations for mandatory sentences at the January meeting of the Commission. The substance of that package follows these introductory remarks. After careful consideration of all the pros and cons of the

Staff recommendations the Commission concluded that it could not agree unanimously on a proposal which contained mandatory minimum sentences, although the majority of those present did agree that there were instances in which mandatory minimum sentences were warranted. Accordingly, the Commission directed the Staff to develop alternatives which contained no mandatory minimums or limited them to third or subsequent offenses. Those alternatives are set forth in this report following a discussion of the original staff proposal.

AN ALASKA SENTENCE STRUCTURE AND AMERICAN BAR ASSOCIATION STANDARDS

The proposals on sentencing structure which follow were developed to comply in most instances with the recommendations of the American Bar Association's Standards on Sentencing Alternatives and Procedures.

That work set forth a number of general principles for statutory structure which our proposal has followed. Among them are the following:

> 2.1 (a) All crimes should be classified for the purpose of sentencing into categories which reflect substantial differences in gravity. The categories should be few in number. Each should specify the sentencing alternatives available for offenses which fall within it. The penal codes of each jurisdiction should be revised where necessary to accomplish this result.
>
> (b) The sentencing court should be provided in all cases with a wide range of alternatives, with gradations of supervisory, supportive and custodial facilities at its disposal so as to permit a sentence appropriate for each individual case.
>
> (c) The Legislature should not specify a mandatory sentence for any sentencing category or for any particular offense.
>
> (d) It should be recognized that in many instances in this country the prison sentences which are now authorized, and sometimes required, are significantly higher than are needed in the vast majority of cases in order adequately to protect the interests of the public. Except for a very few particularly serious offenses, and except under the circumstances set forth in section 2.5 (b) (special term for certain types of offenders), the maximum authorized prison term ought to be five years and only rarely ten.*

The A.B.A. Commission noted that one of the most chaotic aspects of the laws relating to sentencing is the condition of the penal codes themselves. "It is easily demonstrable in most states that the sanctions available for different offenses are utterly without any rational basis... Another manifestation of this same problem is that too many distinct penalties are in use. It is common to find as many as twelve to fifteen maximum terms that are available for different felony convictions."**

* A.B.A. Standards for Criminal Justice: "Sentencing Alternatives and Procedures" (1968) p. 48

** Ibid., p. 49, 50

A brief review of Appendix I on current Alaska sentences will amply demonstrate that Alaska falls within the area of criticism just expressed.

The A.B.A. Commission also noted that the best method of assuring consistency of penalty is by a process which forces comparison between offenses. Thus, by reducing unessential differences in the penalties available for different offenses, and by consideration of the entire penal structure in one package, draftsmen should be able to avoid much of the illogic that is manifested in current sentencing practices.

The rationalization of the penalty structure by the classification of all offenses into a small number of distinct sentencing categories should be a matter of highest priority in every state the A.B.A. Commission concluded.

Our proposal attempts to address both these charges in a positive fashion. It departs from the recommendations of the Commission with respect to mandatory minimum sentences but that departure as it relates to second and third offenders is not substantially different from other recommendations of the A.B.A. Commission (2.5 (b)) with respect to exceptional cases.

CLASSIFICATION OF FELONIES INTO THREE DEGREES

The Commission was unanimous in its belief that in a revised criminal code all crimes should be classified for purposes of sentencing into categories which reflect substantial differences in gravity. Further, the Commission agreed that the sentencing categories should be limited in number. This approach follows the guidelines suggested in §2.1 of the ABA Standards Relating to Sentencing Alternatives and Procedures (1967).

With the exception of first and second degree murder, all felonies within the Revised Criminal Code are to be categorized into one of three classes. Though in this part of the revision the Commission only considered crimes against property, for purposes of formulating a sentencing structure it was helpful to consider the probable effect of the recommended classification scheme on a cross section of felonies now found in the current statutes. This classification was formulated by the Commission's staff. In considering which class to place a specified felony, the staff was primarily influenced by the current authorized sentence for the crime. It must be emphasized that the classifications provided by the staff below is not a final classification of felonies for purposes of a revised criminal code. Instead, the actual classifications will be accomplished when the specific substantive crime is revised.

Class A felonies are those which involve substantial violence to the victim or a very substantial threat or potential death. When the Commission considers crimes against the person,

it will consider including within this classification such crimes as rape, armed robbery, kidnapping, attempted murder, first degree arson, procuring to murder, and assault with intent to kill.

Class B felonies are those which involve the likelihood of some violence or threat to the person whether the thrust of the conduct is against person or property. Also included within this category are crimes which threaten the integrity of the justice system itself. Examples of offenses which may be considered for this category include assault, unarmed robbery, conspiracy to kidnap (not carried out), most attempts at class A crimes, burglary, theft by extortion, perjury in a criminal case, bribery or rioting.

Class C felonies are comprised of felonies that are not serious enough to be categorized as either Class A or B. Crimes which might be included in this category include forms of theft not involving personal risk to the victim, blackmail, criminal mischief, fraud and forgery, attempts at most class B offenses, and most other Title 11 offenses.

It must be emphasized that the categorization of felonies described above (with the exception of the substantive crimes treated in this report) is not a final classification of crimes for purposes of sentencing. Instead, this categorization is provided as a general guideline for determining the eventual effect on prison populations of the sentencing structure recommended by the Commission and for assessing the relative value of the recommendations which the Commission is making on sentencing for property crimes.

COMMISSION RECOMMENDATION - FELONIES

(Unless otherwise indicated, figures read as years.)

Class of Felony	1st Offense	2nd Offense	3rd Offense
A	0-10	5-15	10-20
B	0-5	2-7	5-10
C	0-3	6 mos. - 5	1-5

MINORITY RECOMMENDATION #1

A	0-10	0-15	5-20
B	0-5	0-7	2-10
C	0-3	0-5	6 mos. - 5

MINORITY RECOMMENDATION #2

A	0-10	0-15	0-20
B	0-5	0-7	0-10
C	0-3	0-5	0-5

COMMISSION RECOMMENDATION - MISDEMEANORS

Class of Misdemeanor	All Offenses
A	0-1
B	0-1 mo.

HIGHLIGHTS OF COMMISSION'S RECOMMENDATION - FELONIES

1. With the exception of special terms of imprisonment for first and second degree murder there are only three categories of felonies for sentencing purposes.

2. The maximum authorized sentence for a second offense increases over the maximum authorized sentence for a first offense. The maximum authorized sentence for a third offense increases over the maximum authorized sentence for a second offense.

3. All sentences will be of a determinative nature, i.e., sentence will be for a definite period.

4. Probation is allowed as a sentencing alternative for all first offenses.

5. Parole has been eliminated and replaced by a good time statute that will reduce all sentences by one-half if the conditions of good time are satisfied.

6. There are no mandatory minimum sentences that must be served upon conviction of a first offense.

7. The mandatory minimum for a third offense increases over the mandatory minimum for a second offense.

8. Probation is not available as a sentencing alternative for the mandatory minimum sentence that a second or third offender must serve. However, probation is a sentencing alternative for that portion of the sentence that may be imposed which is greater than the mandatory minimum sentence.

9. Any time a defendant is to be sentenced as a second or third offender the court is required to impose at least the minimum mandatory sentence. The court can impose more than the

minimum sentence, up to the maximum sentence authorized, but cannot impose less than the minimum.

10. There are only nine sentencing alternatives for all felonies in the Code as compared to the dozens of alternatives in the current statutes.

HIGHLIGHTS OF MINORITY RECOMMENDATION #1 - FELONIES

1. Same as Highlights #1-6 of Commission's recommendation.

2. There are no mandatory minimum sentences that must be served upon conviction of a second offense. However, a mandatory minimum sentence must be served upon conviction of a third offense.

3. Probation is not available as a sentencing alternative for the mandatory minimum sentence that a third offender must serve. However, probation is a sentencing alternative for that portion of the sentence that may be imposed which is greater than the mandatory minimum sentence.

4. Any time a defendant is to be sentenced as a third offender the court is required to impose at least the mandatory minimum sentence. The court can impose more than the mandatory minimum sentence up to the maximum sentence authorized, but cannot impose less than the minimum.

5. There are only eight sentencing alternatives for all felonies in the Code as compared to the dozens of alternatives in the current statutes.

HIGHLIGHTS OF MINORITY RECOMMENDATION #2 - FELONIES

1. Same as Highlights #1-6 of Commission's recommendation.

2. Probation is allowed as a sentencing alternative for all offenses.

3. There are no mandatory minimum sentences that must be imposed upon conviction of any offense.

4. There are only six sentencing alternatives for all felonies in the Code as compared to the dozens of alternatives in the current statutes.

PROPOSED STATUTES FOR COMMISSION'S RECOMMENDATION

I. SENTENCE OF IMPRISONMENT FOR FELONIES; ORDINARY TERMS

A. Sentences for felonies shall be for a definite term. Unless the defendant is to be sentenced pursuant to §II or §III, the Court shall sentence a person who has been convicted of a felony within this state to a term of imprisonment within the following maximum limitations:

1. For a Class A Felony, 10 years.
2. For a Class B Felony, 5 years.
3. For a Class C Felony, or for any felony for which no specific sentence is provided, 3 years.

This section is based on the current Oregon sentencing provision, but requires the sentence to be of a determative nature.

IA. SENTENCE OF IMPRISONMENT FOR MISDEMEANORS

A. Sentences for misdemeanors shall be for a definite term. The Court shall sentence a person who has been convicted of a misdemeanor within this state to a term of imprisonment within the following maximum limitations:

1. For a Class A Misdemeanor, 1 year.
2. For a Class B Misdemeanor, or for any misdemeanor for which no specific sentence is provided, 6 months.

This section is based on the Oregon sentencing provision.

II. SENTENCE OF IMPRISONMENT FOR FELONIES; SECOND OFFENSE

A. The Court shall sentence a defendant who has been convicted of a felony within this state to a definite term of imprisonment as provided in this section if it finds all the following:

1. Pursuant to this Code, the defendant has previously been convicted of a felony committed in this state after his 18th birthday that was of the same or more serious class than the felony for which the defendant is to be sentenced.

2. The felony for which the defendant is to be sentenced was committed after the defendant was arrested for the previously committed felony.

3. The felony for which the defendant is to be sentenced was committed within 5 years of the date of the conviction of the previously committed felony or within 5 years of the defendant's release from a prison sentence or other commitment imposed as a result of a prior conviction for a felony, whichever is later.

4. The defendant has not received a pardon for any felony that is necessary for the operation of this section.

5. A conviction of a felony necessary to the operation of this section has not been set aside in any post-conviction proceeding.

B. The Court, in conformity with the criteria specified in subsection (A) shall sentence the defendant as follows:

1. For a Class A felony, for a definite term of at least 5 years but not more than 15 years.

2. For a Class B felony, for a definite term of at least 2 years but not more than 7 years.

3. For a Class C felony, or for a felony for which no specific sentence is provided for a definite term of at least 6 months but not more than 5 years.

This section is based on Florida §775.084.

III. SENTENCE OF IMPRISONMENT FOR FELONIES; THIRD OFFENSE

A. The Court shall sentence a defendant who has been convicted of a felony within this state to a definite term of imprisonment as provided in this section if it finds all the following:

1. Pursuant to this Code, the defendant has previously been convicted of two or more felonies committed in this state after his 18th birthday that were of the same or more serious class than the felony for which the defendant is to be sentenced.

2. The felony for which the defendant is to be sentenced was committed after the defendant was arrested for the two previously committed felonies.

3. The felony for which the defendant is to be sentenced was committed within 5 years of the date of the conviction of the last previously committed felony or within 5 years of the defendant's release from a prison sentence or other commitment imposed as a result of a prior conviction for the last previously committed felony, whichever is later.

4. The defendant has not received a pardon for any felony that is necessary for the operation of this section.

5. A conviction of a felony necessary to the operation of this section has not been set aside in any post-conviction proceeding.

B. The Court, in conformity with the criteria specified in subsection (A) shall sentence the defendant as follows:

1. For a Class A felony, for a definite term, of at least 10 years but not more than 20 years.

2. For a Class B felony, for a definite term of at least 5 years but not more than 10 years.

3. For a Class C felony, or for a felony for which no specific sentence is provided for a definite term of at least 1 year but not more than 5 years.

This section is based on Florida §775.084

IV. REDUCTION OF SENTENCE; GOOD TIME

A. A prisoner shall be allowed a good time deduction from his sentence of 1 day for each day served of his sentence.

B. The Division of Corrections shall have the authority to forfeit any good time previously earned by the prisoner, or to deny the prisoner the right to earn good time in any amount, if during the term of imprisonment a prisoner commits any offense or violates the rules of the institution [taken from Ky. R. S. 197.045]. The Division

shall adopt rules and regulations implementing this section and graduating rule infractions by their seriousness.

V. DISCHARGE

A prisoner shall be released from confinement at the expiration of his term of sentence less the good time deduction.

This section is based on AS 33.20.030

VI. SUSPENSION OF SENTENCE & PROBATION; FIRST OFFENSE

Upon entering a judgment of conviction of misdemeanor or a felony for which the defendant may be sentenced pursuant to §I, or at any time within 60 days from the date of entry of that judgment of conviction, a court, when satisfied that the ends of justice and the best interest of the public as well as the defendant will be served thereby, may suspend the imposition or execution or balance of the sentence or a portion thereof, and place the defendant on probation for a period and upon the terms and conditions as the court considers best.

This section is taken from AS 12.55.080

VII. SUSPENSION OF SENTENCE & PROBATION; SECOND & THIRD OFFENSES

A. A defendant who has been convicted of a felony for which he shall be sentenced pursuant to §II or §III shall be sentenced to a term of imprisonment for no less than the minimum sentence authorized.

B. Upon entering a judgment of conviction for a felony for which the defendant shall be sentenced pursuant to §II or §III or at any time within 60 days from the date of entry of that judgment of conviction, a court, when satisfied that the ends of justice and the best interest of the public as well as the defendant will be served thereby, may suspend the imposition or execution of the portion of the sentence greater than the minimum sentence authorized, and place the defendant on probation for a period and upon the terms and conditions as the court considers best. However, in no event may the court place a defendant on probation for the minimum sentence authorized.

This section is based on AS 12.55.080.

DEFINITIONS OF SECOND AND THIRD OFFENSE

One of the most important aspects of the Commission's recommended sentencing structure is the imposition of mandatory minimum sentences for repeat felony defendants. Therefore, the definition of the type of previously committed felonies which can be used to find that the felony for which the defendant is to be sentenced is a second or third felony is central to the sentencing structure.

As a preliminary requirement, any previously committed felony that is used to trigger the imposition of mandatory minimum sentences must have occurred after the defendant reached 18. In addition, the defendant must have been convicted of that felony. However, the conviction of any type of felony will not be sufficient to require the imposition of mandatory minimum sentences.

Both §II and §III require that the previous felonies that are relied upon to require mandatory minimum sentences must have been of the same or more serious class than the felony for which the defendant is to be sentenced. Thus, if the defendant had previously been convicted of a Class B felony, that felony would be sufficient to trigger the imposition of a mandatory minimum sentence pursuant to §II if the defendant is to be sentenced for either a Class B or Class C felony, but not if he is to be sentenced for a Class A felony as a Class B felony is less serious than the felony for which the defendant is to be sentenced.

The Commissions's recommendation treats all criminal transactions occurring before an arrest as one transaction for the purpose

of triggering mandatory minimum sentences. This assures that a previously committed felony cannot be one that evolved from the same transaction as the felony for which the defendant is to be sentenced. By requiring the felony for which the defendant is to be sentenced to have been committed after the defendant was arrested for the previous felony, the Commission's recommendation eliminates the possibility of a defendant receiving a mandatory minimum sentence when he commits two felonies during the same criminal act or course of conduct. For example, a bank robber who assaults a teller cannot be tried first for assault and upon conviction be tried for robbery, with the assault conviction used as a previously committed felony for purposes of sentencing for the robbery. This occurrence is impossible under the Commission's recommendation as the robbery did not occur after the arrest for assault. However, a defendant who is arrested for assault and while on bail commits an assault the day after his first arrest will be treated as a second offender if he is first convicted of the first assault and then tried and convicted of the second assault.

The Commission's recommendation requires that to count as a prior conviction the previously committed felony cannot have occurred more than five years before the felony for which the defendant is to be sentenced. However, if the defendant received a jail sentence for the previously committed felony the five year period does not begin to run until the defendant is released from jail.

The Commission's proposal also insures that a felony for which the defendant was pardoned or for which post-conviction

relief was granted in his favor cannot be used to trigger mandatory minimum sentences under §II and §III.

MANDATORY MINIMUM SENTENCING

The Commission has recommended a system of mandatory minimum sentences. There are wide differences of opinion among members of the public, the criminal justice community and scholars concerning the desirability of mandatory minimum sentencing. These differences of opinion are reflected on the Commission. The Commission has tried to steer a middle road avoiding both a premature imposition of a minimum sentence or a Draconian measurement of minimum terms on the one hand and unfettered discretion in the court to make its own determination of offender freedom on the other.

Some critics of Alaska justice administration have complained concerning the lack of use of the "habitual criminal" statute. This proposal will build a better, graduated, habitual criminal standard directly into all criminal cases, providing for its compulsory application and avoiding many of the difficulties associated with prosecuting habitual criminality as a separate, status offense.

The Commission has not recommended mandatory minimum sentences out of any idealistic notion that mandatory minimums will have a drastic influence as a deterrent in reducing crime. Few if any of our citizens committing an offense give serious enough consideration to the prospect that they will be apprehended. Massive deterrent sentencing is no more likely to be a cure-all than any other panacea offered for America's crime problems. The Commission does hope that at least a measurable deterrent influence will result from a workable system of mandatory minimums if they can be maintained over a period of years. The efficacy of such a system

presupposes the capacity of the prison system to sustain it. Any scheme that applies mandatory minimums to broad classes of offenders (first offenders, offenders with an unrelated type of crime in their past, etc.) or which sets long terms of years for the first level of minimum sentence or covers overbroad classes of offenses (bad checks and misdemeanors, for instance) will soon jam up the system no matter how fast we build new prisons. Any scheme adopted must maximize the use of existing space behind bars taking account of plausible projections for expansion. This limited space must be allocated to protect the public, to reinforce the most plausible deterrent influences and to provide custodial rehabilitation to those who cannot absorb it any other way.

But at bottom, the justification of a scheme of mandatory maximum sentences does not lie in their utility as deterrents alone,but in their justness in the view of the public and possibly the offender himself. The average citizen's confidence in the fairness and evenhandedness of the justice system is a basic bulwark to community support for law enforcement, to the motivation to be law abiding and to the system of justice and government under law generally. Regardless of the technical facts, there can be little doubt that there is a widespread felt perception among the public that even repeat offenders go free. The average citizen can sympathize with the notion that everyone should be considered for one more chance. Few have any sympathy for the prospect that one more chance will be available again and again.

In their defense it might be said that few, if any, judges

have any different notion. Yet that one exceptional case where a judge feels that yet another chance is due can seriously erode public confidence in the administration of justice and is perceived as the rule rather than the exception by a disgruntled public. Any scheme of mandatory minimums, as with maximums, is a limitation of the discretion of judges. It is our hope that this very modest limitation will inspire greater confidence among the public in the exercise of that very broad remaining judicial discretion.

The same perception of easy justice unfortunately infects that certain kind of youth that works out his late adolescence in systematic defiance of law enforcement authorities. Police officers on and off the Commission are familiar with the attitude of a class of offender who thumbs his nose at the law in the belief that if he is caught nothing will happen to him.

When this kind of atmosphere and public mistrust are commonplace, certainty of punishment, at least for some limited class of recidivists, is a systematic requirement. Almost certainly, under any system of mandatory minimums, some will go behind bars who could have made it on the outside. If their loss of freedom is a sacrifice to assure some credibility to general and special deterrence and public confidence in the justice system, the least that could be said of the loss in freedom is that it is deserved.

Under this proposal no mandatory minimums are set forth for first time felony offenders. Thus, the judge will have complete flexibility to set sentences which, in his judgement, are most likely to enhance rehabilitation, or deter further criminal conduct and protect society.

Practicality as well as justice indicates the reasonableness of this course. Ample statistics indicate that most first time offenders do not repeat their crimes. One can safely conclude for most of these that they have been sufficiently chastened by the sentence they received or that their crimes were once-in-a-lifetime occurences brought on by moment of circumstantial temptation, the heat of passion, or other non-recurring circumstances. This conclusion is supported, to an extent, by data developed by the Judicial Council in their study of sentencing. In 1973 only 41 of 177 individuals (23%) charged with violent felony crimes (excluding robbery) had a prior felony conviction. 65 of those 177 defendants (37%) had no prior record of any type.

The proposal on mandatory minimums is designed to deal not with these individuals, but with those whose patterns of criminal behavior indicates that this first experience has produced no positive results. In assessing the second time, repeat offender the Commission took cognizance of the realities of criminal behavior. Those realities are that a substantial amount of crime goes unreported; that a substantial protion of crime is committed by repeaters; that plea bargaining has historically resulted in a substantial number of felony crimes being reduced to misdemeanors for conviction purposes; and, in too many cases individuals who are arrested for crime are not convicted at all.

Consequently, most of those individuals convicted of a second or subsequent felony offense are likely to have more extensive backgrounds in crime. If this is the case, and the available Alaska data suggests that it is, then it calls into question the

proposition that absolute sentencing flexibility for judges in all cases is a tool in reducing crime. (The Commission assumes that when judges consider sentence alternatives they do so with a view towards minimizing the likelihood that the individual will continue in a life of crime upon conclusion of the sentence.)

The Commission considered using out-of-state convictions as a basis for second or subsequent offense mandatory sentencing. There are many problems with using out-of-state convictions including differences in definitions of "same or similar" crime, proof of conviction, the availability of special circumstance information, differences in judicial processing and others. The Commission concluded that, in the end, omission of out-of-state convictions as a basis for establishing mandatory minimums is not a source of great concern because where they exist those records should be available to the sentencing judge. The state having set, by the adoption of these mandatory minimums, a standard for its own citizens, it is highly unlikely that a judge would treat a person with an outside record differently in the exercise of his discretion. The same consequence will result. Why lay a foundation for an expensive and time consuming evidentiary dispute to establish a technical certainty which will not effect the outcome?

Criticism in many jurisdictions of mandatory sentences results from the fact that they are a part of otherwise irrational sentencing structures which do not differentiate between types of crime and provide for sentences with minimum terms far greater than are required. Thus it may be that the problem traditionally

thought to exist with mandatory sentences may not be that they are mandatory but that they are mandatory for excessive periods of time. Additional problems with mandatory minimums arise if there are inadequate penal institutions or insufficient space to absorb sentenced populations. If these issues, when they exist, are not squarely faced, the results can be disasterous. But the failure of some other states to deal with these problems should not be used as a basis for condemning a workable system of mandatory minimums for this state.

The Commission believes that potential problems have been met by the sentencing structure it has proposed because it does differentiate between classes of crimes and does attach sentences of reasonable length to those crimes.

Mandatory minimum sentences are unlikely to produce a rehabilitative effect on those subject to them. Fortunately they need not stand on this ground for support. There is a substantial amount of literature which suggests that rehabilitation efforts within prison do not reduce recidivism. The Commission's staff has not been able to review all these studies, but one example might suffice.

The Spring 1974 issue of The Public Interest carried an article by Robert Martinson which outlined the results of research he had carried out at the request of the New York State Governor's Special Committee on Criminal Offenders. The study had commenced in 1966 and was concluded in the spring of 1972.

Martinson and his colleagues surveyed the literature for all reports in English language on attempts made at rehabilitation

within prisons, here and abroad, between 1945 and 1967. Using a rigorous methodology to insure that the studies they reviewed had met acceptable social science research standards, they developed a listing of 231 rehabilitation studies which they then analyzed. In their words they concluded that: "it is possible to give a rather bald summary of our findings. With few and isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism. Studies that have been done since our survey was completed do not present any major grounds for altering that original conclusion." (Emphasis in the original) *

Martinson's findings are not unique. (Reference is made to supporting studies in the Commission's discussion of parole which follows.)

The efficacy of in-prison rehabilitation programs remains to be tested under a system where participation is not tied to release. While the conclusions of Martinson and others lay a basis for almost automatic skepticism of prison rehabilitation programs, it should also be noted that Alaska has some unique circumstances and one unique institution where evidence of a breakthrough in correctional science may develop. However, we should approach cautiously any sentencing structure built on a rehabilitative prison model.

If rehabilitation efforts in prison do not result in reductions in recidivism then we should not deprive individuals

* Martinson, "What Works? - questions and answers about prison reform". Public Interest, No. 35, Spring 1974, pp. 22-54 at p. 25.

of their liberty on a theory that it is to their benefit to be imprisoned because while confined we can make them better citizens. Protection of the public stands as the first justification of sentencing to imprisonment.

Rehabilitation must be conceived of in the broadest context - the reduction of recidivism. In this context a deterrent sentencing structure can be seen as meeting overall rehabilitative goals. There is some data supporting the efficacy of deterrent systems.

The data used to support this conclusion has come not from social science researchers but from economists. The leading exponent of this theory is Professor Isaac Ehrlich of the University of Chicago. Using F.B.I. Uniform Crime Reports data for 1940, 1950, and 1960, Ehrlich, after controlling for factors such as income and minority population, concluded that"states with better police protection, higher certainty of conviction and imprisonment, and longer sentences had lower crime rates that more permissive states."* Ehrlich's findings held true from crimes like rape as well as crimes which were likely to be economically motivated such as robbery.

An article in the Summer 1974 issue of the Public Interest** by Gordon Tullock, a professor at Virginia Polytechnic Institute provides additional support for Ehrlich's findings. Tullock reviewed an number of studies conducted by other economists along

* "Crime, A Case for More Punishment" Business Week, September 15, 1975, p. 92.

** Tullock, "Does Punishment Deter Crime", The Public Interest, Vol. 36, Summer 1974, pp. 103-111.

the same lines as Ehrlich's but which focused on a broader range of crimes. They, too, concluded that where punishment was higher, crime was lower.

More interesting than these results, however, was Tullock's reporting on the results of a number of studies initiated by sociologists which were designed to refute the findings of the economists. Upon completion of the studies the sociologist ended up concluding that the economists were right: that crime can be detered by punishment. In addition, because they used research methods which were different than those employed by the economists their work could be taken as an independent confirmation of the economist's approach, Tullock observed.

The question neither group could answer with any degree of satisfaction was whether the severity of the sentence was more important than the likelihood that it would be imposed. Tullock reports that most concluded that between the two, the frequency of imposition was more important than the severity of the sentence.

Tullock concludes his article with a brief discussion of why rehabilitation became the dominant rationale of corrections. He found that it was more appealing to opt for a "pleasant" choice, i.e. rehabilitation, than for unpleasant choices. He concludes:

> "It is clearly more appealing to think of solving the criminal problem by means that are themselves not particulary unpleasant than to think of solving it by methods that are unpleasant. But in this case we do not have the choice between a pleasant and an unpleasant method of dealing with crime. We have an unpleasant method - deterrence- that works, and a pleasant method - rehabilitation - that (at least so far) never has worked. Under the circumstances, we have to opt either for the deterrence method or for a higher crime rate."* (Emphasis in the original.)

* Ibid, p. 110.

We believe that deterrence can be considered as a neglected factor in rehabilitation theory and thus that it is consistent with Alaska's constitutional limitations to utilize a mandatory minimum sentence structure.

The views expressed above are not held unanimously by the Commission's members.* A statement generally reflecting the views of a dissenting minority follows.

* Nor are they stated as a precise representation of any Commission concensus. Time did not permit detailed textual review of the supporting text though there was general agreement on statutory principles.

DISSENTING VIEWS ON MANDATORY MINIMUM SENTENCING

No Mandatory Minimum Sentence

Mandatory minimum sentencing has been offered as a panacea to crime problems for many years. It ignores the fact that the origins of criminal behavior lie in motivations, criminal opportunities and social conditions which are not materially influenced by the way we process those criminal offenders who are caught.

Our system of justice is based upon an evaluation of objective facts and the state of mind of the offender in determining guilt but an examination of the individual and the needs of society in determining sentence. The verities of human condition are so diverse that we need highly trained judges to individually determine in each case the appropriate disposition. Every move eroding the discretionary authority of the judge in favor of blindly applied penalties is a step away from handling the offender in the most rational manner possible for the benefit of society as well as the individual.

Contrary to the impression of the uninformed, judges do impose substantial sentences on second and subsequent offenders when circumstances warrant, as is frequently the case. The imposition of mandatory minimums does not effect those offenders who in common judgement need incarceration. These offenders receive sentences of imprisonment anyway. Those who will be sent to prison under a rule of mandatory minimum are those who do not belong there, offenders whose incarceration is not necessary to protect the public. These offenders will take up space in our institutions unnecessarily and may eventually displace offenders for whom there is no room but

who are more in need of incarceration.

Some support for mandatory minimum sentences comes from those who would simply like to see more offenders locked up for more time. Draconian punishments will not seriously reduce crime as is well documented by the record of feudal Anglo-Saxon sentencing when execution and other drastic penalties for trivial crimes was common. Turning back now to the standards of a less humane era will not only exact a heavy toll in human suffering but will influence adversely the quality of society generally. Nor does this mood reflect the real feelings of the public which, while exasperated with crime, is not prepared to invest vast sums of money in facilities and operating costs to keep a larger portion of Alaskans behind bars.

Opposition to mandatory minimum sentencing is the prevailing viewpoint of every major investigation of sentencing conducted since 1965. The National Advisory Commission on Criminal Justice Standards and Goals in its report on Corrections, offered the following reasons in support of this position.

> "There are two important factors in fashioning sentencing provisions: the offender and the offense. The legislature, in enacting a penal code with penalty provisions, can only deal with the offense; the offenders who will be convicted under the provision over the history of its enactment will span the spectrum of guilt. No legislature can determine in advance the nature of the offender who will be prosecuted under the particular penalty provision.
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> * * * *
>
> Legislators should not impose mandatory sentences. They are counter productive to public safety, and they hinder correctional programming without any corresponding benefit. To the extent that the mandatory provision requires an individual offender to be incarcerated longer than necessary, it is wasteful of public resources.

To the extent that it denies correctional programming such as probation or parole to a particular offender, it lessens the chance for his successful reintegration into the community. To the extent that mandatory sentences are enforced, they have a detrimental effect on corrections.

However, mandatory sentences generally are not enforced. The Crime Commission's Task Force on Courts found persuasive evidence of nonenforcement of these mandatory sentencing provisions by the courts and prosecutors. Prosecutors who find that an unusually harsh sentence in a particular case is unjust will, through plea negotiations, substantially circumvent the provision.

Where lengthy mandatory sentences are imposed, undermanned prosecutors may be forced to alter the charge to obtain guilty pleas, since mandatory sentences leave little incentive for the offender to plead guilty.

Mandatory sentences in fact grant greater sentencing prerogatives to prosecutors than to courts. The result increases rather than decreases disparity in sentences and subverts statutory provisions by a system designed to enforce them. The resulting disrespect for the system on the part of both the offender and the public tends to undermine our system of criminal justice."*

The American Bar Association had the following comments on mandatory sentences in its recommendations on Sentencing Alternatives and Procedures.

"It follows clearly from subsection (b) that the legislature should not specify in advance sentences which must be imposed regardless of the circumstances of the offense. Yet the incidence of such sentences is so prevalent that the Advisory Committee is led to state specifically in subsection (c) that such provisions are unsound.

The real evil of existing mandatory sentences consists of their impact at two points: on the question of whether the defendant is a suitable subject for probation or some other disposition short of total confinement in an institution; and, assuming an institutional

* Corrections, National Advisory Commission on Criminal Justice Standards and Goals. (G.P.O. Washington, 1973) pp. 545-546.

commitment, on the question of whether he is a suitable subject for release on parole. It is thus a characteristic of such sentences that they deny the sentencing court authority to place an offender on probation or to select some other sentence which is less severe than total incarceration, or they deny or unduly delay the power of paroling authorities to conditionally release the defendant at the point where it is most likely to produce a satisfactory result.

Each of these problems is considered at length in the sections below which are devoted to them. See §§ 2.3,3.2, 3.3, infra. Suffice it to observe here that mandatory sentences rarely accomplish the ends they seek. The certainty of punishment which is sought by such provisions is illusory. There are numerous discretionary devices--ranging from acquittal of the guilty to reduction of the charge--by which the judge, if that is his purpose, can frustrate the effect of a mandatory sentence. The experience with such sentences shows that such devices are very commonly employed, sometimes to the point of conviction of the defendant for an offense which could not possibly have occurred under the circumstances of the case in order to permit the imposition of a more realistic sentence. See, e.g., Newman, Conviction: The Determination of Guilt or Innocence Without Trial 101 (1966). The only alternative in many instances is imposition of a sentence which under the circumstances of the case is much too harsh. Neither emasculating the statute nor acquiescing in an injustice is to be commended. Both effectively and understandably breed disrespect for the system."*

SUPPLEMENTARY DISSENTING VIEWS:

Mandatory Minimums but with Less Frequency

Limitations on judicial discretion are imposed for too easily in the Commission's principal recommendation on this subject for the reasons generally set out above.

Particularly in the case of the second offender, mandatory minimums take insufficient account of the variety of circumstances that can bring an offender before the bar for a second offense.

* A.B.A. Sentencing Alternatives and Procedures, (Chicago, 1968) pp. 55-56.

Frequently the second offense is not an indication of a criminal bent of mind at all, particularly when the second offense is not for the same offense. A burglar once caught may be cured of the pursuit of crime for personal gain but may get caught later in a serious assaultive situation as a result of a drinking problem or a family argument. Yet under the Commission's recommendation, the offender in this situation would receive a mandatory minimum sentence despite the fact that the offender was completely rehabilitated under the circumstances in his first offense. He is not a true recidivist.

If the legislature is disposed to apply a mandatory minimum structure limiting the authority of judges to dispose of cases in the manner they think best meets the needs of society and the individual, that mandatory minimum requirement should come into effect only on the third offense. A second offense is frequently not an indicator of a pattern of criminal behavior. A third offense usually is.

THE PAROLE SYSTEM

The Commission has considered the purpose and administration of parole systems and recommends that, in its present form, parole be abolished in Alaska. It is recommended that some of the functions purported to be served by parole be abandoned and that the board be eliminated in its entirety.

To provide protection to the public in the sensitive post-release period and guidance to the newly released offender, the Commission recommends that every prisoner serve a period of conditional release akin to probation.

Under the proposal, a convicted offender may serve up to half of his sentence on this conditional release, which may be called "mandatory probation", depending upon his behavior in prison and out. For a model prisoner, half the sentence will be "good time", served on mandatory probation. Any revocation of such release will be handled according to the standards and procedures for probation, generally. Cancellation of "good time" for an offender in custody will be handled according to procedures now mandated by law.

Before exploring further the mechanics and merits of the proposed new system, a review of the principal objections to the present system of parole is in order.

David Fogel, Executive Director of the Illinois Law Enforcement Commission, in a monograph entitled "We are the Living Proof..." written while in residence at the Harvard Law School Center

for Criminal Justice commented on the fact that confusion and aimlessness in sentencing and parole are reflected in the quality of prison life:

> "Like both, it too is effectively ruleless. How could it be otherwise with 95% of its prisoners unable to calculate when they will be released or even what, with a degree of certainty, is demanded of them for release candidacy by parole authorities?"*

The uncertainty created by the present system of parole makes parole a serious enemy of the rehabilitative process and contributes significantly to problems otherwise inherent in depriving individuals of their liberty.

Those who favor the parole system generally offer two grounds in support of their position.

> "First, virtually everyone convicted and sent to a correctional institution is destined to return to live in the community. He can be discharged either with no continuing responsibility on his part of that of the state, or he can be released under supervision at an optimal time and given help in finding a way to live within the law. From this perspective, parole is simply a form of graduated return to the community, a sensible release procedure.
>
> "A second major argument is that a parole board can better judge the precise time at which an inmate should be released. The sentencing judge cannot foretell what new information may be available to a parole board or what

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*Fogel, We are the Living Proof, p. 18, Chapter 4. Unpublished Monograph, 1975.

> circumstances might arise which would render one time more favorable than another for an inmate's release. A paroling agency also has the advantage of being able to observe the behavior of the offender when he is in confinement. A corollary to this argument is the idea that a parole board can more objectively appraise the offender when the passions aroused by his offense have cooled."*

While these are undoubtedly valid arguments for the existence of some form of reconsideration of sentence, there are those who offer another reason for parole.

> "Though it is seldom stated openly, parole boards often are concerned with supporting a system of appropriate and equitable sanctions. This concern is reflected in several ways, depending upon a jurisdiction's sentencing system. One of the most common is through parole decisions seeking to equalize penalties for offenders who have similar backgrounds and have committed the same offense but who have received different sentences." (Emphasis added)**

Briefly stated, parole finds its raison d'etre in the concepts of proof of rehabilitation, leniency or sovereign grace, or equity. Implicit in these concepts are the assumptions that judges are human and will from time to time err in their sentencing decisions and that offenders as humans can change in character and behavior.

The question remains, however, whether or not a parole system is the only means to these ends. The Commission has concluded that the parole board is a poor instrument for measuring rehabilitation, dispersing charity or equalizing sentences.

* O'Leary, "Issues and Trends in Parole Administration in the United States." 11 Am. Crim. Law J. 100-101. (1972)

** "Corrections" National Advisory Commission on Criminal Justice Standards and Goals (G.P.O. 1973) pp.393-394.

These arguments for parole assume that a parole board is in a position to judge the arrival of an "optimal time". One can legitimately question the efficacy of this assumption. Measuring the success of parole judgements by the frequency of return to prison by those released, the validity of this assumption is highly questionable.

In 1974 the "Citizens Inquiry on Parole and Criminal Justice in New York City" reported the results of their investigation of that state's parole system. Over four years they looked at those who were returned to prison within a year of release. The study groups included those who were released on parole and those who were denied parole and served their full sentences. Overall, there was no significant difference in the return rates for the two groups: about 10-11 percent in each went back within a year's time.*

Findings of a similar nature have occurred in other jurisdictions.** The results call into serious question the ability of a parole board to judge who is and who is not rehabilitated and the fairness of a discretionary system which cannot meet this criteria.

This result can be only partly blamed on the guality of parole board membership, if at all. In nearly every state one

* Citizen's Inquiry on Parole and Criminal Justice. "Report on New York Parole." (New York City, 1974)

** See also, Kastenmeier and Eglit, "Parole Release Decision Making" 22 Am. U. L. Rev. (Spring 1973) 477-525.

board sits to review the records of all prisoners incarcerated within the state. Interviews with the prisoner are usually held, but what do they really reveal? Most involve substantial game playing by the prisoner. But even when this is not the case, the incentive to tell the board what it wants to hear is very strong. Parole board members, generally speaking, are not full-time employees of the criminal justice system.

When not proceeding on dubious intuitive judgments derived from the interview process, the parole board relies upon corrections officials for their information on the progress, or lack thereof, of the prisoner. Since most prisoners must serve a minimum period of time (anywhere from one-third or more of the sentence) before they become eligible for parole, thousands of events transpire upon which corrections officials can form a judgement. Obviously, reporting of this behavior is, inherently, highly selective and thus of questionable reliability.

Even if the board is presented with good information it must still decide how the prisoner is going to act when released to the community. Therein lies the crux of the matter. Predicting human behavior is no small feat under any circumstances. The hard fact is that attitude and behavior behind bars is not an indication of attitude and behavior on the street.

Parole as a moderating influence on sentence assumes that the parole board can more objectively appraise the offender when the passions aroused by his offense have cooled. While this

may sometimes be the case, the opposite result occurs too frequently. Individuals who committed particularly notorious crimes who may in fact be ready for release are denied it because pressure is brought to bear on the board.

That parole decisions are not made on the basis of sentence equalization is inferentially supported by a 1965 survey conducted by the National Parole Institute. A questionnaire was sent to all parole board members in the United States and returned by over half. They were asked to rate the top five factors they considered in making parole decisions. 92.8 percent of those responding listed the risk that the prisoner would commit another serious crime. 87.1 percent listed the feeling that the prisoner would benefit from further institutional experience, or at least become less of a risk if confined longer. 71.9 percent felt that if confined any longer the prisoner would become a worse risk.* The possibility that the sentence may have been too long originally was not given as a reason by a significant number of respondents.

Despite its low significance in practice, sentence equalization provides perhaps the strongest argument for a discretionary parole system. As was pointed out in other sections of this report,** wide disparities do exist among sentencing practices, both nationally and in Alaska. But, is a parole system the real solution to that problem? The Commission has concluded that it should not be the answer.

*"Corrections", Op. Cit. p. 394
** See page 135

Alternative methods for providing sentence equalization include strengthing of appellate sentence review,* extension of the time or the creation of new time intervals (with appropriate safeguards) within which application may be made to the court for sentence revision under the rules of court; and, executive clemency. In general a detailed examination of these recourses if beyond the scope of our report this year. It is sufficient to note that they are all legitimate avenues for modification of sentence and, in our present view, all better adopted to this purpose than parole determination.

Societal charity or "giving the offender a break" is frequently considered as one of the basic concepts underlying parole systems. This role may explain why clergymen are frequently appointed to parole boards, presumably as official dispensers of the sovereign's grace. However, there is no statistical data supporting the rationality with which charity is dispersed. Offenders released on parole appear just as likely to be recidivists as those released unconditionally according to one survey. A 1967 study by the Federal Bureau of Prisons of all prisoners released in the United States in 1964 revealed that the median time served by paroles was 21.1 months, while those discharged unconditionally served only 20.1 months. Moreover, these figures do not indicate how much additional time was served by the parolees for violation of parole conditions.

* As extensive review of experience under the 1969 Alaska sentence review legislation is set out in "Five Years of Sentencing Review in Alaska", Erwin, Robert C., 5 UCLA-Alaska Law Rev. 1 at page 1.

The arbitrariness of parole procedures as well as the substance of parole decisions has come increasingly under attack. A recent survey conducted by O'Learly and Nuffield* found that:

> "Parole boards were found to be moving away from their roles as autonomous decision makers and instead are developing an expanded function as part of larger departments of corrections. Parole board members are now, to a greater degree than a few years ago, full time personnel serving longer terms of office - perhaps an indication of a trend towards increased professionalism. Procedures at parole release hearings have not changed much in recent years, except for the manner of informing the inmate of the board's decision. On the other hand, procedures at revocation hearings have shown an increased tendency to accord the offender the right to a number of due process safeguards, a trend that was clear even before the requirements set forth in the recent Supreme Court decision in Morrissey v. Brewer."**

As Alaska's prison population has grown, and the weakness of charitably oriented parole has been more manifest, the national trend towards full time boards and staff for the parole system has increasingly discussed as an option for this state. The Commission's proposal for abolishing parole would obviate the necessity of funding for an elaboration of parole professionals.

In lieu of a parole system, the Commission is recommending a system of "good time" served as mandatory probation. For every day a prisoner spends in an institution following its rules his sentence is reduced by a day. Nothing else a prisoner does will result in faster release.

* O'Leary and Nuffield, "A National Survey of Parole Decision Making." Crime & Delinquency July 1973 pp. 378-393.
** Ibid, at 378.

This system will require the Division of Corrections to establish where they have not done so, specific rules of conduct and guides to behavior providing adequate notice to inmates concerning their nature and the penalties which can be imposed for violations. This is not an unreasonable burden on the institution and should result in a more orderly life within institutions, both for inmates and correctional personnel.

Revocation of "good time credit" should result only after an administrative hearing at which the inmate can defend himself according to procedures now generally applicable to good time loss hearings. While we do not propose the adoption of all standards applicable to a probation revocation to an administrative hearing on loss of good time, almost any process would be a clear advance over parole denials at which inmates have almost no procedural rights. Both sides will know in advance what their rights and responsibilities are, and what consequences will flow from disregard of those factors. This system will introduce a new degree of certainty to prison life.

Moreover, because "good time" under this proposal would be the only avenue to early release, the Division of Corrections may find that its rehabilitation programs will become more relevant or even undergo changes in their basic nature. Unquestionably, inmates gravitate towards rehabilitation programs within institutions which they perceive as having current favor with parole boards

rather than those which might be most appropriate to their need or real personal interest. Too frequently, an individual who has no desire to honestly participate in a rehabilitation program will do so because it will look good on his record at parole hearings. These kind of participants inject a motivational distortion disruptive to those who are participating for more sincere reasons.

Elimination of parole con games would create an atmosphere in which it would be desirable to give a more substantial voice in the type of programs offered within institutions to inmates. The result might be an improvement in over-all rehabilitation programming. At the very least one might assume that day-to-day conditions within institutions should improve since the inmates would be engaged in activities serving their goals as opposed to activities serving the ends of the correctional system.

In sum, under a "good time" procedure a prisoner knows the day he enters prison how much time he will have to serve and under what conditions. If his behavior conforms to institution rules and regulations he knows when he will be released. This system removes most release-related incentive for an inmate to participate in rehabilitation oriented programs and allows the programs to operate and be evaluated according to their real justification.

As earlier indicated, though a prisoner may be a model, the special jurisdiction of the criminal justice system over him does not end until his until full sentence is served. Earned good time converts to mandatory probationary time in which the state

can both assist in and evaluate the offenders readjustment to society for up to two years.

It is contemplated that the offender will serve his mandatory probation according to general conditions of probation similar to those now used in Alaska but subject to piecemeal release of condition at the discretion of the division of corrections, based upon the necessity of close supervision and other criteria. The condition that no offense be committed during the period of probation would be unreleasable. Just as with probation as now administered, this would give the prosecutor the option of proceeding on a lesser standard of process and proof for minor offenses which could be served within the remaining mandatory probationary time. There is no extension of mandatory probation however without a fresh conviction.

This system of mandatory probation should in many cases relieve the judge of the necessity of imposing a sentence of probation on condition that the offender first serve a certain amount of time in jail, an existing practice which causes some confusion among the public. It is not intended to restrict existing judicial prerogatives to impose additional terms of probation, probation in lieu of imprisonment etc. (except where barred by mandatory sentence requirements.).

Granted, the proposal does not meet the complaint of those who point out that straight time allows an individual who simply

follows the rules to be released from prison in precisely the same condition character-wise as he entered. However, all the data currently available on the success of prison-run rehabilitation programs strongly suggests that straight time would produce no major change in current results.* It should be clear, however, that the Commission is not questioning the validity of rehabilitation programs currently being offered in Alaska or suggesting that they be abandoned. We are only pointing out that elimination of a system which offers the wrong incentives to participate in such programs is not likely to result in increases in recidivism among inmates after their release from prison.

* While evaluation of rehabilitation programs is not of immediate concern to the Commission, we can not ignore the impressive array of studies which indicate the general failure of rehabilitation programs within prisons, whatever their nature, to have any appreciable impact on recidivism rates. See generally: Martinson, "What Works? - Questions and Answers About Prison Reform" The Public Interest (Spring 1974) pp. 22-54; Hood, "Research on the Effectiveness of Punishments and Treatments," in Crime and Justice, ed. Leon Radzinowicz and Marvin Wolfgang (New York: Basic Books, 1971), vol. 3 pp. 159-182; Barley, "Correctional Outcome: An Evaluation of 100 Reports," in Crime and Justice, supra, vol. 3, p. 190; and, Wilkins, Evaluation of Penal Measures (New York, Random House, 1969), p. 78.

GOOD TIME AND ITS RELATION TO PAROLE

The Commission has recommended that the system of credit towards early release from sentence, usually called "good time", replace the present parole system. (A detailed explanation of the Commission's reasons supporting this decision can be found in the preceding comments on parole.)

Though Section 21 of Article III of the Alaska Constitution mandates that a system of parole be provided by the legislature by law, we take the view that enactment of the good time system as modified in this proposal includes sufficient characteristics of parole to meet the constitutional standard even though we concluded that the use of the term "parole" in the contemporary context might be misleading.

The Commission recommends that A.S. 33.20.010 - 50, be modified or repealed should legislative action be taken on this proposal to conform with those recommendations.

The Commission recommends that the Legislature provide for a good time system by statute, leaving the matter of development of administrative guidelines to the Division of Corrections.

To facilitate administration of the good time system the Commission recommends that the statute establishing it provide for a day of credit towards release for each day of the sentence served in conformity with division rules and regulations. This standard should apply to all sentenced prisoners, regardless of the crime for which they were convicted.

The Commission also recommends that the Division of Corrections review its rules and regulations governing inmate conduct and the penalties attached thereto in the event a new system of good time is enacted by the Legislature to insure that those rules, regulations and penalties conform to the spirit and intent of the new system.

While the Commission recommends that the Legislature simply provide for the earning of good time and for its forfeiture by statutory enactment, leaving to the Division of Corrections responsibility for the development of guidelines and procedures governing these matters, the Commission does recommend that the decision of the Alaska Supreme Court in McGinnis, et. al v. Stevens, et. al. (No. 1207, December 1, 1975), as it applies to good time, serve as a model in developing guidelines and procedures for administration of the recommended system.

The Division's current practice of maintaining a "time accounting sheet" on each inmate should be continued and the practice of making it available to the inmate upon request maintained under the new recommended system. Similarly, the Division should continue under the new system its practice of providing all new arrivals at institutions with written copies of the rules, regulations and procedures for that institution.

In so far as release from sentence resulting from good time served is concerned, the Commission recommends that such release not be unconditional since it is a new form of parole. The balance of the time remaining on the original sentence should be served by

the inmate under conditions established by the Division of Corrections. Those conditions should be set on a case by case basis. They should be designed to reduce the likelihood that the inmate will recidivate upon release. The range of options open to the Division should correspond with those normally associated with conditions of probation.

Violations of the conditions set at the time of good time release should be dealt with in the same manner as violations of the conditions of probation. That is, procedures for the revocation of probation which are in use at the time of violation of conditions of good time release should govern revocation of the latter.

During the period of release on good time, an individual should not be subject to search and seizure except upon issuance of a warrant or a showing of probable cause.

The Commission recommends that regardless of the length of time remaining on the sentence as a result of good time release, a maximum of two years be the limit of supervision under good time release.

Lastly, the Commission is aware that an occasion may arise in which an inmate, in view of corrections personnel, should be released from prison prior to the time at which he would be eligible for release under a good time system. In those circumstances, the Commission feels it would be appropriate for the Division to petition for executive clemency under A. S. 33.20.070.

Proposed draft act

for an

Alaska Criminal Law Revision Commission

For an act entitled: An Act
relating to criminal law revision
and providing for an effective date

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

Section 1 AS 24.20 is amended by adding new sections to read:

AS 24.20.071. ESTABLISHMENT OF CRIMINAL LAW REVISION COMMISSION. There is established as a legislative advisory commission of the Alaska Legislative Council a Criminal Law Revision Commission.

AS 24.20.073 MEMBERSHIP OF THE COMMISSION. (a) The Commission is composed of:

(1) one member of the state house of representatives and one member of the state senate to be appointed by the Legislative Council;

(2) the Attorney General;

(3) the Commissioner of Public Safety;

(4) the Director, Division of Corrections, Department of Health and Social Services;

(5) a judge of the Superior Court appointed by the Chief Justice;

(6) a judge of the District Court appointed by the presiding judge of the Superior Court;

(7) the Public Defender;

(8) one social worker appointed by the Legislative Council;

(9) two Alaska mayors from municipalities designated by the Legislative Council;

(10) an attorney appointed by the President, the Alaska Bar Association;

(11) two representatives of the public at large appointed by the Legislative Council;

(12) two representatives of the public appointed by the Governor.

(b) An appointing authority or a designated Commissioner may name an alternate to serve in his stead when the member may be unable to attend.

AS 24.20.075. TERMS, REMOVAL, COMPENSATION. (a) Members serve ex officio or at the pleasure of the appointing authority. The term of an appointed member is four years.

(b) Members receive no salary but appointed members are entitled to per diem and travel expenses authorized by law for other boards and commissions.

AS 24.20.077. DUTIES OF THE COMMISSION. The commission shall

(1) advise the governor and the legislature on necessary revisions in the criminal laws;

(2) prepare a comprehensive revision of Alaska criminal law including but not limited to necessary substantive and topical revisions of the criminal law and of criminal procedure,

sentencing and the parole and probation of offenders;

(3) conduct studies of criminal justice practices and procedures necessary to perform its duties;

(4) receive and expend grants and appropriations from private and governmental sources for the purpose of carrying out its duties under this section and may contract with other agencies or persons for the performance of necessary services;

(5) submit a report and recommendations to the first session of the Tenth legislature concerning substantive or topical revisions to the criminal laws by February 1, 1977;

(6) submit a report and recommendations to the second session of the Tenth Legislature by February 1, 1978 concerning revision of the laws governing criminal procedure and such other pertinent matters concerning the criminal law on which no previous report has been made together with any recommendations concerning the future existence, purposes or composition of the commission.

AS 24.20.078. CHAIRMAN, MEETINGS, QUORUM. (a) The commission shall select two of its members as chairman and vice chairman. It may hold meetings and public hearings throughout the state and may determine a proper quorum for conducting business.

Section 2. EFFECTIVE DATE

FROM
SENTENCING IN ALASKA, Alaska Judicial Council

STATUTORY MAXIMUM AND MINIMUM FELONY PENALTIES
AS DESIGNATED BY THE CRIMINAL CODE **
(Effective in 1973)

**See footnote on page IV-11, this section

*M = Misdemeanor to which a Felony Commonly Reduced
J = Jail Sentence
P = Penitentiary Sentence

[Historically the penitentiary was for felons and the jail for misdemeanants and persons awaiting trial.]

OFFENSES AGAINST THE PERSON

Offense	Minimum	Maximum
1st Degree murder	20 yrs	life
Obstructing or injuring R.R. or aircraft	20 yrs	life
2nd Degree murder	15 yrs	life
Manslaughter	1 yr	20 yrs
Procuring another to commit self-murder (manslaughter)	1 yr	20 yrs
Abortion (illegal)	---	$1000 or 5 yrs both
Physician administering poison or causing death while intoxicated (manslaughter)	1 yr	20 yrs
Negligent homicide (manslaughter)	1 yr	20 yrs
Rape (defendant 19 yrs or older, female 16 yrs or younger, or daughter or sister)	---	Penitentiary unlimited
(defendant less than 19, female 16 yrs or younger, or daughter or sister)	---	20 yrs
(all others)	1 yr	20 yrs
Lewd and lascivious acts toward children	1 yr	10 yrs
Mayhem	1 yr	20 yrs
Shooting, stabbing or cutting with intent to kill, wound, maim	1 yr	20 yrs
Assault with intent to kill, rape or rob	1 yr	15 yrs
Dueling	1 yr	10 yrs
Posting another for not engaging in duel	1 yr	2 yrs
Assault while armed	1 yr	10 yrs

	Offense	Minimum	Maximum
*M	Careless use of firearms		1 yr] or $1000] both
	Assault with dangerous weapon	P 6 mo J 1 mo $100	10 yrs 1 yr $1000
*M	Assault and battery		6 mo] or $500] both
	Robbery	1 yr	15 yrs
	Larceny from a person	1 yr	5 yrs
	Kidnapping (and conspiracy to kidnap carried out by any overt act)	any term of years	life
	Receiving, possessing or disposing of ransom	1 yr	10 yrs] or $10,000] both
	Child stealing	P 6 mo J	10 yrs 1 yr] or $500] both
	Use of firearms during commission of robbery, assault, murder, rape, burglary, kidnapping		
	1st offense	10 yrs	---
	2nd offense	25 yrs	---
	Blackmail	P 6 mo J 3 mo	5 yrs 1 yr
*M	Libel and Slander	J 6 mo $50	1 yr $500
	Sodomy	1 yr	10 yrs
	Threat and false report of bombing	1 yr	$5000 5 yrs
	OFFENSES AGAINST PROPERTY		
	1st Degree arson	2 yrs	20 yrs
	2nd Degree arson	1 yr	10 yrs] or $5000] both
	3rd Degree arson	1 yr	3 yrs] or $3000] both

	Offenses Against Property Cont.	Minimum	Maximum
	4th D. arson	1 yr	2 yrs or $1000 both
	Burning to defraud insurer	1 yr	5 yrs or $3000 both
	Burglary in a dwelling	1 yr	10 yrs
	Burglary in a dwelling at night	1 yr	15 yrs
	Burglary in a dwelling if occupied	1 yr	20 yrs
	Burglary not in a dwelling	2 yrs	5 yrs
	Burglary in leaving dwelling	1 yr	3 yrs
*M	[Unauthorized use, entry or occupation]		
	Larceny of money or property more than $100	1 yr	10 yrs
*M	Larceny of money or property less than $100	J 1 mo $25	1 yr $100
*M	[Driving or taking vehicle without consent]		1 yr or $1000 both
	Larceny in building or vessel	1 yr	7 yrs
	Larceny of Animals worth more than $50	1 yr	10 yrs
	Making, altering or defacing marks on brands (larceny)	1 yr	5 yrs
	Larceny of minerals (grand larceny)	1 yr	10 yrs
*M	Issuing checks without funds or credit		1 yr or $1000 both
	Issuing checks with intent to defraud (unclear) amount greater than $50	1 yr	10 yrs
	Retention of lost property worth more than $100 (larceny of money or property)	1 yr	10 yrs
	Embezzlement by employee or servant more than $100	1 yr	10 yrs
	Embezzlement by bailee or servant more than $100	1 yr	10 yrs
	Embezzlement of public money or servant more than $100	1 yr (plus double fine of amount converted)	15 yrs

Offenses against property, cont.	Minimum	Maximum
Embezzlement by trustee	3 mo $50	1 yr $1000
Embezzlement by fiduciary	3 mo $50	1 yr $1000
Buying, receiving or concealing stolen property	1 yr	3 yrs $1000 plus
Obtaining money or property by false pretenses	1 yr	5 yrs
False invoice to defraud insurer	6 mo	3 yrs
Fraudelent conveyance	6 mo	2 yrs
Fraudelent sale of personalty subject to security interest		1 yr or $500 both
Fraudelently producing heir	1 yr	10 yrs
Substituting another child for infant	1 yr	10 yrs
Defrauding innkeeper, more than $100	---	5 yrs or $1000 both
Defrauding innkeeper, less than $100		
Malicious or wanton injury to animals or other personalty	P 6 mo J 3 mo $50	3 yrs 1 yr $1000
Stealing, removing or damaging parts of aircraft	---	10 yrs $10,000 or both
Destroying boats	3 yrs	10 yrs
Fitting out boat with intent that it be destroyed	1 yr	5 yrs
Forgery of credit card	1 yr	3 yrs or $3000 both

Offenses against property, cont.	Minimum	Maximum
Fraud more than $500 in 6 mo period, person authorized to provide goods or services upon presentation of credit card	1 yr	3 yrs or $3000 both
Possession of incomplete credit cards with intent to complete	1 yr	3 yrs or $3000 both
Forgery of record or certificate and uttering forged instrument	2 yrs	20 yrs
Forgery of evidence of debt or uttering forged evidence of debt	1 yr	20 yrs
Making or possessing tool designed for counterfeiting	1 yr	5 yrs
Making or possessing tool designed for counterfeiting coins	1 yr	10 yrs
Making or passing counterfeit coins	1 yr	10 yrs
Joining parts of genuine instruments (forgery)	2 yrs	20 yrs
Making false receipts or altering receipts of goods in warehouse	P 1 J 3 mo	5 yrs 1 yr
Affixing fictitious signature	2 yrs	20 yrs
Adulterating gold dust	1 yr	5 yrs
Possession of mixed or adulterated gold dust with intent to pass or sell	1 yr	5 yrs
Punishment on subsequent conviction of all forgeries	1 yr	5 yrs
OFFENSES AGAINST PUBLIC JUSTICE		
Perjury and subornation of perjury - in criminal action punishable by life	2 yrs	20 yrs
Perjury and subornation of perjury - in other court action	3 yrs	10 yrs

	Offenses against public justice, cont.	Minimum	Maximum
	Perjury and subornation of perjury - not in court action, or subornation of perjury	1 yr	5 yrs
	Endeavor to procure perjury	1 yr	3 yrs
	Bribery	2 yrs	10 yrs
	Accepting bribe (judicial or executive officer)	5 yrs	15 yrs
	Aiding escape from confinement	1 yr	3 yrs
	Fugitive escape from custody or confinement (if felon)	1 yr	3 yrs] or $5000] both
*M	Fugitive escape from custody or confinement (if misdemeanor)	---	1 yr] or $1000] both
	Officer allowing escape or refusing to receive prisoner	1 yr $200	5 yrs] plus $1000]
	Rescue of prisoner	2 yrs	10 yrs
	Assault on officer in penitentiary	3 yrs	20 yrs
	Assault by person aiding escape from penitentiary	2 yrs	15 yrs
	Assault on officer in jail	10 yrs	20 yrs
	Assault by person aiding escape from jail	3 yrs	10 yrs
	Act of officer having custody (destroying evidence)	1 yr	5 yrs] or $5000] both
	Act of other than officer destroying evidence	1 yr	3 yrs] or $2000] both
	Filing (or offering) false or forged instruments	1 yr	2 yrs] or $2000] both
	False certificate by public officer	1 yr	2 yrs] or $5000] both
	Offering false evidence	1 yr	2 yrs] or 10,000] both

	Offenses against public justice, cont.	Minimum	Maximum	
	Preparing false evidence	1 yr	2 yrs $10,000	or both
	Influencing witnesses, judges, jurors, etc. or obstructing the administration of justice	1 yr	5 yrs $5000	or both
	CRIMES AGAINST MORALITY AND DECENCY			
	Cohabiting in state of adultery or fornication	1 yr	2 yrs $500	or both
	Polygamy	1 yr	7 yrs	
	Seduction	J 3 mo P 1 yr $500	1 yr 5 yrs $1000	
*M	Lewd and lascivious	J 3 mo	1 yr	
	Incest	3 yrs	15 yrs	
	Sodomy	1 yr	10 yrs	
	Contributing to delinquency of minor	1 yr	2 yrs	
	Taking female under 16 for prostitution or marriage	J 3 mo P 1 yr $100	1 yr 2 yrs $500	
*M	Prostitution (soliciting, receiving)			
	Male employed in house of prostitution or living off earnings	2 yrs	5 yrs	
	Importing or exporting females for prostitution	2 yrs $1000	20 yrs $5000	or both
	Placing female in house of prostitution	2 yrs $1000	21 yrs $5000	or both
	Procuring or attempting to procure female for prostitution	2 yrs $1000	20 yrs	or both

Crimes against morality and decency, cont.	Minimum	Maximum
Procuring chaste female for prostitution (single act)	2 yrs	5 yrs
Receiving money for placing female in house of prostitution	2 yrs $1000	20 yrs $5000] or both
Detaining female to pay debts	2 yrs $1000	20 yrs $5000] or both
Accepting earnings of prostitute	2 yrs $1000	20 yrs $5000] or both
Male living with or on earnings of prostitute	2 yrs	20 yrs
M Pimping	J 3 mo P 6 mo	1 yr 2 yrs

OFFENSE AGAINST PUBLIC PEACE

Riot (if felony or misd. results, punished as a principal accordingly)		
Riot with dangerous weapon or encouraging force and violence	3 yrs	15 yrs
Threat and false report of bombing	1 yr	5 yrs $5000] or both
Disorderly Conduct		10 days $300

SYNDACALISM

Advocacy of criminal syndicalism	1 yr	10 yrs $5000] or both
Participating in assembly to advocate criminal syndicalism	1 yr	10 yrs $5000] or both

WEAPONS		Minimum	Maximum
Possession of weapon by convict		1 yr	5 yrs, or $500 both
OFFENSES AGAINST PUBLIC POLICY			
Conspiracy against rights of person		---	2 yrs, or $1000 both
DRUG OFFENSES			
HARD DRUGS			
Violation of UNDA - (heroin)	1st offense	2 yrs	10 yrs, $5000 plus
	2nd offense	10 yrs	20 yrs, $7500 plus
	3rd offense	20 yrs	40 yrs, $10,000 plus
Violating UNDA record keeping		$500	5 yrs, $5000 or both
Illegally selling to minor (under 21)			
	1st offense	10 yrs $5000	30 yrs, $10,000 plus
	2nd offense	15 yrs	30 yrs, $25,000 plus
	3rd offense		life
(no suspended sentences allowed, and imprisonment for minimum required before parole eligibility)			
SOFT DRUGS			
Depressant, Halucinogenic, Stimulant Drugs (grass, speed, etc.) - violation of possession or control laws		[misd]	1 yr

Drug offenses, cont.		Minimum	Maximum
Violation with intent to sell or dispose to another:			
	1st offense	---	25 yrs or $20,000 both
	2nd offense	---	any term including life or $25,000 both
Selling to minor (under 19)		---	any term including life or $25,000 both

ALCOHOL

M	Minor in possession	---	1 yr $500
M	Sale to a Minor	---	1 yr $500 (plus possible license so revocation if judge sends to board)
	1st offense	10 - 45 days	
	2nd offense	30 - 90 days	
	3rd offense	revocation	

PARTIES TO CRIME

Accessory	---	P 1 - 5 J 3 mo 1 y $100--$500

	MOTOR VEHICLES	Minimum	Maximum
*M	Driving while intoxicated	---	$1000 1 yr (plus possible 1 yr. susp. of license)
*M	Leaving scene of accident	---	1 yr $500
	Failure to render assistance	---	10 yrs $10,000
	PAROLE, PROBATION VIOLATIONS		
	Parole	---	up to original sentence
	Probation	---	up to original sentence of probation or if imposition suspended any sentence that might have been imposed

**The Commission staff has made no attempt to check the accuracy or completeness of this table nor to update it from the date of its preparation. Prior to any enactment into law, these tasks should be undertaken though there is no reason to suppose that this work is not generally accurate.

Alaska State Legislature

LEGISLATIVE AFFAIRS AGENCY

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

23 November 1975

SUBJECT: Criminal Provisions of the Alaska Statutes

TO: Criminal Code Revision Commission

FROM: Gerald L. Williams, Legislative Intern

The following is a compilation of the criminal provisions of the first sixteen Titles of the Alaska Statutes. These provisions are listed by AS number, title and penalties. Unless otherwise indicated, the penalty listed is a maximum that may be imposed by the court.

02.05.230 - Violation a misdemeanor - Misdemeanor, $500.
02.05.231 - Civil penalties for violation - $150.
02.15.240 - Penalties - Misdemeanor, $500, 90 days, both.
02.20.060 - Enforcement and penalties - $500, 6 months, or both.
02.30.020 - Unauthorized operation - Misdemeanor.
02.30.040 - Penalties - Misdemeanor, $500.
02.35.120 - Penalties for violation of this chapter - $500, 6 months, or both.
02.35.130 - Penalty for violation of §§90 or 110 of this chapter - Misdemeanor, $500.

03.05.090 - Penalty for violation - $1000, one year, or both.
03.17.090 - Penalties - Misdemeanor, $100-2000.
03.35.060 - Penalty for removing impounded animal - $25-100, 90 days, or both.
03.40.060 - Penalty for use without certificate - Misdemeanor, $50-300.
03.40.100 - Penalty for branding another's livestock - Felony, 2-5 years.
03.40.150 - Penalty for sale without power of attorney or bill of sale - Felony, 2-5 years.
03.40.170 - Penalty regarding slaughter permit - Misdemeanor, $10-100.
03.40.210 - Recording branded hides - Misdemeanor, 3 months, $100.
03.40.240 - Penalty regarding spayed heifers - Misdemeanor, $10-100.
03.40.260 - General Penalty - $25-100, Misdemeanor.
03.45.040 - Penalties - $500.

04.05.070 - Violations of regulations of the board - Misdemeanor, punished according to AS 04.15.100.

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04.15.080 - Giving of intoxicating liquor to persons under the age of 19 years - Misdemeanor, one year, $500, or both.
04.15.100 - Penalties for violation of title or municipal ordinance - Misdemeanor, one year, $500.
04.15.110 - Sale in violation of local option - Misdemeanor, one year, $5000, or both.

05.10.160 - Penalty for conducting contests without license - Misdemeanor.
05.10.170 - General penalty - Misdemeanor
05.15.200 - Penalty - Misdemeanor
05.25.090 - Penalties - Misdemeanor, $500, 6 months, or both.
05.30.110 - Penalty - Misdemeanor, $100.

06.05.490 - Receipt of deposits while insolvent - Felony, $5000, one-three years, or both.
06.05.500 - Unlawful deceit of department or its employees - 1-5 years.
06.05.510 - Unlawful false report to department - Misdemeanor, $5000, 1-5 years, or both.
06.05.515 - Slander and libel of bank - Felony, $5000, 1-5 years, or both.
06.05.520 - Penalty - Misdemeanor, $5000, one year, or both.
06.20.320 - Criminal penalties - Misdemeanor.
06.25.060 - Penalty for false representation - Felony, $1000-5000, 1-5 years, or both.
06.25.070 - Penalty for obtaining fraudulent certificate - Felony, $1000-5000, 1-5 years, or both.
06.25.320 - Penalty for violations not specifically provided for - (a)person violations receive: misdemeanor, $1000, one year, or both; (b) corporate violations receive: $1000.
06.30.075 - Penalty for violation of § 70 of this chapter - $5000.
06.30.210 - Penalty for violation of § 205 of this chapter - Misdemeanor.
06.30.875 - Defamation of institutions prohibited - $1000, one year, or both.

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08.08.230 - Unlawful practice a misdemeanor - Misdemeanor, $1000, one year, or both.
08.12.250 - Failure to possess license - $500, 30 days, or both.
08.18.141 - Misdemeanor - Misdemeanor.
08.20.200 - Violation of § 100 of this chapter - Misdemeanor, $1000, one year, or both.
08.24.360 - Fines and penalties - $500, 3 months, or both.
08.28.310 - Penalties - 90 days, $300, or both.
08.32.180 - Violation - Misdemeanor, $100.
08.36.340 - Penalties - Misdemeanor, $500, 6 months,or both.
08.40.180 - Violation of chapter - Misdemeanor, $300, 60 days, or both.
08.48.291 - Violations and penalties - Misdemeanor, $10,000, one year, or both.
08.52.080 - Violations and penalties - $1000, one year, or both.
08.54.210(a) - Unlawful acts - Misdemeanor, $1000, one year, or both.
08.54.210(b) - Unlawful acts - (a) person violation receives: Misdemeanor, $1,000, one year or both; (b) guide with license suspended receives: Felony, $5,000, 1-3 years, equipment confiscated.
08.56.030 - Penalty for noncompliance - $10-25, 10 days, or both.
08.60.020 - Violation of chapter a misdemeanor - Misdemeanor, $100, 90 days.
08.60.090 - Penalty - Misdemeanor, $500, one year, or both.
08.62.190 - Penalty - Misdemeanor, $500-1,000.
08.64.360 - Penalty for practicing without a license or in violation of this chapter - Misdemeanor, $50-100, 10-90 days, or both.
08.66.080 - Penalties - (a) failure to register receives: $100; (b) wilfull violation receives: Misdemeanor, $300.
08.68.350 - Punishment for misdemeanor - Misdemeanor, 10 days-one year, $10-500, or both.
08.70.170 - Penalties - $500, one year, or both.
08.71.180 - Practicing without a license - Misdemeanor
08.72.275 - Lenses and frames for eyeglasses and sunglasses - $50-500.
08.72.290 - Penalty - Misdemeanor, $50-500, 10-90 days, or both.
08.76.030 - Criminal liability - Misdemeanor, $500, 6 months, or both.
08.80.460 - Violation - Misdemeanor, $1,000, 3 months, or both.
08.84.140 - Penalty for fraud in obtainig registration - Misdemeanor.
08.84.170 - Penalty - Misdemeanor, $50-500, 30 days.
08.86.210 - Penalty - Misdemeanor.
08.88.401 - Prohibited conduct - Misdemeanor.
08.99.120 - Penalty - Misdemeanor, $500.

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10.05.786 - Penalties imposed upon officers and directors - Misdemeanor, $500.
10.20.645(b) - Penalties imposed upon corporation - Misdemeanor, $500.
10.20.650 - Penalties imposed upon officers and directors - Misdemeanor, $500.

14.20.110 - Penalty for violation of § 100 of this chapter - $100.
14.30.020 - Violation - Misdemeanor, $50-200, costs of prosecution.
14.47.050 - Penalty - Misdemeanor, 30 days, $1,000, or both.
14.47.140 - Penalty - Misdemeanor, 30 days, $1,000, or both.

15.07.160(c) - Unlawful action - Misdemeanor.
15.07.190 - Violations - Misdemeanor, one year, $1,000, or both.
15.15.215(b) - Disposition of challenged and questioned votes - Misdemeanor, 30 days, $100, or both.
15.45.100 - Statement of warning - $1,000, one year, or both.
15.45.330 - Statement of warning - $1,000, one year, or both.
15.45.570 - Statement of warning - $1,000, one year, or both.
15.55.010 - Undue influence by force - Misdemeanor.
15.55.020 - undue influence by offer - Misdemeanor.
15.55.030 - Publication without identification - Misdemeanor.
15.55.040 - Publication of false statement - Misdemeanor.
15.55.050 - Improper possession of ballot - Misdemeanor.
15.55.060 - Counerfeiting of ballot - Misdemeanor.
15.55.070 - Refusal to allow employees time off - Misdemeanor, $50.
15.55.080 - Improper disclosure of vote - Misdemeanor.
15.55.085 - Divulging ballot count, penalty - Misdemeanor, one year, $1,000, or both.
15.55.090 - Writing of false statement - Felony.
15.55.100 - Voting in false name - Felony.
15.55.110 - Undue influence of election official - Felony.
15.55.120 - Improper change of election returns - Felony.
15.55.130 - Improper delay in sending of election materials - Felony.
15.55.140 - Voting more than once - Felony.
15.55.150 - Improper subscription to petition - Misdemeanor.
15.55.160 - Improper printing and distribution of ballots - Felony.
15.55.170 - False swearing - Felony.

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LEGISLATIVE AFFAIRS AGENCY

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15.55.180 - Improper influence of election by election officials - Felony.
15.55.190 - False count by election officials - Felony.
15.55.200 - Concealment of returns by election officials - Felony.
15.55.210 - General penalty for misdemeanor - $1,000, one year, or both.
15.55.220 - General Penalty for felony - $3,000, 1-5 years, or bcth.
15.55.230 - Penalty for corrupt practice - Deprived of office.
15.55.245 - Voting after disqualification - Misdemeanor.
15.65.010 - Electioneering prohibited near polling places - $500, 6 months, or both.
15.65.030- Penalty for violation of §20 of this chapter - $50.
15.65.040 - Offenses against election laws - (a) Persons receive: $100-500, 1-3 years, or both, plus costs of prosecution; (b) officials receive: $200-1,000, 1-5 years, or both, plus costs of prosecution.

16.05.430 - Penalties - Misdemeanor, $1,000, 6 months, or both.
16.05.665 - Falsification of application for license - Misdemeanor, $1,000, 6 months, or both.
16.05.720(a) - Penalties - Misdemeanor, $5,000, one year, or both.
16.05.720(c) - Penalties - In addition to 16.05.720(a), the value of the fish, upon third conviction three times value of fish or $10,000.
16.05.827(a) - Sale of subsistence salmon roe - $10,000, 6 months or both.
16.05.831(c) - Waste of salmon - $10,000, 6 months, or both.
16.05.860 - Penalty for violation of §§840 and 850 of this chapter - Misdemeanor, $1,000.
16.05.880 - Violation of §§870-895 of this chapter - Misdemeanor.
16.05.895 - Penalty for causing material damage - Misdemeanor.
16.05.900 - Penalty for violations - Misdemeanor, $1,000, 6 months, or both.
16.05.910 - Penalty - Misdemeanor, forfeiture of vessel, one year, $10,000, or any two of above.
16.10.030 - Violation of §§ 10-55 of this chapter a misdemeanor - Misdemeanor, $100-500.
16.10.090 - Penalties for vioaltion of §70 of this chapter - Misdemeanor, one year, $5000, Or both.
16.10.110 - Penalties for violation of § 100 of this chapter - Misdemeanor, oner year, $5,000, or both.

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16.10.130 - Penalties for violation of §120 of this chapter - Misdemeanor, 6 months, $1,000, or both.
16.10.220 - Penalties for violation of §§200 and 210 of this chapter - Misdemeanor, $5,000, one year, or both.
16.10.250 - Penalty - Misdemeanor, $5,000, one year, or both.
16.20.200 - Penalty - Misdemeanor.
16.35.120 - Criminal liability for false claims or statements - Misdemeanor, $1,000, one year, or both.
16.35.170 - Criminal liability for false certificate - Misdemeanor, $100 first offense, $250 for each successive offense, 6 months for first offense, one year for each successive offense, or both.
16.43.360(a) - Penalties - Misdemeanor, $5,000 for first, $10,000 for second, forfeiture of permits for third.
16.43.360(b) - Misdemeanor, Forfeiture of permits.

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

M E M O R A N D U M December 16, 1975

SUBJECT: Criminal Provisions of the Alaska Statutes

TO: Criminal Code Revision Commission

FROM: Gerald L. Williams, Legislative Intern

The following is a compilation of the criminal provisions of Titles 17-30 of the Alaska Statutes. These provisions are listed by AS number, title and penalties. Unless otherwise indicated, the penalty listed is a maximum that may be imposed by the court.

It appears that the work of the Commission is directed toward a completed draft dealing with crimes against property. In order to facilitate accomplishment of this goal, a further statutory search for all crimes will be held in abeyance until such time as it becomes necessary to utilize such a search. If this assumption is incorrect, please advise me, and I will attempt to continue the search on a regular basis.

17.05.010	Sale of diseased, corrupted or unwholesome provisions prohibited - 3 months - 1 year $50 - 500.
17.05.020	Adulteration prohibited - 3 months - 1 year, $50 - 500.
17.05.040	Penalty for violation of §30 of this chapter - $200, 90 days, or both.
17.05.050	Re-serving prohibited - 6 months, $100, or both.
17.05.150	Penalty for violations - $200, 30 days.
17.10.200(a)	Penalties: (1) first offense receives $5,000, 2-5 years; (2) second offense receives $7,500, 10-20 years; (3) third offense receives $10,000, 20-40 years.

5.200(b)	$500 - 5,000, 1-5 years, or both
17.10.200(c)	Penalties: (1) first offense receives 10-30 years, $5,000 - 10,000; (2) second offense receives 15-30 years, $25,000; (3) third offense receives life imprisonment.
17.15.040	Penalty for violations - $100 - 500, 180 days or both.
17.15.050	Selling poison without label - $20 - 100
17.20.310	Penalties: (a) 6 months, $500, or both (b) 1 year, $500, or both
17.12.110(a)	Penaltics - misdemeanor, 1 year, $1,000 or both
17.12.110(b)	Felony: (1) first offense receives 25 years, $20,000 or both (2) second offense receives up to life, $25,000 or both
17.12.110(c)	Felony - up to life, $25,000 or both
17.12.110(d)	Misdemeanor - $1,000
18.05.060	Penalty for violation - misdemeanor, $500, 1 year
18.06.040	Penalty for denying rights - misdemeanor, $1,000, 60 days or both
18.15.100	Penalty for violation - misdemeanor, $500
18.15.180	Penalty: (1) Physician receives misdemeanor, $500 (2) Misdemeanor
18.20.110	Misdemeanor to establish or conduct hospital without license - misdemeanor, $500
18.20.250	Receipt of services without intent to pay a misdemeanor - misdemeanor, 1 year, $1,000 or both
18.35.050	Maintaining accomodations without permit or after suspension of permit a misdemeanor - misdemeanor, $500, 6 months, or both
18.35.080	Penalty for noncompliance - $100, 30 days, or both

18.35.115	Penalty - Misdemeanor, $500
18.35.210	Penalty - misdemeanor, $500
18.40.050	Prohibited acts and penalties - $100 - 500, 3 months - 1 year, or both
18.50.360	Prohibited acts and penalties - misdemeanor, $1,000, 1 year or both
18.60.085	Prohibition of unauthorized notice of inspection $1,000, 180 days, or both
18.60.160	Violation a misdemeanor - misdemeanor
18.60.450	Violations and penalties - misdemeanor, $50 - 500
18.60.650	Penalty for violations - $1,000
18.60.685	Penalties - misdemeanor, $500, 6 months or both
18.60.730	Penalty for violation - $1,000
18.60.765	Penalty - misdemeanor, $500 - 1,000, 1 year or both
18.62.080	Penalty - misdemeanor, $500
18.65.070	Destruction of department files a misdemeanor - misdemeanor, $500, 1 year, or both
18.70.100	Violation - misdemeanor, $500, 6 months, or both
18.72.040	Violation - misdemeanor, $500, 6 months, or both
18.80.270	Penalty - misdemeanor, $500, 30 days or both
19.05.140	Penalties - misdemeanor, $10 - 500, 1 year or both
19.10.250	Penalty for failure to erect warning signs $10 - 50, 60 days, or both
19.25.030	Damages to obstructions, signs, and construction - misdemeanor
19.25.130	Penalty for violation misdemeanor, $50 - 1,000
19.27.120	Penalty for violation - misdemeanor, $50 - 1,000
19.40.065	Regulations and penalties - misdemeanor, $10,000

21.09.260	Violations, penalties - misdemeanor, $500
21.27.010	License required - $500, 6 months
21.33.010	Unauthorized insurers (unadmitted companies) $50 - 1,000
21.33.065	Penalty for unauthorized insurance - $5 000 or $500
21.36.200	False applications, claims, proof of loss 3 - 6 months, $250 - 500 or both
21.48.230	Violations - punishment per AS 21.90.020
21.51.340	Violations - punishment per AS 21.90.020
21.57.150	Penalties - up to $250 or $1,000
21.66.160	Penalties - misdemeanor, $500, 6 months, or both
21.69.210	Penalty for exhibiting false accounts, etc. - 5 years, $10,000 or both
21.69.510	Illegal dividends - misdemeanor
21.90.020	General penalty - $50 - 1,000, 30 - 90 days, or both
21.33.180	Financial requirements for insurers of surplus lines - $50 - 250
23.05.280	Penalties - $1,000, 1 year, or both
23.10.010	Penalty for violation of §5 of this chapter - misdemeanor, $25 - 100, 10 - 30 days, or both
23.10.020	Penalty for violation of §15 of this chapter - $2,000, 1 year, or both
23.10.025	Use of armed guards - felony, 1 - 5 years
23.10.037	Lie-detector tests - misdemeanor, $1,000 1 year or both
23.10.040	Payment of wages in state - misdemeanor
23.10.045	Payments into benefit fund - punishment as per AS 23.10.415
23.10.140	Penalty - $100 - 2,000, 10 - 90 days, or both
23.10.180	Criminal penalties - misdemeanor, $500

23.10.370	Penalty - misdemeanor, $500, 90 days, or both
23.10.400	Penalty - misdemeanor, $1,000
23.10.415	Penalty - misdemeanor (1) first offense receives $100 - 500, 60 days - 6 months or both (2) second offense receives 60 days - 1 year
23.10.420	Train crews - $500
23.15.510	Violations - misdemeanor, $1,000, 6 months or both
23.20.255	Compromise of contributions - $5,000, 1 year or both
23.20.485	False statement to secure benefits - $200, 60 days or both
23.20.490	Acts of employer prohibited - $200, 60 days or both
23.20.495	Noncompliance with subpoena of agency - $200, 60 days, or both
23.20.500	Violation of law, rules or regulations - $200, 60 days, or both
23.30.250	Penalty for misrepresentation - misdemeanor, $1,000, 1 year, or both
23.30.255	Penalty for failure to pay compensation - misdemeanor, $1,000, 1 year or both
23.30.260	Penalty for receiving unapproved fees and soliciting - misdemeanor, $1,000, 1 year or both
23.40.180	Penalty for violation of order or decision - misdemeanor, $500
24.25.060	Oath and penalty for violation of oath - perjury, 1 - 5 years.
24.25.080	Punishment for disobediance to subpoena or refusal to testify - $100 - 500, 30 days - 6 months
24.45.110	Penalties (1) a person receives $200 - 1,000, 1 year (2) association receives $200 - 5,000.
24.45.120	Violation by legislative counsel or agent - $100 - 1,000

25.05.331	Unlawful issuance or refusal of license misdemeanor, 6 months, $500, or both
25.05.341	Misrepresentation and violation of confidence - misdemeanor, $500
25.05.351	Violation concerning marriage license docket - misdemeanor, $50
25.05.361	Unlawful solemnization of marriage - misdemeanor, 6 months, $500, or both
25.05.371	Solemnization of marriage by unauthorized person - misdemeanor, 1 year, $1,000 or both
26.20.180	Penalties - $500, 90 days, or both
27.05.130	Penalties - $1,000, 1 - 2 years or both
27.20.051	Penalties - $1,000, 1 year, or both
27.20.290	Penalties - misdemeanor, $1,000, 1 year or both
27.20.300	Penalty for violation of §295 of this chapter - misdemeanor, $500, 60 days or both
27.20.495	Penalties - misdemeanor, $1,000, 1 year or both
28.10.600	Fraudulent applications - felony, 1 - 2 years, $2,000 or both
28.10.610	False evidence of title and registration - felony, 1 - 2 years, $2,000 or both
28.10.620	Removal of vehicles from state - felony, 2 years, $2,000 or both
28.10.630	Representation by dealers as to vehicle of another state - felony, 1 - 2 years, $2,000, or both
28.10.640	Other violations - misdemeanor, $100
28.15.290	Unlawful use of license - misdemeanor, 10 days - 1 year, $1,000 or both
28.15.300	Driving while license cancelled, suspended revoked - misdemeanor
28.15.305	Driving in violation of a limitation of license - misdemeanor, $100 - 1,000

[illegible].330	Making false statement punished for perjury
[illegible].070	Penalties - misdemeanor, $1[illegible]0, 30 days or both
[illegible].025	Obtaining rental vehicle with intent to defraud - 5 years, $1,000 or both
28.35.026	Failure to return rental vehicle - 5 years, $1,000 or both
28.35.030	Driving while under the influence of intoxicating liquor or drugs; (1) first offense receives $1,000, 1 year or both (2) second offense receives not less than 3 days (3) third offense receives not less than 10 days
28.35.040	Reckless driving - misdemeanor, $1,000, 1 year or both
28.35.045	Negligent driving - misdemeanor, $300
28.35.060(b)	Duty of operator to give information and render assistance - 1 year, $500 or both
28.35.060(c)	Duty of operator to give information and render assistance - 10 years, $10,000 or both
28.35.110(d)	Penalty for giving false information in report or failing to report - $1,000, 1 year or both
28.35.110(b)	Penalty for giving false information in report or failing to report - misdemeanor, $200, 90 days or both
28.35.130	False report or destruction of evidence - perjury, $500, 6 months or both
28.35.230	Penalty for violations of law or regulations - misdemeanor, $200, 90 days, or both
29.33.190	Penalties - misdemeanor, $500
30.10.070	Penalty - no pilot offense receives misdemeanor, $1,000
30.30.010	Abandonment of vessel unlawful - misdemeanor, $500, 6 months or both

31.05.020	Waste of oil and gas prohibited, up to $1,000 for each act and each day violation continues
31.05.090	Drilling of a well prohibited unless a permit to drill is obtained, up to $1,000 for each act and each day violation continues.
31.05.150(a)	General violation section for any provision of the chapter, Up to $1,000 for each day and act unless otherwise provided for.
(b)	Violations for false entries in records, ommissions from records, destruction or alteration of records - misdemeanor up to $5,000, up to 1 year, or both.
(c)	Knowingly aiding or abetting a violation of the chapter - same as (a).
32	None
33	None
34.05.030	Obtaining rental equipment with intent to defraud - 1 year, $1,000 or both.
34.05.040	Failure to return rental equipment - 1 year, $1,000 or both.
34.06.047	Penalty for violation of provision of Emergency Residential Rent Regulation and Control Act (AS 34.06) and falsification of an eviction notice application - $2,500, 1 year or both.
34.35.380	Removal of property under lien from state - 6 months, $2,000 or both.
34.35.385	Embezzlement of lien property (punishable as for embezzlement in AS 11).
34.35.390	Failure to furnish required written statements to employees - 6 months, $2,000 or both.
34.55.028	Penalty for violation of Uniform Land Sales Practices Act or making untrue statement of a material fact - 6 months, $1,000 (or double the amount of gain from the transaction, whichever is larger up to $50,000) or both.

35.10.150	Damage or destruction of public works - 1 year, not less than $10 nor more than $500, or both.
36.05.060	Penalty for Violation of Wage and Hour laws - not less than 10 days nor more than 90 days, not less than $100 nor more than $1,000, or both.
36.10.100	Penalty for contractor or his agent violating a provision of chapter on employment preference law (AS 36.10) - 90 days, $500 or both.
38.05.355	Bargaining by unfair method for the purchase of state land offered at a public sale - 1 year, $1,000 or both.
38.05.360	Waste or injury to land - $1,000.
40.15.130(a)	Owner of land within a subdivision who transfers, sells, or enters into a contract to sell land before a plat is prepared - $500 for each lot or parcel transferred or sold.
(b)	filing or recording plat of subdivision without approval - 6 months, $500 or both.
41.15.060-150	Failure to obtain permit for fires or violating condition of the permit and violation of other provision relating to fires and fire suppression.
41.20.040	Violating a provision of chapter relating to parks and recreational facilities - 6 months, $1,000 or both.
41.35.210	Violation of a provision of the Alaska Historic Preservation Act (AS 41.35) -6 months, $1,000 or both.
42.10.389	Accepting or receiving rebate for a violation of Alaska Motor Freight Carrier Act - misdemeanor.
42.10.393	Violation of provision of Alaska Motor Freight Carrier Act or of the commission relating to rates or to aid and abet such violation - $500 for each offense and costs of prosecution.
42.15.281	Violation of provision of chapter relating to bus transportation - $500 for each offense and costs of prosecution.

42.20.020	Refusal to transmit communication or falsification of official communication - 1 year, $1,000 or both.
42.20.030	Punishment for injury or interference with Telegraph, Telephone, etc. - 6 months, $500 or both.
42.20.040	Removal of instrument or meter or disconnecting wire - 30 days, $200, or both.
42.20.050	Altering message - 1 year, $1,000 or both.
42.20.060	Sending or delivering false or forged message, 1 year, $1,000 or both.
42.20.070	Use of information derived from message, 1 year, $1,000 or both.
42.20.080	Delaying or refusing to send or deliver message, 6 month, $500 or both.
42.20.090	Opening or obtaining message addressed to another, 1 year, $1,000 or both.
42.20.110	Bribing operator or employee to disclose private message, 1 year, $1,000 or both.
42.20.120	Refusal to yield to emergency calls. 30 days, not less than $50 nor more than $500 or both.
42.20.130	Use of party line on pretext of emergency - 30 days, not less than $50 nor more than $500 or both.
42.30.020	Violation of public utilities duty to serve without discrimination and violation of regulations. 90 days, $1,000 or both.
42.30.050	Failure to file annual report. $1,000
42.30.080	Violation of prohibition of explosives on vessels or vehicles carrying passengers (060) or marking packages containing explosives (070), 18 months, $2,000 or both.
42.30.090	Causing death or injury from violation of 60-100 (above) - not less than 1 year nor more than 10 years.

42.30.140	Violation of safety regulations governing transportation of passenger in vehicles (§§42.30.110 (Escape doorway), 42.30.120 (standing passengers) - $300.
42.30.180	Failure to file notice of killing or injuring livestock on railway - $200 for each offense.
43.05.130	Violation of §§43.05.010-130 (department of Revenue and its duties and responsibilities), $1,000 for each offense.
43.05.190	Commissioner or person in his office embezzling - penalty for embezzlement in AS 11.
43.10.200	Person or officer of a non-resident business who fails or neglects to comply with provisions of §§43.10.160-200 (filing statement and tax bonds) - 1 year, $1,000 or both.
43.20.335(a)	Wilful attempting to evade taxes, five years, $5,000 or both.
(b)	Person required to collect or account for or pay over tax, or account for a tax - five years, $10,000 or both.
(c)	Wilful failure to pay, keep records, supply information, 1 year, $50,000 or both.
(d)	Wilful making of false return, or subscribing when written declaration that it is under penalty of perjury, 3 years, $5,000 or both.
(e)	Wilful and knowing aiding or assisting in violation of tax laws. 3 years, $5,000 or both.
(f)	Wilful delivering or disclosing to department false list or statement, 1 year, $1,000 or both.
(i)	Supplying false information to an employer, 1 year, $5,000 or both.
43.26.060	Fraudulently representing facts upon which tax credit is based, 1 year, $1,000 or both.
45.030.050	Violation of mobile home standards (45.30) $1,000.
43.31.360	Failure to make estate return, 1 year, $10,000 and costs of prosecution.
43.31.370	False estate return - 5 years, $10,000 and costs of prosecution.
43.31.380	False statement in return - 1 year, $5,000.
43.31.390	Failure to pay tax, evasion, 5 years, $10,000 and costs of prosecution.

43.35.080	Violation of chapter on Coin - Operated devices and puchboards, $100.
43.35.150	Violating provision of §§100-150 relating to punchboards - $500.
43.40.020(a)	Violating &&10-100 relating to motor fuel oil tax - 1 year, $50-500, or both.
(b)	Claim of nonpropulsion use fuel tax exemption - $5,000.
43.40.090	Use of motor fuel knowing tax not paid - 1 year, $500, or both.
43.45.060(a)&(b)	Penalty for violation of school tax provisions - 1 year, $1,000 or both.
43.50.160(a)	Penalties for violations of tobacco tax provisions (§§10-180 with intent to defraud or aid or testifying falsely under oath at a hearing - 1 year, $1,000 or both.
(b)	Violation of §§10-180 other than specified in (a) above - $250.
43.55.120	Noncompliance with chapter on Oil and Gas properties production tax - misdemeanor.
43.55.130	False report (oil and gas properties production tax) - perjury under AS 11.
43.56.190	Knowingly failing to file return or making false statement relating to oil and gas exploration, production and pipeline transportation property taxes - 6 months, $1,000 or both and costs of prosecution.
43.60.040	Person failing to obtain license certificate or permit, paying the excise tax, displaying records, etc. - 1 year, $1,000 or both, and cost of prosecution.
43.65.050(f)&(g)	Penalties relating to failing to pay mining license tax - 1 year, $1,000 or both and costs of prosecution.
43.70.100	Violation under the Business License Act - 1 year, $1,000 or both.
43.75.050	Penalties relating to fisheries taxes; failure to pay, keep records - 1 year, $1,000 or both and costs of prosecution.
43.75.090	Penalty for cold storages and other processors for failing to pay taxes, etc. (same as prescribed in business license law for canneries.

43.75.120	Penalties for failing to pay tax on fish products sold outside jurisdiction (same as in business license law for salmon canneries).
43.80.020	Prosecution for failure to secure license - 6 months, $500.
44.21.050	Penalty for allowance of false, unjust or illegal claims, Department of Administration - not less than 1 year, or more than 2 years, $10,000 or both.
44.23.060(f)	Providing Attorney General with information, contempt - $5,000.
45.10.200	Penalty for violation of order or injunction issued under Retail Installment Sales Act - 6 months, $1,000 or both.
45.10.210	Penalty for violation of Retail Installment Sales Act - 6 months, $1,000 or both.
45.50.320	Penalties for fraudulent branding timber - 6 months, $1,000 or both.
45.50.450	Violations of chapter (aiding abetting or conspiring) - 6 months, $500 or both.
45.50.490	False, deceptive or misleading advertising prohibited - 90 days, $5,000 or both.
45.51.010	Reproduction, sale without consent prohibited. (sound recordings, etc.) - 1 year, $1,000 or both.
45.52.120	Violations in restraint of trade, if a natural person 1 year, $20,000 or both or if not a natural person, $50,000.
45.55.210	Violation of chapter with knowledge - 1-5 years, $5,000 or both. Upon conviction for a felony under the chapter imprisonment for not less than 1 year is mandatory.
45.65.060(a)	Penalties for knowingly attaching identification seal to an article knowing it is not authentic - 1 year, $1,000 or both.
(b)	Offering same for sale with knowledge - 1 year, $1,000 or both.
(c)	Changing, altering identification - 1 year, $1,000 or both.
45.75.360	Hindering or obstructing officer and penalty - 3 months, $20-200 or both.

45.75.370	Impersonation of officer and penalties - 1 year, $100-500, or both.
45.75.380	Penalties for violation of weights and measures provisions; 1st conviction - 3 months, $20-200, or both; 2nd conviction - 1 year, $50-500, or both.
45.80.050	Penalty for deceptive advertising - 6 months, $500 (alternative civil penalty not more than $5,000).
46.03.760(a)	Pollution penalties. Violation of Sec. 710, 730, 740, or 750 of chapter - 1 year, $25,000, or both.
(d)	Falsely certifying information required under Sec. 750 - 1 year, $25,000, or both.
46.03.790	Wilful violation of a provision of chapter - 1 year, $1,000 and costs of prosecution, or both.
46.03.800	Water nuisances, misdemeanor - penalty same as § 790.
46.03.810	Air and land nuisances - penalty same as § 790.
46.03.840	Radiation penalties - 6 months, $100, or both.
46.15.180	Crimes relating to water use - misdemeanor.
47.10.090	Records. Violation of section - 1 year, $500, or both.
47.25.290	Penalty for violation of General Relief Assistance provisions (§§ 120-300) - 1 year, $1,000, or both.
47.25.403	Reporting change of status, misdemeanor - 1 year, $1,000, or both.
47.25.405	Obtaining assistance by fraud - 1 year, $1,000, or both.
47.25.600	Obtaining assistance by fraud - 6 months, $500, or both.
47.25.610	Violation of provision of old age assistance law - 6 months, $500, or both.
47.25.760	Obtaining assistance by fraud - 6 months, $500, or both.

47.25.770	Penalty for violation of aid to blind law (§§ 620-780) - 6 months, $500, or both.
47.25.950	Obtaining assistance by fraud (aid to the permanently and totally disabled) - 6 months, $500, or both.
47.25.985	Food stamp penalties - 1 year, $1,000, or both.
47.30.260	Disclosure of information - 1 year, $500, or both.
47.30.330	Criminal penalties for unlawful hospital committment - 1 to 10 years, $10,000, or both.
47.35.070	Violation of provision relating to foster homes, boarding homes, and institutions for children - $200.
47.45.140	Penalty for false statements (longevity bonus) - 6 months, $500, or both.

PROPOSED BUDGET

(summary)

Personal Services	$140,184
Contractual Services	3,500
Travel	23,150
Supplies	5,000
Equipment	600
Printing	10,000
Indirect Costs	14,018
Total	$196,452
Twelve Month Total	(157,162)

WORK SCHEDULE[1] FOR A REVISED CRIMINAL CODE

WORK ORDER -- BLOCK 1: Part I of General Provisions, Offenses against Property and Sentencing Structure

BLOCK 2: Crimes against the Person

BLOCK 3: Offenses against the Family
Offenses against Public Administration
Offenses against Public Order

BLOCK 4: Offenses against Public Health and Decency

BLOCK 5: General Provisions Part II and Miscellaneous

SCHEDULE --

Jan. 31, 1976	Legislative Presentation of Preliminary Report and Block one drafts, submission to Commission of first drafts, Block 2
Feb. 28, 29	Commission presentation and first review of first drafts, Block 2
March 20, 21	Presentation of first drafts, Block 3
April 3, 4	Commission first review of first drafts, Block 3
April 24, 25	Commission second review of first drafts, Block 2
May 15, 16	Commission second review of first drafts, Block 3
May 24, 25	Commission presentation of first drafts, Block 4
June 7, 8	First review of first drafts, Block 4
June 28, 29	Commission presentation of first drafts, Block 5
July 12, 13	Commission first review of first drafts, Block 5
July 26, 27	Second review of first drafts, Block 4
Aug. 9, 10	Second review of first drafts, Block 5
Aug. 16 - 31	First round public hearings
Sept. 15 - Nov. 15	Commission reviews (according to emphases emanating

[1] contingent upon timely funding

from hearings and the Commission's sense of the firmness of each block), each block to be brought to a third review.

Six meetings, one on each block, every two weeks

Nov. 29 - Dec. 10 — Final hearing round

Dec. 10, 1976 - Feb. 1, 1977 — Final draft revision presented to legislature - substantive code

Feb. 1, 1978 — Presentation of Final draft, procedural code revision