



**Law Department
City & Borough of Juneau**

MEMORANDUM

TO: CBJ Assembly

FROM: Amy Gurton Mead, Municipal Attorney

DATE: June 9, 2017

SUBJECT: Proposed changes to CBJ Criminal Code and Potential Sources of Revenue Collection by the Law Department

A. Proposed Changes to CBJ Criminal Code

At a recent Finance Committee meeting, the Chief of Police explained he would be making a request to amend the CBJ criminal code in order to bring a number of code sections in line with Alaska statutes. The purpose of the amendment would be to allow the officers to file certain misdemeanor cases now filed with the District Attorney's office with the CBJ Law Department for prosecution instead.

The Chief's request was directed at the following criminal charges:

1. CBJ 42.30.040 False reports to law enforcement authorities (*compare* AS 11.56.800).

The amendment would allow CBJ code to be charged when a suspect gives any false information to an officer concerning the person's identity when under arrest, detention, investigation or when being served a warrant or citation. Currently, CBJ code is only violated when the suspect provides the officer with a false name for the purpose of implicating another person.

2. CBJ 42.20.110 Harassment (*compare* AS 11.61.118).

Under state law, harassment is charged as either an A or B misdemeanor. Harassment is an A misdemeanor if:

- (1) the person violates AS 11.61.120(a)(5) and the offensive physical contact is contact with human or animal blood, mucus, saliva, semen, urine, vomitus, or feces; or
- (2) under circumstances not proscribed under AS 11.41.434--11.41.440 [sexual abuse of a minor], the person violates AS 11.61.120(a)(5) [subjecting another to offensive physical contact] and the offensive physical contact is contact by the person touching through clothing another person's genitals, buttocks, or female breast.

CBJ Code does not include any of the A misdemeanor provisions.

3. Amendment of CBJ 42.15 Offenses against property, to include a prohibition against fraudulent use of an access device (AS 11.46.285).

Under state law, it is a crime to use someone's credit card, debit card, ATM card, or the like (either the identifying numbers or the physical cards themselves) to fraudulently obtain goods or services. CBJ code does not criminalize this behavior.

4. Amendment of CBJ code to include misconduct involving weapons in the 4th and 5th degrees (AS 11.61.220 and 210).

Under state law, it is unlawful for a person to fail to inform an officer of the existence of a concealed weapon, have a concealed weapon within certain facilities (licensed premises, domestic violence shelters), or to have a weapon on one's person or in the interior of a vehicle when the person driving is impaired. (The statutes prohibit other similar conduct.) This crime is most often charged in connection with DUI cases. Although the CBJ prosecutes most of the misdemeanor DUIs in Juneau, if there is a firearm in the vehicle, the officer has to choose to send the case to the state to prosecute both the DUI and the weapons charge, or to send the case to the City to prosecute only the DUI. Because the state does not have the resources to focus on misdemeanors, the cases sent to the state are not always pursued. This amendment would allow these cases to be filed with the CBJ prosecutors.

5. CBJ 42.15.030 Buying, receiving or concealing stolen property (*compare* AS 11.46.190).

This amendment would have CBJ adopting the much simpler language contained in state statute.

6. Amending CBJ 42.30.060 Violating a domestic violence protection order, to include a prohibition on violating protective orders based on stalking and sexual assaults (*see* AS 11.56.740(a)(2)).

It is an A misdemeanor under CBJ code to violate the provisions of a domestic violence protection order. The comparative state law, also an A misdemeanor, addresses not only violations of domestic violence orders, but also the violation of protective orders issued as a result of stalking or sexual assaults. This code change would allow the CBJ to do the same (the fact that the underlying complaint – stalking and sexual assault – are felonies has no significance with respect to prosecution under AS 11.56.740).

7. Misconduct Involving Controlled Substances (AS 11.71).

The Chief has also recommended amending CBJ code to include "misconduct involving controlled substances" misdemeanors. The cost of prosecuting those cases can be quite high as they almost always require the testing of the substance (and there are no testing facilities in Juneau). Under the crime reform bill, these crimes carry little to no jail sentence. Between January 2015 and June 2017, JPD filed 178 of these types of cases with the DAO. Taking on these cases would likely require an increase to Law's budget to cover the added cost of

prosecution. If the Assembly would like to consider amending CBJ code to add this type of offense, I can provide the Assembly with cost estimates.

B. Current Status of Criminal Section Workload

The CBJ prosecutors are currently handling a record number of cases. I previously provided you with this table:

Year	Number of cases filed between January 1 and May 2
2017 (post SB 91)	433 (as of June, 7, 2017, this number is 548)
2016 (pre SB 91)	307
2015	266
2014	239
2013	231
2012	247
2011	232

- Note that these numbers represent only cases filed during the given time period, not the number of cases open and being actively prosecuted at any given time.
- As of May 2, CBJ Law had 269 open cases, but that number did not include petition to revoke probation cases, which are tied to either a new law violation or a failure to satisfy some component of a sentence – like failure to complete an alcohol program. (The petition to revoke probation cases are also not included in the “cases filed” number in the table above.) We have fifty or so open petition to revoke probation cases at any given time.
- These numbers also do not include all of the “possible prosecutes.” A possible prosecute case is a case JPD sends to us for review and the possible filing of charges. A prosecutor reviews those cases for probable cause and evidentiary problems, and if accepted for filing, drafts a complaint and a request for a summons. The possible prosecutes that were accepted are reflected in the number of open cases. We’ve reviewed and declined 114 possible prosecutes this year and are currently reviewing thirteen more.
- The uptick between 2015 and 2016 was due to the District Attorney’s Office implementing a new policy of aggressively screening misdemeanor cases and selectively prosecuting due to budget cuts and a lack of resources. Since that time (and the passage of SB 91), the DAO has declined to prosecute most misdemeanors or property crimes of any type due to lack of resources.

C. Revenue Collection

1. Sales Tax

When a vendor fails to remit sales tax collected or fails to file the required reports, the first effort to gain compliance is undertaken by the Sales Tax Office. The Sales Tax Administrator sends a total of three letters: a notice that the account is thirty days past due; a sixty day notice; and a third and final ninety day notice advising that if the vendor does not comply, the case will be sent to the Law Department. Once received, the Law Department sends a letter putting the vendor on notice that suit may be filed, and giving the vendor the option of agreeing to a confession of judgment instead.

Between May 2016 through May 2017, the Sales Tax Office sent the Law Department twenty-one delinquent sales tax cases to pursue. The outstanding balances in those cases totaled \$649,692. As a result of the demand letters and other efforts by the Law Department, we secured confessions of judgment for \$291,531. We obtained default judgments (after initiating suit in district court) for \$112,416. \$71,433 was paid in full as a result of the letter alone, without the need for a COJ or complaint. Collections obtained judgements in small claims court for \$7,174.

The last \$167,138 represents outstanding balances owed by five vendors. We have complaints prepared and ready to file against the two vendors with the highest balances, but do not have the capacity to file and manage those cases yet. The other three vendors have received a demand letter and failed to respond. Suit will be filed against those three vendors as soon as we have the resources to do so.

The Sales Tax Administrator estimates approximately \$150,000 and \$200,000 in unpaid sales tax balances could annually be forwarded to Law for collection for the foreseeable future.

2. Collections Office

a. Collection of Past Due Confessions of Judgment and Default Judgments

The maintenance and supervision of signed confessions of judgment (for both sales tax and utilities) and default judgments is done by the Collections Office. If informal efforts to encourage compliance aren't successful, the Collections Office works with the Law Department to file writs, to initiate court proceedings (such as debtor examinations) designed to secure an enforceable writ, and to otherwise collect on the outstanding amounts.

In April of 2017, there was \$1,165,930 owed in outstanding confessions of judgment. Thirty-two of the forty-three accounts were delinquent. While a few are not collectable (for example, they've been outstanding for too long), with more resources, a concentrated and focused effort could result in more of the outstanding funds being recovered.

b. Civil Violations

In 2013, the CBJ amended its code to convert a number of criminal violations (which were filed with state court) to civil infractions (handled by the CBJ). As of June 1, 2017, there was approximately \$400,000 in unpaid civil violations outstanding.

In the past, civil past due accounts (such as past due utility accounts) were sent to collection agencies to pursue, but that practice stopped after a change in federal law late last year. Federal law now prohibits the reporting of past due delinquent accounts to credit agencies unless the past due account is tied to a contractual obligation between the debtor and creditor. The collection agencies will not accept cases that are not premised upon a contractual agreement since their enforcement tool (reporting to a credit bureau) is no longer an option.

The collection of this \$400,000 will require the initiation of small claims actions and other court proceedings.

3. Risk Cases

There are currently three tort cases Risk would like to see prosecuted to recover monetary damages for injury to CBJ property (totaling \$261,663.36). Given the amounts at stake, it does not make sense to hire outside counsel to pursue these claims.