, the defendant in this case, has been charged with the crime of criminal mischief in the third degree.

To prove that the defendant committed this crime, the state must prove beyond a reasonable doubt the following:

[(1) the defendant intentionally damaged the property of another;

(2) the defendant had no right to do so or any reasonable ground to believe that the defendant had such a right; and

(3) the damage to the property was in an amount of $750 or more.]

[(1) the defendant recklessly created a risk of damage to property of another by use of widely dangerous means;

(2) the defendant had no right to do so or any reasonable ground to believe that the defendant had such a right; and

(3) the risk of damage was in an amount exceeding $100,000.]

[(1) the defendant knowingly defaced, damaged, or desecrated a cemetery, tomb, grave, or memorial or the contents of a cemetery, tomb, grave, or memorial regardless of whether the tomb, grave, or memorial is in a cemetery or whether the cemetery, tomb, grave, or memorial appears to be abandoned, lost, or neglected; and

(2) the defendant had no right to do so or any reasonable ground to believe that the defendant had such a right.]

[(1) the defendant knowingly removed human remains or associated burial artifacts from a cemetery, tomb, grave, or memorial regardless of whether the cemetery, tomb, grave, or memorial appears to be abandoned, lost, or neglected, and

(2) the defendant had no right to do so or any reasonable ground to believe that the defendant had such a right.]

# USE NOTE

The following terms are defined in other instructions:

"contents of a cemetery" – 11.46.482

"intentionally" – 11.81.900

"knowingly" – 11.81.900

"memorial" – 11.46.482

"oil or gas pipeline or supporting facilities" – 11.46.495

"property" – 11.81.900

"recklessly" – 11.81.900

"tamper" – 11.46.495

"tomb" – 11.46.482

"utility" – 11.46.495

"widely dangerous means" – 11.46.495

It is an affirmative defense to a prosecution under AS 11.46.482(a)(3) – the desecration theory – that the defendant was, at the time of the crime, an employee of the cemetery and was engaged in an authorized activity on behalf of the cemetery or was authorized by law or state permit to engage in the conduct.

The criminal mischief statutes do not require the state to prove that the defendant knew of or had reason to know that the damage caused would exceed a particular amount or value. Ortberg v. State, 751 P.2d 1368 (Alaska App. 1988).

The amount of damage caused by an act of criminal mischief may be established through evidence showing either diminution in value or reasonable cost of repair. Willett v. State, 826 P.2d 1142, 1144 (Alaska App. 1992).

The state bears the burden of proving beyond a reasonable doubt that a defendant has no reasonable ground to believe that his actions are necessary for self-protection in a prosecution for criminal mischief in which the defendant asserts a necessity defense. McGee v. State, 162 P.3d 1251, 1255 (Alaska App. 2007).