

CS FOR HOUSE BILL NO. 14(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/17/19

Referred: Finance

Sponsor(s): REPRESENTATIVES LINCOLN, Claman, Fields, Spohnholz, Tarr, Tuck, Zulkosky, Hopkins, Drummond, Kreiss-Tomkins, LeDoux, Kopp, Rasmussen

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to assault in the first degree; relating to sex offenses; relating to the**
2 **definition of 'dangerous instrument'; providing for an aggravating factor at sentencing**
3 **for strangulation that results in unconsciousness; relating to the duties of the**
4 **prosecuting attorney; and relating to victim notifications."**

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 *** Section 1.** AS 11.41.200(a) is amended to read:

7 (a) A person commits the crime of assault in the first degree if

8 (1) that person recklessly causes serious physical injury to another by
9 means of a dangerous instrument;

10 (2) with intent to cause serious physical injury to another, the person
11 causes serious physical injury to any person;

12 (3) the person knowingly engages in conduct that results in serious
13 physical injury to another under circumstances manifesting extreme indifference to the
14 value of human life; [OR]

1 (4) that person recklessly causes serious physical injury to another by
 2 repeated assaults using a dangerous instrument, even if each assault individually does
 3 not cause serious physical injury; or

4 **(5) that person knowingly causes another to become unconscious**
 5 **by means of a dangerous instrument; in this paragraph, "dangerous instrument"**
 6 **has the meaning given in AS 11.81.900(b)(15)(B).**

7 * **Sec. 2.** AS 11.81.900(b)(15) is amended to read:

8 (15) "dangerous instrument" means

9 (A) any deadly weapon or anything that, under the
 10 circumstances in which it is used, attempted to be used, or threatened to be
 11 used, is capable of causing death or serious physical injury; or

12 (B) hands, **other body parts,** or other objects when used to
 13 impede normal breathing or circulation of blood by applying pressure on the
 14 throat or neck or obstructing the nose or mouth;

15 * **Sec. 3.** AS 11.81.900(b)(60) is amended to read:

16 (60) "sexual contact" means

17 (A) the defendant's

18 (i) knowingly touching, directly or through clothing, the
 19 victim's genitals, anus, or female breast; [OR]

20 (ii) knowingly causing the victim to touch, directly or
 21 through clothing, the defendant's or victim's genitals, anus, or female
 22 breast; or

23 **(iii) knowingly ejaculating on the victim;**

24 (B) but "sexual contact" does not include acts

25 (i) that may reasonably be construed to be normal
 26 caretaker responsibilities for a child, interactions with a child, or
 27 affection for a child;

28 (ii) performed for the purpose of administering a
 29 recognized and lawful form of treatment that is reasonably adapted to
 30 promoting the physical or mental health of the person being treated; or

31 (iii) that are a necessary part of a search of a person

1 committed to the custody of the Department of Corrections or the
2 Department of Health and Social Services;

3 * **Sec. 4.** AS 12.55.155(c) is amended to read:

4 (c) The following factors shall be considered by the sentencing court if proven
5 in accordance with this section, and may allow imposition of a sentence above the
6 presumptive range set out in AS 12.55.125:

7 (1) a person, other than an accomplice, sustained physical injury as a
8 direct result of the defendant's conduct;

9 (2) the defendant's conduct during the commission of the offense
10 manifested deliberate cruelty to another person;

11 (3) the defendant was the leader of a group of three or more persons
12 who participated in the offense;

13 (4) the defendant employed a dangerous instrument in furtherance of
14 the offense;

15 (5) the defendant knew or reasonably should have known that the
16 victim of the offense was particularly vulnerable or incapable of resistance due to
17 advanced age, disability, ill health, homelessness, consumption of alcohol or drugs, or
18 extreme youth or was for any other reason substantially incapable of exercising
19 normal physical or mental powers of resistance;

20 (6) the defendant's conduct created a risk of imminent physical injury
21 to three or more persons, other than accomplices;

22 (7) a prior felony conviction considered for the purpose of invoking a
23 presumptive range under this chapter was of a more serious class of offense than the
24 present offense;

25 (8) the defendant's prior criminal history includes conduct involving
26 aggravated assaultive behavior, repeated instances of assaultive behavior, repeated
27 instances of cruelty to animals proscribed under AS 11.61.140(a)(1) and (3) - (5), or a
28 combination of assaultive behavior and cruelty to animals proscribed under
29 AS 11.61.140(a)(1) and (3) - (5); in this paragraph, "aggravated assaultive behavior"
30 means assault that is a felony under AS 11.41, or a similar provision in another
31 jurisdiction;

1 (9) the defendant knew that the offense involved more than one victim;

2 (10) the conduct constituting the offense was among the most serious
3 conduct included in the definition of the offense;

4 (11) the defendant committed the offense under an agreement that the
5 defendant either pay or be paid for the commission of the offense, and the pecuniary
6 incentive was beyond that inherent in the offense itself;

7 (12) the defendant was on release under AS 12.30 for another felony
8 charge or conviction or for a misdemeanor charge or conviction having assault as a
9 necessary element;

10 (13) the defendant knowingly directed the conduct constituting the
11 offense at an active officer of the court or at an active or former judicial officer,
12 prosecuting attorney, law enforcement officer, correctional employee, firefighter,
13 emergency medical technician, paramedic, ambulance attendant, or other emergency
14 responder during or because of the exercise of official duties;

15 (14) the defendant was a member of an organized group of five or
16 more persons, and the offense was committed to further the criminal objectives of the
17 group;

18 (15) the defendant has three or more prior felony convictions;

19 (16) the defendant's criminal conduct was designed to obtain
20 substantial pecuniary gain and the risk of prosecution and punishment for the conduct
21 is slight;

22 (17) the offense was one of a continuing series of criminal offenses
23 committed in furtherance of illegal business activities from which the defendant
24 derives a major portion of the defendant's income;

25 (18) the offense was a felony

26 (A) specified in AS 11.41 and was committed against a spouse,
27 a former spouse, or a member of the social unit made up of those living
28 together in the same dwelling as the defendant;

29 (B) specified in AS 11.41.410 - 11.41.458 and the defendant
30 has engaged in the same or other conduct prohibited by a provision of
31 AS 11.41.410 - 11.41.460 involving the same or another victim;

1 (C) specified in AS 11.41 that is a crime involving domestic
2 violence and was committed in the physical presence or hearing of a child
3 under 16 years of age who was, at the time of the offense, living within the
4 residence of the victim, the residence of the perpetrator, or the residence where
5 the crime involving domestic violence occurred;

6 (D) specified in AS 11.41 and was committed against a person
7 with whom the defendant has a dating relationship or with whom the defendant
8 has engaged in a sexual relationship; or

9 (E) specified in AS 11.41.434 - 11.41.458 or AS 11.61.128 and
10 the defendant was 10 or more years older than the victim;

11 (19) the defendant's prior criminal history includes an adjudication as a
12 delinquent for conduct that would have been a felony if committed by an adult;

13 (20) the defendant was on furlough under AS 33.30 or on parole or
14 probation for another felony charge or conviction that would be considered a prior
15 felony conviction under AS 12.55.145(a)(1)(B);

16 (21) the defendant has a criminal history of repeated instances of
17 conduct violative of criminal laws, whether punishable as felonies or misdemeanors,
18 similar in nature to the offense for which the defendant is being sentenced under this
19 section;

20 (22) the defendant knowingly directed the conduct constituting the
21 offense at a victim because of that person's race, sex, color, creed, physical or mental
22 disability, ancestry, or national origin;

23 (23) the defendant is convicted of an offense specified in AS 11.71 and

24 (A) the offense involved the delivery of a controlled substance
25 under circumstances manifesting an intent to distribute the substance as part of
26 a commercial enterprise; or

27 (B) at the time of the conduct resulting in the conviction, the
28 defendant was caring for or assisting in the care of a child under 10 years of
29 age;

30 (24) the defendant is convicted of an offense specified in AS 11.71 and
31 the offense involved the transportation of controlled substances into the state;

1 (25) the defendant is convicted of an offense specified in AS 11.71 and
2 the offense involved large quantities of a controlled substance;

3 (26) the defendant is convicted of an offense specified in AS 11.71 and
4 the offense involved the distribution of a controlled substance that had been
5 adulterated with a toxic substance;

6 (27) the defendant, being 18 years of age or older,

7 (A) is legally accountable under AS 11.16.110(2) for the
8 conduct of a person who, at the time the offense was committed, was under 18
9 years of age and at least three years younger than the defendant; or

10 (B) is aided or abetted in planning or committing the offense by
11 a person who, at the time the offense was committed, was under 18 years of
12 age and at least three years younger than the defendant;

13 (28) the victim of the offense is a person who provided testimony or
14 evidence related to a prior offense committed by the defendant;

15 (29) the defendant committed the offense for the benefit of, at the
16 direction of, or in association with a criminal street gang;

17 (30) the defendant is convicted of an offense specified in AS 11.41.410
18 - 11.41.455, and the defendant knowingly supplied alcohol or a controlled substance to
19 the victim in furtherance of the offense with the intent to make the victim
20 incapacitated; in this paragraph, "incapacitated" has the meaning given in
21 AS 11.41.470;

22 (31) the defendant's prior criminal history includes convictions for five
23 or more crimes in this or another jurisdiction that are class A misdemeanors under the
24 law of this state, or having elements similar to a class A misdemeanor; two or more
25 convictions arising out of a single continuous episode are considered a single
26 conviction; however, an offense is not a part of a continuous episode if committed
27 while attempting to escape or resist arrest or if it is an assault on a uniformed or
28 otherwise clearly identified peace officer or correctional employee; notice and denial
29 of convictions are governed by AS 12.55.145(b) - (d);

30 (32) the offense is a violation of AS 11.41 or AS 11.46.400 and the
31 offense occurred on school grounds, on a school bus, at a school-sponsored event, or

1 in the administrative offices of a school district if students are educated at that office;
2 in this paragraph,

3 (A) "school bus" has the meaning given in AS 11.71.900;

4 (B) "school district" has the meaning given in AS 47.07.063;

5 (C) "school grounds" has the meaning given in AS 11.71.900;

6 (33) the offense was a felony specified in AS 11.41.410 - 11.41.455,
7 the defendant had been previously diagnosed as having or having tested positive for
8 HIV or AIDS, and the offense either (A) involved penetration, or (B) exposed the
9 victim to a risk or a fear that the offense could result in the transmission of HIV or
10 AIDS; in this paragraph, "HIV" and "AIDS" have the meanings given in
11 AS 18.15.310;

12 (34) the defendant committed the offense on, or to affect persons or
13 property on, the premises of a recognized shelter or facility providing services to
14 victims of domestic violence or sexual assault;

15 (35) the defendant knowingly directed the conduct constituting the
16 offense at a victim because that person was 65 years of age or older;

17 (36) the defendant committed the offense at a health care facility and
18 knowingly directed the conduct constituting the offense at a medical professional
19 during or because of the medical professional's exercise of professional duties; in this
20 paragraph,

21 (A) "health care facility" has the meaning given in
22 AS 18.07.111;

23 (B) "medical professional" has the meaning given in
24 AS 12.55.135(k);

25 **(37) the defendant knowingly caused the victim to become**
26 **unconscious by means of a dangerous instrument; in this paragraph, "dangerous**
27 **instrument" has the meaning given in AS 11.81.900(b)(15)(B).**

28 * Sec. 5. AS 12.61.015(a) is amended to read:

29 (a) If a victim of a felony, **a sex offense as defined in AS 12.63.100**, or a
30 crime involving domestic violence requests, the prosecuting attorney shall make a
31 reasonable effort to

1 (1) confer with the person against whom the offense has been
2 perpetrated about that person's testimony before the defendant's trial;

3 (2) in a manner reasonably calculated to give prompt actual notice,
4 notify the victim

5 (A) of the defendant's conviction and the crimes of which the
6 defendant was convicted;

7 (B) of the victim's right in a case that is a felony to make a
8 written or oral statement for use in preparation of the defendant's presentence
9 report, and of the victim's right to appear personally at the defendant's
10 sentencing hearing to present a written statement and to give sworn testimony
11 or an unsworn oral presentation;

12 (C) of the address and telephone number of the office that will
13 prepare the presentence report; and

14 (D) of the time and place of the sentencing proceeding;

15 (3) notify the victim in writing of the final disposition of the case
16 within 30 days after final disposition of the case;

17 (4) confer with the victim **or the victim's legal guardian** concerning a
18 proposed plea agreement before entering into **the plea** [AN] agreement **to ask the**
19 **victim or the victim's legal guardian whether the victim is in agreement with the**
20 **proposed plea agreement; the prosecuting attorney shall record whether the**
21 **victim or the victim's legal guardian is in agreement with the proposed plea**
22 **agreement;**

23 (5) inform the victim of a pending motion that may substantially delay
24 the prosecution and inform the court of the victim's position on the motion; in this
25 paragraph, a "substantial delay" is

26 (A) for a misdemeanor, a delay of one month or longer;

27 (B) for a felony, a delay of two months or longer; and

28 (C) for an appeal, a delay of six months or longer.

29 * **Sec. 6.** AS 12.61.015 is amended by adding new subsections to read:

30 (d) The court may reschedule a hearing to consider a plea agreement as
31 needed to allow additional time to comply with the victim notification requirements

1 under (a)(2) and (4) of this section.

2 (e) Nothing in this section requires a victim or a victim's legal guardian to
3 provide a response to a prosecuting attorney regarding a plea agreement or requires the
4 prosecuting attorney to be bound by the victim's or legal guardian's response regarding
5 the plea agreement.

6 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 APPLICABILITY. AS 11.41.200(a), as amended by sec. 1 of this Act,
9 AS 11.81.900(b)(15), as amended by sec. 2 of this Act, AS 11.81.900(b)(60), as amended by
10 sec. 3 of this Act, and AS 12.55.155(c), as amended by sec. 4 of this Act, apply to offenses
11 committed on or after the effective date of this Act.