

HOUSE BILL NO. 367

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE HEALTH AND SOCIAL SERVICES COMMITTEE

Introduced: 3/19/12

Referred: Health and Social Services, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to mitigation at sentencing in a criminal case for a defendant found by**
2 **the court to have been affected by a fetal alcohol spectrum disorder."**

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

4 * **Section 1.** AS 12.55.155(d) is amended to read:

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

8 (1) the offense was principally accomplished by another person, and
9 the defendant manifested extreme caution or sincere concern for the safety or well-
10 being of the victim;

11 (2) the defendant, although an accomplice, played only a minor role in
12 the commission of the offense;

13 (3) the defendant committed the offense under some degree of duress,
14 coercion, threat, or compulsion insufficient to constitute a complete defense, but that

1 significantly affected the defendant's conduct;

2 (4) the conduct of a youthful defendant was substantially influenced by
3 another person more mature than the defendant;

4 (5) the conduct of an aged defendant was substantially a product of
5 physical or mental infirmities resulting from the defendant's age;

6 (6) in a conviction for assault under AS 11.41.200 - 11.41.220, the
7 defendant acted with serious provocation from the victim;

8 (7) except in the case of a crime defined by AS 11.41.410 - 11.41.470,
9 the victim provoked the crime to a significant degree;

10 (8) before the defendant knew that the criminal conduct had been
11 discovered, the defendant fully compensated or made a good faith effort to fully
12 compensate the victim of the defendant's criminal conduct for any damage or injury
13 sustained;

14 (9) the conduct constituting the offense was among the least serious
15 conduct included in the definition of the offense;

16 (10) the defendant was motivated to commit the offense solely by an
17 overwhelming compulsion to provide for emergency necessities for the defendant's
18 immediate family;

19 (11) after commission of the offense for which the defendant is being
20 sentenced, the defendant assisted authorities to detect, apprehend, or prosecute other
21 persons who committed an offense;

22 (12) the facts surrounding the commission of the offense and any
23 previous offenses by the defendant establish that the harm caused by the defendant's
24 conduct is consistently minor and inconsistent with the imposition of a substantial
25 period of imprisonment;

26 (13) the defendant is convicted of an offense specified in AS 11.71 and
27 the offense involved small quantities of a controlled substance;

28 (14) the defendant is convicted of an offense specified in AS 11.71 and
29 the offense involved the distribution of a controlled substance, other than a schedule
30 IA controlled substance, to a personal acquaintance who is 19 years of age or older for
31 no profit;

1 (15) the defendant is convicted of an offense specified in AS 11.71 and
 2 the offense involved the possession of a small amount of a controlled substance for
 3 personal use in the defendant's home;

4 (16) in a conviction for assault or attempted assault or for homicide or
 5 attempted homicide, the defendant acted in response to domestic violence perpetrated
 6 by the victim against the defendant and the domestic violence consisted of aggravated
 7 or repeated instances of assaultive behavior;

8 (17) except in the case of an offense defined by AS 11.41 or
 9 AS 11.46.400, the defendant has been convicted of a class B or C felony, and, at the
 10 time of sentencing, has successfully completed a court-ordered treatment program as
 11 defined in AS 28.35.028 that was begun after the offense was committed;

12 (18) except in the case of an offense defined under AS 11.41 or
 13 AS 11.46.400 or a defendant who has previously been convicted of a felony, **and,**
 14 **except as provided by (20) of this subsection,** the defendant committed the offense
 15 while suffering from a mental disease or defect as defined in AS 12.47.130 that was
 16 insufficient to constitute a complete defense but that significantly affected the
 17 defendant's conduct;

18 (19) the defendant is convicted of an offense under AS 11.71, and the
 19 defendant sought medical assistance for another person who was experiencing a drug
 20 overdose contemporaneously with the commission of the offense;

21 **(20) the defendant committed the offense while suffering from a**
 22 **condition diagnosed as a fetal alcohol spectrum disorder, the fetal alcohol**
 23 **spectrum disorder substantially impaired the defendant's judgment, behavior,**
 24 **capacity to recognize reality, or ability to cope with the ordinary demands of life,**
 25 **and the fetal alcohol spectrum disorder, though insufficient to constitute a**
 26 **complete defense, significantly affected the defendant's conduct; in this**
 27 **paragraph, "fetal alcohol spectrum disorder" means a condition of impaired**
 28 **brain function in the range of permanent birth defects caused by maternal**
 29 **consumption of alcohol during pregnancy, as determined by a**
 30 **neuropsychological examination.**