

31-LS0182\E
Radford
2/26/19

CS FOR HOUSE BILL NO. 14()

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - FIRST SESSION

BY

**Offered:
Referred:**

**Sponsor(s): REPRESENTATIVES LINCOLN, Claman, Fields, Spohnholz, Tarr, Tuck, Zulkosky, Hopkins,
Drummond**

A BILL

FOR AN ACT ENTITLED

**"An Act relating to assault in the first degree; relating to sex offenses; relating to the
definition of 'dangerous instrument'; and providing for an aggravating factor at
sentencing for strangulation that results in unconsciousness."**

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

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

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

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

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

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

(4) that person recklessly causes serious physical injury to another by

repeated assaults using a dangerous instrument, even if each assault individually does not cause serious physical injury; or

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

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

(15) "dangerous instrument" means

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

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

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

(60) "sexual contact" means

(A) the defendant's

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

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

(iii) knowingly causing the victim to come into contact with ejaculate;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(18) the offense was a felony

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

(B) specified in AS 11.41.410 - 11.41.458 and the defendant has engaged in the same or other conduct prohibited by a provision of 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. The uncoded law of the State of Alaska is amended by adding a new section to
29 read:

30 APPLICABILITY. AS 11.41.200(a), as amended by sec. 1 of this Act,
31 AS 11.81.900(b)(15), as amended by sec. 2 of this Act, AS 11.81.900(b)(60), as amended by

- 1 sec. 3 of this Act, and AS 12.55.155(c), as amended by sec. 4 of this Act, apply to offenses
2 committed on or after the effective date of this Act.