

CS FOR SENATE BILL NO. 194(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 2/29/96

Referred: Rules

Sponsor(s): SENATORS KELLY, Phillips, Leman, Pearce, Green, Donley, Sharp, Salo, Taylor, Halford, Frank, Rieger

REPRESENTATIVES B.Davis, Green, Ogan, Rokeberg

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to offenses associated with criminal street gangs, and to
2 sentencing for those offenses; relating to the offenses of murder in the second
3 degree, an unclassified felony, misconduct involving weapons in the first degree,
4 a class A felony, and misconduct involving weapons in the third degree, a class
5 C felony; and amending Rule 702(a), Alaska Rules of Evidence; and providing for
6 an effective date."

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

8 * **Section 1.** AS 11.41.110(a) is amended to read:

9 (a) A person commits the crime of murder in the second degree if

10 (1) with intent to cause serious physical injury to another person or
11 knowing that the conduct is substantially certain to cause death or serious physical injury
12 to another person, the person causes the death of any person;

13 (2) the person knowingly engages in conduct that results in the death of

another person under circumstances manifesting an extreme indifference to the value of human life; [OR]

(3) acting either alone or with one or more persons, the person commits or attempts to commit arson in the first degree, kidnapping, sexual assault in the first degree, sexual assault in the second degree, burglary in the first degree, escape in the first or second degree, [OR] robbery in any degree, or misconduct involving a controlled substance under AS 11.71.010(a), 11.71.020(a), 11.71.030(a)(1) or (2), or 11.71.040(a)(1) or (2) and, in the course of or in furtherance of that crime, or in immediate flight from that crime, any person causes the death of a person other than one of the participants; or

(4) acting with a criminal street gang, the person commits or attempts to commit a crime that is a felony and, in the course of or in furtherance of that crime or in immediate flight from that crime, any person causes the death of a person other than one of the participants.

* Sec. 2. AS 11.61 is amended by adding new sections to article 1 to read:

Sec. 11.61.160. RECRUITING A GANG MEMBER IN THE FIRST DEGREE.

(a) A person commits the crime of recruiting a gang member in the first degree if the person uses or threatens the use of force against a person or property to induce a person to participate in a criminal street gang or to commit a crime on behalf of a criminal street gang.

(b) Recruiting a gang member in the first degree is a class C felony.

Sec. 11.61.165. RECRUITING A GANG MEMBER IN THE SECOND DEGREE. (a) A person commits the crime of recruiting a gang member in the second degree if the person is 18 years of age or older and, without force or the threat of force, encourages or recruits a person who is under 18 years of age and at least three years younger than the offender to participate in a criminal street gang.

(b) Recruiting a gang member in the second degree is a class A misdemeanor.

* Sec. 3. AS 11.61.190(a) is amended to read:

(a) A person commits the crime of misconduct involving weapons in the first degree if the person

(1) uses or attempts to use a firearm during the commission of an offense under AS 11.71.010 - 11.71.040; or

1 (2) discharges a firearm from a propelled vehicle while the vehicle
2 is being operated and under circumstances manifesting substantial and unjustifiable
3 risk of physical injury to a person or damage to property.

4 * Sec. 4. AS 11.61.200(a) is amended to read:

5 (a) A person commits the crime of misconduct involving weapons in the third
6 degree if the person

7 (1) knowingly possesses a firearm capable of being concealed on one's
8 person after having been convicted of a felony or adjudicated a delinquent minor for
9 conduct that would constitute a felony if committed by an adult by a court of this state,
10 a court of the United States, or a court of another state or territory;

11 (2) knowingly sells or transfers a firearm capable of being concealed on
12 one's person to a person who has been convicted of a felony by a court of this state, a
13 court of the United States, or a court of another state or territory;

14 (3) manufactures, possesses, transports, sells, or transfers a prohibited
15 weapon;

16 (4) knowingly sells or transfers a firearm to another whose physical or
17 mental condition is substantially impaired as a result of the introduction of an
18 intoxicating liquor or controlled substance into that other person's body;

19 (5) removes, covers, alters, or destroys the manufacturer's serial number
20 on a firearm with intent to render the firearm untraceable;

21 (6) possesses a firearm on which the manufacturer's serial number has
22 been removed, covered, altered, or destroyed, knowing that the serial number has been
23 removed, covered, altered, or destroyed with the intent of rendering the firearm
24 untraceable;

25 (7) violates AS 11.46.320 and, during the violation, possesses on the
26 person a firearm when the person's physical or mental condition is impaired as a result
27 of the introduction of an intoxicating liquor or controlled substance into the person's
28 body;

29 (8) violates AS 11.46.320 or 11.46.330 by entering or remaining
30 unlawfully on premises or in a propelled vehicle in violation of a provision of an order
31 issued under AS 25.35.010(b) or 25.35.020 and, during the violation, possesses on the
32 person a defensive weapon or a deadly weapon, other than an ordinary pocketknife;

1 (9) communicates in person with another in violation of AS 11.56.740
2 and, during the communication, possesses on the person a defensive weapon or a deadly
3 weapon, other than an ordinary pocketknife;

4 (10) resides in a dwelling knowing that there is a firearm capable of
5 being concealed on one's person or a prohibited weapon in the dwelling if the person has
6 been convicted of a felony by a court of this state, a court of the United States, or a
7 court of another state or territory, unless the person has written authorization to live in
8 a dwelling in which there is a concealable weapon described in this paragraph from a
9 court of competent jurisdiction or from the head of the law enforcement agency of the
10 community in which the dwelling is located; or

11 (11) discharges a firearm from a propelled vehicle while the vehicle is
12 being operated in circumstances other than described in AS 11.61.190(a)(2).

13 * **Sec. 5.** AS 11.81.900(b) is amended by adding a new paragraph to read:

14 (59) "criminal street gang" means a group of three or more persons

15 (A) who have in common a name or identifying sign, symbol,
16 tattoo or other physical marking, style of dress, or use of hand signs; and

17 (B) who, individually, jointly, or in combination, have committed
18 or attempted to commit, within the preceding three years, for the benefit of, at
19 the direction of, or in association with the group, two or more offenses under any
20 of, or any combination of, the following:

21 (i) AS 11.41;

22 (ii) AS 11.46; or

23 (iii) a felony offense.

24 * **Sec. 6.** AS 12.45 is amended by adding a new section to read:

25 Sec. 12.45.037. ADMISSIBILITY OF EXPERT TESTIMONY RELATING TO
26 CRIMINAL STREET GANG ACTIVITY. (a) In a criminal prosecution, expert
27 testimony is admissible to show, in regard to a specific criminal street gang or criminal
28 street gangs whose conduct is relevant to the case,

29 (1) common characteristics of persons who are members of the criminal
30 street gang or criminal street gangs;

31 (2) rivalries between specific criminal street gangs;

32 (3) common practices and operations of the criminal street gang or

1 criminal street gangs and the members of those gangs;

2 (4) social customs and behavior of members of the criminal street gang
3 or the criminal street gangs;

4 (5) terminology used by members of the criminal street gang or the
5 criminal street gangs;

6 (6) codes of conduct of the particular criminal street gang or criminal
7 street gangs; and

8 (7) the types of crimes that are likely to be committed by the particular
9 criminal street gang.

10 (b) In this section, "criminal street gang" has the meaning given in
11 AS 11.81.900(b).

12 * **Sec. 7.** AS 12.55.015(a) is amended to read:

13 (a) Except as limited by AS 12.55.125 - 12.55.175, the court, in imposing
14 sentence on a defendant convicted of an offense, may singly or in combination

15 (1) impose a

16 (A) fine when authorized by law and as provided in
17 AS 12.55.035; or

18 (B) [A] day fine when authorized by law and as provided in
19 AS 12.55.036, if the court does not impose a term of periodic or continuous
20 imprisonment or place the defendant on probation;

21 (2) order the defendant to be placed on probation under conditions
22 specified by the court that may include provision for active supervision;

23 (3) impose a definite term of periodic imprisonment;

24 (4) impose a definite term of continuous imprisonment;

25 (5) order the defendant to make restitution under AS 12.55.045;

26 (6) order the defendant to carry out a continuous or periodic program of
27 community work under AS 12.55.055;

28 (7) suspend execution of all or a portion of the sentence imposed under
29 AS 12.55.080;

30 (8) suspend imposition of sentence under AS 12.55.085;

31 (9) order the forfeiture to the commissioner of public safety of a deadly
32 weapon that was in the actual possession of or used by the defendant during the

1 commission of an offense described in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

2 (10) order the defendant, while incarcerated, to participate in or comply
3 with the treatment plan of a rehabilitation program that is related to the defendant's
4 offense or to the defendant's rehabilitation if the program is made available to the
5 defendant by the Department of Corrections;

6 **(11) order the forfeiture to the state of a motor vehicle, weapon,**
7 **electronic communication device, or money or other valuables, used in or obtained**
8 **through an offense that was committed for the benefit of, at the direction of, or in**
9 **association with a criminal street gang.**

10 * **Sec. 8.** AS 12.55 is amended by adding a new section to read:

11 Sec. 12.55.137. PENALTIES FOR GANG ACTIVITIES PUNISHABLE AS
12 MISDEMEANORS. (a) If a person commits an offense that would be a class B
13 misdemeanor and the person committed the offense for the benefit of, at the direction of,
14 or in association with a criminal street gang, the offense is a class A misdemeanor.

15 (b) If a person commits an offense that would be a class A misdemeanor and the
16 person committed the offense for the benefit of, at the direction of, or in association with
17 a criminal street gang, the offense is a class C felony.

18 * **Sec. 9.** AS 12.55.155(c) is amended by adding a new paragraph to read:

19 (29) the defendant committed the offense for the benefit of, at the
20 direction of, or in association with a criminal street gang.

21 * **Sec. 10.** AS 12.55.185 is amended by adding a new paragraph to read:

22 (14) "criminal street gang" has the meaning given in AS 11.81.900(b).

23 * **Sec. 11.** AS 12.45.037, added by sec. 6 of this Act, has the effect of amending Rule 702(a),
24 Alaska Rules of Evidence, to allow the admissibility of expert testimony to show criminal gang
25 characteristics, activity, and practices by a person having that specialized knowledge based on
26 the person's knowledge, skill, experience, training, or education.

27 * **Sec. 12.** APPLICABILITY. This Act applies to an act that occurs on or after the effective
28 date of this Act, except that references to previous offenses refer to acts occurring before, on,
29 or after the effective date of this Act.

30 * **Sec. 13.** This Act takes effect September 1, 1996.