

HOUSE CS FOR CS FOR SENATE BILL NO. 3(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 5/11/99

Referred: Finance

Sponsor(s): SENATORS HALFORD, Phillips, Donley, Green, Leman, Taylor, Pearce, Lincoln, Pete Kelly, Tim Kelly, Ward, Miller, Mackie

REPRESENTATIVES Cissna, Masek, Smalley, Kott, Harris, Cowdery, Phillips, Murkowski, Croft, Kohring

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the crimes of murder, solicitation to commit murder in the
2 first degree, conspiracy to commit murder in the first degree, manslaughter, and
3 criminally negligent homicide; relating to homicides of children; relating to
4 registration as a sex offender or child kidnapper; relating to the crime of
5 interference with custody of a child or incompetent person; and providing for an
6 effective date."

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

8 * **Section 1.** PURPOSE OF SECTION 15. The purpose of the amendment to
9 AS 12.63.100(7), added by sec. 15 of this Act, is to clarify the law in order to validate and
10 affirm the long-standing policy contained in state regulation defining "conviction" for purposes
11 of registration of sex offenders and child kidnappers under AS 12.63 to include a variety of
12 judgments, including those set aside by suspended imposition of sentence under AS 12.55.085.

13 * **Sec. 2.** AS 11.31.110(c) is repealed and reenacted to read:

1 (c) Solicitation is

2 (1) an unclassified felony if the crime solicited is murder in the first
3 degree;

4 (2) a class A felony if the crime solicited is an unclassified felony other
5 than murder in the first degree;

6 (3) a class B felony if the crime solicited is a class A felony;

7 (4) a class C felony if the crime solicited is a class B felony;

8 (5) a class A misdemeanor if the crime solicited is a class C felony;

9 (6) a class B misdemeanor if the crime solicited is a class A or class
10 B misdemeanor.

11 * Sec. 3. AS 11.41.100(a) is amended to read:

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

13 (1) with intent to cause the death of another person, the person

14 (A) causes the death of any person; or

15 (B) compels or induces any person to commit suicide through
16 duress or deception; [OR]

17 (2) the person knowingly engages **in conduct directed toward** [,
18 UNDER CIRCUMSTANCES MANIFESTING EXTREME INDIFFERENCE TO THE
19 VALUE OF HUMAN LIFE, IN A PATTERN OR PRACTICE OF ASSAULT OR
20 TORTURE OF] a child under the age of 16 **and the person with criminal negligence**
21 [, AND ONE OF THE ACTS OF ASSAULT OR TORTURE RESULTS IN THE
22 DEATH OF THE CHILD; FOR PURPOSES OF THIS PARAGRAPH, A PERSON
23 "ENGAGES IN A PATTERN OR PRACTICE OF ASSAULT OR TORTURE" IF
24 THE PERSON] inflicts serious physical injury on **the** [A] child by at least two
25 separate acts, and one of the acts results in the death of the child; **or**

26 **(3) acting alone or with one or more persons, the person commits**
27 **or attempts to commit a sexual offense against or kidnapping of a child under 16**
28 **years of age and, in the course of or in furtherance of the offense or in immediate**
29 **flight from that offense, any person causes the death of the child; in this**
30 **paragraph, "sexual offense" means an offense defined in AS 11.41.410 - 11.41.470.**

31 * Sec. 4. AS 11.41.110(a) is amended to read:

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

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

(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;

(3) under circumstances not amounting to murder in the first degree under AS 11.41.100(a)(3), while 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, sexual abuse of a minor in the first degree, sexual abuse of a minor in the second degree, burglary in the first degree, escape in the first or second degree, 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; or

(5) the person with criminal negligence causes the death of a child under the age of 16, and the person has been previously convicted of a crime involving a child under the age of 16 that was

(A) a felony violation of AS 11.41;

(B) in violation of a law or ordinance in another jurisdiction with elements similar to a felony under AS 11.41; or

(C) an attempt, a solicitation, or a conspiracy to commit a crime listed in (A) or (B) of this paragraph.

* Sec. 5. AS 11.41.130(b) is amended to read:

(b) Criminally negligent homicide is a class **B** [C] felony.

* **Sec. 6.** AS 11.41.320(a) is amended to read:

(a) A person commits the crime of custodial interference in the first degree if the person violates AS 11.41.330 and causes the **child or incompetent person** [VICTIM] to be

(1) removed from the state; or

(2) kept outside the state.

* **Sec. 7.** AS 11.81.250(a) is amended to read:

(a) For purposes of sentencing under AS 12.55, all offenses defined in this title, except murder in the first and second degree, attempted murder in the first degree, **solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree,** sexual assault in the first degree, sexual abuse of a minor in the first degree, misconduct involving a controlled substance in the first degree, and kidnapping, are classified on the basis of their seriousness, according to the type of injury characteristically caused or risked by commission of the offense and the culpability of the offender. Except for murder in the first and second degree, attempted murder in the first degree, **solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree,** sexual assault in the first degree, sexual abuse of a minor in the first degree, misconduct involving a controlled substance in the first degree, and kidnapping, the offenses in this title are classified into the following categories:

(1) class A felonies, which characteristically involve conduct resulting in serious physical injury or a substantial risk of serious physical injury to a person;

(2) class B felonies, which characteristically involve conduct resulting in less severe violence against a person than class A felonies, aggravated offenses against property interests, or aggravated offenses against public administration or order;

(3) class C felonies, which characteristically involve conduct serious enough to deserve felony classification but not serious enough to be classified as A or B felonies;

(4) class A misdemeanors, which characteristically involve less severe violence against a person, less serious offenses against property interests, less serious offenses against public administration or order, or less serious offenses against public

1 health and decency than felonies;

2 (5) class B misdemeanors, which characteristically involve a minor risk
3 of physical injury to a person, minor offenses against property interests, minor offenses
4 against public administration or order, or minor offenses against public health and
5 decency;

6 (6) violations, which characteristically involve conduct inappropriate
7 to an orderly society but which do not denote criminality in their commission.

8 * **Sec. 8.** AS 11.81.250(b) is amended to read:

9 (b) The classification of each felony defined in this title, except murder in the
10 first and second degree, attempted murder in the first degree, **solicitation to commit**
11 **murder in the first degree, conspiracy to commit murder in the first degree,**
12 sexual assault in the first degree, sexual abuse of a minor in the first degree,
13 misconduct involving a controlled substance in the first degree, and kidnapping, is
14 designated in the section defining it. A felony under Alaska law defined outside this
15 title for which no penalty is specifically provided is a class C felony.

16 * **Sec. 9.** AS 12.55.125(b) is amended to read:

17 (b) A defendant convicted of murder in the second degree, attempted murder
18 in the first degree, **solicitation to commit murder in the first degree,** conspiracy to
19 commit murder in the first degree, kidnapping, or misconduct involving a controlled
20 substance in the first degree shall be sentenced to a definite term of imprisonment of
21 at least five years but not more than 99 years. **A defendant convicted of murder in**
22 **the second degree shall be sentenced to a definite term of imprisonment of at least**
23 **20 years but not more than 99 years when the defendant is convicted of the**
24 **murder of a child under 16 years of age and the court finds by clear and**
25 **convincing evidence that the defendant (1) was a natural parent, a stepparent, an**
26 **adopted parent, a legal guardian, or a person occupying a position of authority**
27 **in relation to the child; or (2) caused the death of the child by committing a crime**
28 **against a person under AS 11.41.200 - 11.41.530. In this subsection, "legal**
29 **guardian" and "position of authority" have the meanings given in AS 11.41.470.**

30 * **Sec. 10.** AS 12.55.125(c) is amended to read:

31 (c) A defendant convicted of a class A felony may be sentenced to a definite

term of imprisonment of not more than 20 years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, five years;

(2) if the offense is a first felony conviction

(A) [,] other than for manslaughter [,] and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, or knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional employee, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, seven years;

(B) for manslaughter and the conduct resulting in the conviction was knowingly directed towards a child under the age of 16, seven years;

(3) if the offense is a second felony conviction, 10 years;

(4) if the offense is a third felony conviction and the defendant is not subject to sentencing under (1) of this section, 15 years.

* Sec. 11. AS 12.55.125(k) is amended to read:

(k) A first felony offender convicted of an offense for which a presumptive term of imprisonment is not specified under this section

(1) may be sentenced to a term of unsuspended imprisonment that exceeds the presumptive term for a second or third felony offender convicted of the same crime if the offender is convicted of criminally negligent homicide and the victim is a child under the age of 16;

(2) except as provided in (1) of this subsection, may not be sentenced to a term of unsuspended imprisonment that exceeds the presumptive term for a second felony offender convicted of the same crime unless the court finds by clear and convincing evidence that an aggravating factor under AS 12.55.155(c) is present, or

1 that circumstances exist that would warrant a referral to the three-judge panel under
2 AS 12.55.165.

3 * Sec. 12. AS 12.63.100(1) is amended to read:

4 (1) "aggravated sex offense" means

5 (A) a crime under AS 11.41.100(a)(3), or a similar law of
6 another jurisdiction, in which the person committed or attempted to
7 commit a sexual offense, or a similar offense under the laws of the other
8 jurisdiction; in this subparagraph, "sexual offense" has the meaning given
9 in AS 11.41.100(a)(3);

10 (B) a crime under AS 11.41.110(a)(3), or a similar law of
11 another jurisdiction, in which the person committed or attempted to
12 commit one of the following crimes, or a similar law of another
13 jurisdiction:

14 (i) sexual assault in the first degree;

15 (ii) sexual assault in the second degree;

16 (iii) sexual abuse of a minor in the first degree; or

17 (iv) sexual abuse of a minor in the second degree; or

18 (C) a crime, or an attempt, solicitation, or conspiracy to commit
19 a crime, under AS 11.41.410, 11.41.434, or a similar law of another
20 jurisdiction;

21 * Sec. 13. AS 12.63.100(2) is amended to read:

22 (2) "child kidnapping" means

23 (A) a crime under AS 11.41.100(a)(3), or a similar law of
24 another jurisdiction, in which the person committed or attempted to
25 commit kidnapping;

26 (B) a crime under AS 11.41.110(a)(3), or a similar law of
27 another jurisdiction, in which the person committed or attempted to
28 commit kidnapping if the victim was under 18 years of age at the time of
29 the offense; or

30 (C) a crime, or an attempt, solicitation, or conspiracy to
31 commit a crime, under AS 11.41.300, or a similar law of another jurisdiction,

1 if the victim was under 18 years of age at the time of the offense; [.]

2 * **Sec. 14.** AS 12.63.100(5) is amended to read:

3 (5) "sex offense" means

4 (A) a crime under AS 11.41.100(a)(3), or a similar law of
 5 another jurisdiction, in which the person committed or attempted to
 6 commit a sexual offense, or a similar offense under the laws of the other
 7 jurisdiction; in this subparagraph, "sexual offense" has the meaning given
 8 in AS 11.41.100(a)(3);

9 (B) a crime under AS 11.41.110(a)(3), or a similar law of
 10 another jurisdiction, in which the person committed or attempted to
 11 commit one of the following crimes, or a similar law of another
 12 jurisdiction:

13 (i) sexual assault in the first degree;

14 (ii) sexual assault in the second degree;

15 (iii) sexual abuse of a minor in the first degree; or

16 (iv) sexual abuse of a minor in the second degree;

17 (C) a crime, or an attempt, solicitation, or conspiracy to commit
 18 a crime, under the following statutes or a similar law of another jurisdiction:

19 (i) [(A)] AS 11.41.410 - 11.41.438;

20 (ii) AS 11.41.440(a)(2);

21 (iii) AS 11.41.450 - 11.41.458;

22 (iv) AS 11.41.460 [, 11.41.440(a)(2), 11.41.450 -
 23 11.41.458, OR 11.41.460] if the indecent exposure is before a person
 24 under 16 years of age and the offender has a previous conviction for
 25 that offense;

26 (v) [(B)] AS 11.61.125 or 11.61.127;

27 (vi) [(C)] AS 11.66.110 or 11.66.130(a)(2) if the person
 28 who was induced or caused to engage in prostitution was 16 or 17 years
 29 of age at the time of the offense; or

30 (vii) [(D)] former AS 11.15.120, former 11.15.134, or
 31 assault with the intent to commit rape under former AS 11.15.160,

former AS 11.40.110, or **former** 11.40.200;

* **Sec. 15.** AS 12.63.100 is amended by adding a new paragraph to read:

(7) "conviction" means that an adult, or a juvenile charged as an adult under AS 47.12 or a similar procedure in another jurisdiction, has entered a plea of guilty, guilty but mentally ill, or nolo contendere, or has been found guilty or guilty but mentally ill by a court or jury, of a sex offense or child kidnapping regardless of whether the judgment was set aside under AS 12.55.085 or a similar procedure in another jurisdiction or was the subject of a pardon or other executive clemency; "conviction" does not include a judgment that has been reversed or vacated by a court.

* **Sec. 16.** APPLICABILITY OF SECTIONS 2 - 6 AND 9 - 11. Sections 2 - 6 and 9 - 11 of this Act apply to offenses committed on or after the effective date of this Act. However, previous convictions refer to convictions occurring before, on, or after the effective date of this Act.

* **Sec. 17.** APPLICABILITY OF SECTIONS 12 - 14. (a) A sex offender or child kidnapper with, before the effective date of this Act, (1) one conviction for an aggravated sex offense that is a violation of AS 11.41.110(a)(3); (2) two or more convictions for child kidnapping with at least one being a violation of AS 11.41.110(a)(3); or (3) one conviction for a child kidnapping that is a violation of AS 11.41.110(a)(3) and one conviction for a sex offense, regardless of whether the offender or kidnapper has been unconditionally discharged from that conviction or convictions, shall register under AS 12.63.010 by the 60th day after the effective date of this Act. A sex offender or child kidnapper who does not have a conviction for a sex offense, who has only one conviction for a child kidnapping that is a violation of AS 11.41.110(a)(3), and who has been unconditionally discharged from that child kidnapping on or after July 1, 1984, but before the effective date of this Act shall register under and otherwise comply with AS 12.63 by the 60th day after the effective date of this Act. A sex offender or child kidnapper who does not have a conviction for a sex offense, who has only one conviction for a child kidnapping, and who has been unconditionally discharged from a child kidnapping that is a violation of AS 11.41.110(a)(3), before July 1, 1984, is not required to register under this Act.

(b) A conviction for a sex offense or child kidnapping before the effective date of this Act is a sex offense or child kidnapping for the purpose of the duration of registration

1 requirement of AS 12.63.020(a).

2 (c) In this section, "aggravated sex offense," "child kidnapping," "sex offender or child
3 kidnapper," and "sex offense" have the meanings given by AS 12.63.100, as amended by
4 secs. 12 - 14 of this Act.

5 * **Sec. 18.** APPLICABILITY OF SECTION 15. (a) The clarification of the definition of
6 "conviction" contained in sec. 15 of this Act applies to convictions that occurred before, on,
7 or after the effective date of this Act, except that a sex offender or child kidnapper with only
8 one conviction for a sex offense or child kidnapping that is not an aggravated sex offense and
9 who has been unconditionally discharged from that conviction before July 1, 1984, is not
10 required to register under AS 12.63.

11 (b) A conviction for a sex offense or child kidnapping before the effective date of this
12 Act is a sex offense or child kidnapping for purposes of the duration of registration
13 requirements of AS 12.63.020(a).

14 (c) In this section, "aggravated sex offense," "child kidnapping," "conviction," "sex
15 offender or child kidnapper," and "sex offense" have the meanings given in AS 12.63.100, as
16 amended by secs. 12 - 15 of this Act.

17 * **Sec. 19.** This Act takes effect immediately under AS 01.10.070(c).