

HOUSE BILL NO. 14

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES LINCOLN, Claman, Fields, Spohnholz, Tarr

Introduced: 1/7/19

Referred: Prefiled

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'; and providing for an aggravating factor at
3 sentencing for strangulation that results in unconsciousness."

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

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

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

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

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

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

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

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

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

6 * **Sec. 2.** AS 11.41.425(a) is amended to read:

7 (a) An offender commits the crime of sexual assault in the third degree if the
8 offender

9 (1) engages in sexual contact with a person who the offender knows is

10 (A) mentally incapable;

11 (B) incapacitated; or

12 (C) unaware that a sexual act is being committed;

13 (2) while employed in a state correctional facility or other placement
14 designated by the commissioner of corrections for the custody and care of prisoners,
15 engages in sexual penetration with a person who the offender knows is committed to
16 the custody of the Department of Corrections to serve a term of imprisonment or
17 period of temporary commitment;

18 (3) engages in sexual penetration with a person 18 or 19 years of age
19 who the offender knows is committed to the custody of the Department of Health and
20 Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of
21 the person;

22 (4) while employed in the state by a law enforcement agency as a
23 peace officer, or while acting as a peace officer in the state, engages in sexual
24 penetration with a person with reckless disregard that the person is in the custody or
25 the apparent custody of the offender, or is committed to the custody of a law
26 enforcement agency;

27 (5) while employed by the state or a municipality of the state as a
28 probation officer or parole officer, or while acting as a probation officer or parole
29 officer in the state, engages in sexual penetration with a person with reckless disregard
30 that the person is on probation or parole; [OR]

31 (6) while employed as a juvenile probation officer or as a juvenile

1 facility staff, engages in sexual penetration with a person 18 or 19 years of age with
 2 reckless disregard that the person is committed to the custody or probationary
 3 supervision of the Department of Health and Social Services; or

4 **(7) engages in masturbation in the presence of another person and**
 5 **ejaculates on that person without the consent of that person.**

6 * **Sec. 3.** AS 11.41.438(a) is amended to read:

7 (a) An offender commits the crime of sexual abuse of a minor in the third
 8 degree if

9 **(1) being 17 years of age or older, the offender engages in sexual**
 10 **contact with a person who is 13, 14, or 15 years of age and at least four years younger**
 11 **than the offender; or**

12 **(2) the offender masturbates in the presence of a person**

13 **(A) under 18 years of age and ejaculates on that person,**

14 **and the**

15 **(i) offender is the victim's natural parent,**
 16 **stepparent, adoptive parent, or legal guardian;**

17 **(ii) victim at the time of the offense is residing in the**
 18 **same household as the offender and the offender has authority over**
 19 **the victim; or**

20 **(iii) offender occupies a position of authority in**
 21 **relation to the victim; or**

22 **(B) under 16 years of age and ejaculates on that person,**

23 **and the victim is at least three years younger than the offender.**

24 * **Sec. 4.** AS 11.81.900(b)(15) is amended to read:

25 (15) "dangerous instrument" means

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

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

1 * **Sec. 5.** AS 12.10.010(b) is amended to read:

2 (b) Except as otherwise provided by law or in (a) of this section, a person may
3 not be prosecuted, tried, or punished for an offense unless the indictment is found or
4 the information or complaint is instituted not later than

5 (1) 10 years after the commission of a felony offense in violation of
6 AS 11.41.120 - 11.41.330, 11.41.425(a)(1), 11.41.425(a)(5) - (7) [11.41.425(a)(5),
7 11.41.425(a)(6)], or 11.41.450 - 11.41.458; or

8 (2) five years after the commission of any other offense.

9 * **Sec. 6.** AS 12.55.155(c) is amended to read:

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

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

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

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

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

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

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

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

31 (8) the defendant's prior criminal history includes conduct involving

1 aggravated assaultive behavior, repeated instances of assaultive behavior, repeated
2 instances of cruelty to animals proscribed under AS 11.61.140(a)(1) and (3) - (5), or a
3 combination of assaultive behavior and cruelty to animals proscribed under
4 AS 11.61.140(a)(1) and (3) - (5); in this paragraph, "aggravated assaultive behavior"
5 means assault that is a felony under AS 11.41, or a similar provision in another
6 jurisdiction;

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

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

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

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

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

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

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

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

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

31 (18) the offense was a felony

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

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

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

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

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

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

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

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

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

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

30 (A) the offense involved the delivery of a controlled substance
31 under circumstances manifesting an intent to distribute the substance as part of

1 a commercial enterprise; or

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

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

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

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

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

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

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

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

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

23 (30) the defendant is convicted of an offense specified in AS 11.41.410
24 - 11.41.455, and the defendant knowingly supplied alcohol or a controlled substance to
25 the victim in furtherance of the offense with the intent to make the victim
26 incapacitated; in this paragraph, "incapacitated" has the meaning given in
27 AS 11.41.470;

28 (31) the defendant's prior criminal history includes convictions for five
29 or more crimes in this or another jurisdiction that are class A misdemeanors under the
30 law of this state, or having elements similar to a class A misdemeanor; two or more
31 convictions arising out of a single continuous episode are considered a single

1 conviction; however, an offense is not a part of a continuous episode if committed
 2 while attempting to escape or resist arrest or if it is an assault on a uniformed or
 3 otherwise clearly identified peace officer or correctional employee; notice and denial
 4 of convictions are governed by AS 12.55.145(b) - (d);

5 (32) the offense is a violation of AS 11.41 or AS 11.46.400 and the
 6 offense occurred on school grounds, on a school bus, at a school-sponsored event, or
 7 in the administrative offices of a school district if students are educated at that office;
 8 in this paragraph,

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

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

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

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

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

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

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

27 (A) "health care facility" has the meaning given in
 28 AS 18.07.111;

29 (B) "medical professional" has the meaning given in
 30 AS 12.55.135(k);

31 **(37) the defendant knowingly caused the victim to become**

1 **unconscious by means of a dangerous instrument; in this paragraph, "dangerous**
2 **instrument" has the meaning given in AS 11.81.900(b)(15)(B).**

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

5 APPLICABILITY. AS 11.41.200(a), as amended by sec. 1 of this Act,
6 AS 11.41.425(a), as amended by sec. 2 of this Act, AS 11.41.438(a), as amended by sec. 3 of
7 this Act, AS 11.81.900(b)(15), as amended by sec. 4 of this Act, AS 12.10.010(b), as
8 amended by sec. 5 of this Act, and AS 12.55.155(c), as amended by sec. 6 of this Act, apply
9 to offenses committed on or after the effective date of this Act.