



West's Alaska Statutes Annotated [Currentness](#)

Title 11. Criminal Law

[Chapter 61](#). Offenses Against Public Order

[Article 2](#). Weapons and Explosives

→ § **11.61.200. Misconduct involving weapons in the third degree**

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

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

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

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

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

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

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

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

(8) violates [AS 11.46.320](#) or [11.46.330](#) by entering or remaining unlawfully on premises or in a propelled vehicle in violation of a provision of an order issued or filed under [AS 18.66.100-18.66.180](#) or issued under former [AS 25.35.010](#)(b) or 25.35.020 and, during the violation, possesses on the person a defensive weapon or a deadly weapon, other than an ordinary pocketknife;

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

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

(11) discharges a firearm from a propelled vehicle while the vehicle is being operated in circumstances other than described in [AS 11.61.190\(a\)\(2\)](#); or

(12) knowingly possesses a firearm that is concealed on the person after having been convicted of a felony or adjudicated a delinquent minor for conduct that would constitute a felony if committed by an adult by a court of this state, a court of the United States, or a court of another state or territory.

(b) It is an affirmative defense to a prosecution

(1) under (a)(1) of this section that

(A) the person convicted of the prior offense on which the action is based received a pardon for that conviction;

(B) the underlying conviction upon which the action is based has been set aside under [AS 12.55.085](#) or as a result of post-conviction proceedings; or

(C) a period of 10 years or more has elapsed between the date of the person's unconditional discharge on the prior offense or adjudication of juvenile delinquency and the date of the violation of (a)(1) of this section, and the prior conviction or adjudication of juvenile delinquency did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory;

(2) under (a)(2) or (10) of this section that

(A) the person convicted of the prior offense on which the action is based received a pardon for that conviction;

(B) the underlying conviction upon which the action is based has been set aside under [AS 12.55.085](#) or as a result of post-conviction proceedings; or

(C) a period of 10 years or more has elapsed between the date of the person's unconditional discharge on the prior offense and the date of the violation of (a)(2) or (10) of this section, and the prior conviction did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory.

(c) It is an affirmative defense to a prosecution under (a)(3) of this section that the manufacture, possession, transportation, sale, or transfer of the prohibited weapon was in accordance with registration under [26 U.S.C. 5801 - 5872](#) (National Firearms Act).

(d) It is an affirmative defense to a prosecution under (a)(11) of this section that the person was using a firearm while hunting, trapping, or fishing in a manner not prohibited by statute or regulation.

(e) The provisions of (a)(3) and (11) of this section do not apply to a peace officer acting within the scope and authority of the officer's employment.

(f) For purposes of (a)(12) of this section, a firearm on a person is concealed if it is covered or enclosed in any manner so that an observer cannot determine that it is a firearm without removing it from that which covers or encloses it or without opening, lifting, or removing that which covers or encloses it. A firearm on a person is not concealed if it is unloaded and is encased in a closed container designed for transporting firearms.

(g) It is an affirmative defense to a prosecution under (a)(12) of this section that

(1) either

(A) the defendant convicted of the prior offense on which the action is based received a pardon for that conviction;

tion;

(B) the underlying conviction upon which the action is based has been set aside under [AS 12.55.085](#) or as a result of post-conviction proceedings; or

(C) a period of 10 years or more has elapsed between the date of the defendant's unconditional discharge on the prior offense or adjudication of juvenile delinquency and the date of the violation of (a)(12) of this section, and the prior conviction or adjudication of juvenile delinquency did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory; and

(2) at the time of possession, the defendant was

(A) in the defendant's dwelling or on land owned or leased by the defendant appurtenant to the dwelling; or

(B) actually engaged in lawful hunting, fishing, trapping, or other lawful outdoor activity that necessarily involves the carrying of a weapon for personal protection.

(h) As used in this section,

(1) "prohibited weapon" means any

(A) explosive, incendiary, or noxious gas

(i) mine or device that is designed, made, or adapted for the purpose of inflicting serious physical injury or death;

(ii) rocket, other than an emergency flare, having a propellant charge of more than four ounces;

(iii) bomb; or

(iv) grenade;

(B) device designed, made, or adapted to muffle the report of a firearm;

(C) firearm that is capable of shooting more than one shot automatically, without manual reloading, by a single function of the trigger; or

(D) rifle with a barrel length of less than 16 inches, shotgun with a barrel length of less than 18 inches, or firearm made from a rifle or shotgun which, as modified, has an overall length of less than 26 inches;

(2) "unconditional discharge" has the meaning ascribed to it in [AS 12.55.185](#).

(i) Misconduct involving weapons in the third degree is a class C felony.

CREDIT(S)

SLA 1978, ch. 166, § 7; [SLA 1990, ch. 63, § 1](#); [SLA 1990, ch. 189, § 1](#); [SLA 1991, ch. 59, §§ 4--6](#); [SLA 1991, ch. 64, § 3](#); [SLA 1992, ch. 79, §§ 11--14](#); [SLA 1994, ch. 113, §§ 2, 3](#); [SLA 1996, ch. 60, § 4](#); [SLA 1996, ch. 64, § 7](#); [SLA](#)

[1998, ch. 1, §§ 1, 2.](#)



#### CROSS REFERENCES

Attempt, classification of offenses, see [§ 11.31.100](#).  
Classification of offenses, see [§ 11.81.250](#).  
Felonies, sentence of imprisonment, see [§ 12.55.125](#).  
Fines, see [§ 12.55.035](#).  
Legal accountability based upon the conduct of another, see [§§ 11.16.110](#) and [11.16.120](#).  
Offenses defined by statute, see [§ 11.81.220](#).  
Prior convictions, effect on sentencing, see [§ 12.55.145](#).  
Restitution and compensation, see [§ 12.55.045](#).  
Victims of crimes, rights, see [§ 12.61.010 et seq.](#)

#### LAW REVIEW AND JOURNAL COMMENTARIES

Compelling testimony in Alaska: The coming rejection of use and derivative use immunity. Jeffrey M. Feldman and Stuart A. Ollanik. [3 Alaska L. Rev. 229 \(December 1986\)](#).

#### LIBRARY REFERENCES

[Explosives](#)  [4](#).  
[Weapons](#)  [4](#) to [15](#).  
Westlaw Key Number Searches: 164k4; 406k4 to 406k15.  
[C.J.S. Explosives §§ 9](#) to [14](#), [20](#), [22](#), [26](#), [31](#).  
[C.J.S. Weapons §§ 9](#) to [27](#), [29](#) to [30](#), [37](#) to [48](#).

#### UNITED STATES CODE ANNOTATED

Drive by shooting, federal crimes and offenses, see [18 U.S.C.A. § 36](#).

Explosives and other dangerous articles, federal crimes and offenses, see [18 U.S.C.A. § 831 et seq.](#); [18 U.S.C.A. § 841 et seq.](#)

Firearms and weapons offenses, federal crimes and offenses, see [18 U.S.C.A. § 921 et seq.](#)

#### UNITED STATES SUPREME COURT

Weapons offenses,


Possession of firearm by convicted felons, misdemeanor crime of domestic violence, domestic relationship as element of predicate offense, see [U.S. v. Hayes, 2009, 129 S.Ct. 1079, 172 L.Ed.2d 816](#).

Use of firearm, firearm traded for drugs, see [Watson v. U.S., 2007, 128 S.Ct. 579, 552 U.S. 74, 169 L.Ed.2d 472](#).


#### NOTES OF DECISIONS

In general [2](#)  
 Admissibility of evidence [15](#)  
 Aggravation and mitigation, sentence and punishment [19](#)  
 Arrest [12](#)  
 Attorney discipline [11](#)  
 Defenses [10](#)  
 Double jeopardy [5](#)  
 Due process [4](#)  
 Equal protection [3](#)  
 Instructions [16](#)  
 Joint or separate trial [13](#)  
 Nature and elements of offense [9](#)  
 Pleas [14](#)  
 Probation and related dispositions, sentence and punishment [20](#)  
 Review [22](#)  
 Right of association [6](#)  
 Right to keep and bear arms [7](#)  
 Right to privacy [8](#)  
 Sentence and punishment [18-21](#)  
     Sentence and punishment - In general [18](#)  
     Sentence and punishment - Aggravation and mitigation [19](#)  
     Sentence and punishment - Probation and related dispositions [20](#)  
     Sentence and punishment - Sufficiency [21](#)  
 Sufficiency, sentence and punishment [21](#)  
 Sufficiency of evidence [17](#)  
 Validity [1/2](#)  
 Validity of prior laws [1](#)


### [1/2](#). Validity

Statute that prohibited a convicted felon from possessing a concealable firearm did not violate Alaska Constitution's provision guaranteeing an individual's right to keep and bear arms. [Wilson v. State, 2009, 2009 WL 1424468](#). [Weapons](#) 3

#### [1](#). Validity of prior laws

Term “gravity knife,” which is included as prohibited weapon under statute making it a felony to possess such weapon, is not unconstitutionally vague; “gravity knife” is commonly understood as knife in which blade opens, falls into place, or is ejected into position by force of gravity or by centrifugal force, and “gravity knife” is included in statute in conjunction with switchblade knife, thus providing ordinary person with notice that “gravity knife” must be similar to switchblade in operating automatically or semiautomatically. AS 11.61.200(e)(1)(D). [State v. Weaver, 1987, 736 P.2d 781](#). [Weapons](#) 3

#### [2](#). In general

Legislature has considerable discretion in creating classifications denoting which former felons can possess firearm and classifications need not be perfect. AS 11.61.200(b); [Const. Art. 1, § 6](#). [McCracken v. State, 1987, 743 P.2d 382](#), dismissal of habeas corpus reversed [985 F.2d 573](#). [Weapons](#) 2

#### [3](#). Equal protection

Statute defining misconduct involving weapons in the first degree, requiring passage of five years from unconditional discharge on prior felony offense before a person can possess firearm, did not violate equal protection clause of State Constitution, even though statute provided that receipt of pardon for prior conviction or having conviction set aside was affirmative defense. AS 11.61.200(b); [Const. Art. 1, § 6. \*McCracken v. State\*, 1987, 743 P.2d 382](#), dismissal of habeas corpus reversed [985 F.2d 573. \*Constitutional Law\* 3234; \*Weapons\* 3](#)

#### 4. Due process

State did not deny defendant due process under Alaska Constitution by convicting him on a felon in possession charge even though his underlying conviction was reversed on constitutional grounds. AS 11.61.200(a)(1). [Clark v. State, 1987, 739 P.2d 777. \*Constitutional Law\* 4509\(25\)](#)

In prosecution of an ex-convict for possessing a concealable weapon, State was not required, as a matter of due process, to establish defendant's awareness of statute prohibiting such conduct. [U.S.C.A. Const. Amend. 14. \*Afcan v. State\*, 1986, 711 P.2d 1198. \*Constitutional Law\* 4694](#)

#### 5. Double jeopardy

Conviction in the Court of the Municipal Magistrate of Anchorage, Alaska, of the crime of carrying a concealed weapon, in violation of an ordinance of that city did not bar prosecution on the same facts under Alaska statute forbidding persons convicted of a felony involving assault and like crimes from carrying firearms capable of being concealed upon the person. Act March 3, 1899, §§ 107, 143, 146, 147, 30 Stat. 1296, 1301; [U.S.C.A. Const. Amend. 5; Laws Alaska 1947, c. 70. \*U.S. v. Farwell\*, 1948, 11 Alaska 507, 76 F.Supp. 35. \*Double Jeopardy\* 187](#)

#### 6. Right of association

Statute prohibiting felon from residing in dwelling with knowledge that concealable firearm was kept there, unless permission had been given by court or local law enforcement, did not infringe upon felon's First Amendment right of association by prohibiting felon from living with his family, absent assertion that stepson who owned gun was unwilling to keep gun elsewhere or that felon had ever applied to court or law enforcement for permission to reside in dwelling with gun. [U.S.C.A. Const. Amend. 1; AS 11.61.200\(a\)\(10\). \*Morgan v. State\* \(1997\) Alaska App., 943 P.2d 1208](#), denial of habeas corpus affirmed [242 F.3d 382. \*Constitutional Law\* 1443; \*Weapons\* 3](#)


#### 7. Right to keep and bear arms


Statute prohibiting felon from residing in dwelling with knowledge that concealable firearm was kept there, unless permission had been given by court or local law enforcement, does not violate right to keep and bear arms, guaranteed by state constitution. [Const. Art. 1, § 19; AS 11.61.200\(a\)\(10\). \*Morgan v. State\* \(1997\) Alaska App., 943 P.2d 1208](#), denial of habeas corpus affirmed [242 F.3d 382. \*Weapons\* 3](#)


#### 8. Right to privacy


Statute which makes possession of "gravity knife" in one's home a felony does not violate right to privacy under State Constitution; legislature may properly prohibit possession of object which interferes in serious manner with health, safety, rights, and privileges of others, or with public welfare. AS 11.61.200(a)(3); [Const. Art. 1, § 22. \*State v. Weaver\*, 1987, 736 P.2d 781. \*Constitutional Law\* 1225; \*Weapons\* 3](#)


#### 9. Nature and elements of offense


The state forbidding persons convicted of a felony involving assault and like crimes from carrying firearms capable of being concealed upon the person did not forbid consideration of felony committed in Oregon seven years earlier, the statute being otherwise valid. Laws Alaska 1947, c. 70. [U.S. v. Farwell, 1948, 11 Alaska 507, 76 F.Supp. 35. Weapons](#) 


A .45 caliber Colt Automatic pistol was a “firearm capable of being concealed upon the person” within statute forbidding persons convicted of felony involving assault and like crimes from carrying a “firearm capable of being concealed upon the person.” Laws Alaska 1947, c. 70. [U.S. v. Farwell, 1948, 11 Alaska 507, 76 F.Supp. 35. Weapons](#) 


Defendants who either have entered guilty plea or have been found guilty of felony at trial are “convicted of a felony” for purposes of the felon in possession of a firearm statute. AS 11.61.200(a)(1). [Brant v. State \(1999\) Alaska App., 992 P.2d 590. Weapons](#) 


Felon can be convicted of violating statute prohibiting felon from residing in dwelling with knowledge that concealable firearm is kept there unless permission has been given by court or local law enforcement, even if felon was unaware of statute; it is widely known that felons are subject to variety of legal disabilities and restrictions, which thus makes it reasonable to hold felons to duty of inquiry concerning such restrictions. AS 11.61.200(a)(10), [11.81.620\(a\). Morgan v. State \(1997\) Alaska App., 943 P.2d 1208](#), denial of habeas corpus affirmed [242 F.3d 382. Weapons](#) 


Related set aside of conviction, following completion of probation on suspended imposition of sentence, related back to date defendant was discharged from probation and, thus, previous conviction could not be used as basis for subsequent conviction of possessing weapon after having been previously convicted of felony. AS 11.61.200, [12.55.085; Rules Crim.Proc., Rules 11\(h\)\(2\), 35.2. Hansen v. State, 1992, 824 P.2d 1384. Weapons](#) 


Butterfly knife is not “switchblade or gravity knife” and therefore does not qualify as prohibited weapon. AS 11.61.200(a)(3), (e)(1)(D). [Jacobson v. State, 1990, 786 P.2d 388. Weapons](#) 


“Butterfly” or “balisong knife” was not “switchblade” or “gravity knife” for purposes of statute making it felony to possess prohibited weapon which is defined to include switchblade or gravity knife. AS 11.61.200(a)(3), (e)(1)(D). [State v. Strange, 1990, 785 P.2d 563. Weapons](#) 


Convicted felon's possession of partner's handgun for less than one-half hour for purpose of pawning it constituted “possession” within meaning of felon-in-possession statute. AS 11.61.200(a)(1). [Baker v. State, 1989, 781 P.2d 1368. Weapons](#) 


Prosecution was not required to prove that defendant had notice or knowledge that his conduct in possessing firearm constituted crime in order to convict defendant of misconduct involving weapons in the first degree. AS 11.61.200(a)(1). [McCracken v. State, 1987, 743 P.2d 382](#), dismissal of habeas corpus reversed [985 F.2d 573. Weapons](#) 

Defendant violated felon in possession law by possessing a concealable firearm while underlying conviction was on appeal, notwithstanding that underlying conviction was later reversed. AS 11.61.200(a)(1). [Clark v. State, 1987, 739 P.2d 777. Weapons](#) 


In prosecution of an exconvict for possessing a concealable weapon, State was not required to establish defendant's awareness of statute prohibiting such conduct. [AS 11.81.620\(a\). Afcan v. State, 1986, 711 P.2d 1198. Weapons](#) 


Defendant could be convicted of being a felon in possession of a concealable firearm while predicate conviction was on appeal and sentence stayed. AS 11.61.200(a)(1). [Berg v. State, 1985, 711 P.2d 553. Weapons](#) 4


Guilt of possession of gun by felon does not require actual possession and custody or control is sufficient, but knowledge is prerequisite to possession, control or custody. AS 11.55.030. [Davis v. State, 1972, 499 P.2d 1025, certiorari granted 93 S.Ct. 1392, 410 U.S. 925, 35 L.Ed.2d 586, reversed 94 S.Ct. 1105, 415 U.S. 308, 39 L.Ed.2d 347. Weapons](#) 4


Weapon is “concealed” if it is hidden from ordinary observation, and need not be absolutely invisible to other persons. AS 11.55.030. [McKee v. State, 1971, 488 P.2d 1039. Weapons](#) 10

## 10. Defenses


Applicant whose prior felony conviction was pardoned by governor would not have affirmative defense to unlawful possession of firearm by convicted felon, and thus, applicant was not eligible for permit to carry concealed weapon under state law, in that he would be subject to criminal liability if he carried concealed handgun in any place outside his dwelling or land appurtenant to dwelling or carried handgun while not engaged in lawful hunting, fishing or trapping, or other lawful activity. [Gabrielle v. State, Dept. of Public Safety \(2007\) Alaska, 158 P.3d 813. Weapons](#) 12

Defendant's alleged reliance on fact that probation officer failed to inform him of statute prohibiting felon from residing in home in which concealable firearm was kept did not present sufficient basis to assert statutory mistake-of-law defense to prosecution for violation of weapons statute. AS 11.61.200(a)(10), [11.81.420\(a\), \(b\)\(1\). Morgan v. State \(1997\) Alaska App., 943 P.2d 1208, denial of habeas corpus affirmed 242 F.3d 382. Criminal Law](#) 32

Defendant's personal belief that he was not convicted for purposes of the felon in possession statute during the pendency of the appeal of the underlying conviction was not sufficient to establish the defense of mistake of law. AS 11.61.200(b)(1-3). [Clark v. State, 1987, 739 P.2d 777. Criminal Law](#) 32

Affirmative defenses provided under felon in possession statute arise only when the actions described therein occurred before the felon in possession offense was committed. AS 11.61.200(b)(1-3). [Clark v. State, 1987, 739 P.2d 777. Weapons](#) 4

## 11. Attorney discipline

Federal crime of aiding and abetting a convicted felon and mental defective in receiving ammunition is a “serious crime” within meaning of bar rule, which provides that an attorney convicted of a serious crime shall be suspended from practice pending final disposition of a disciplinary proceeding and which defines a “serious crime,” in part, as including any crime that would be a felony in state, though state does not specifically prohibit furnishing ammunition to a convicted felon. State Bar Rules, rules 12, 16(c), 23, 23(d); [18 U.S.C.A. §§ 2, 922\(h\); AS 11.55.030, 12.15.010. Matter of Robson, 1978, 575 P.2d 771. Attorney And Client](#) 39

## 12. Arrest

Police officer had probable cause for warrantless seizure and search of contents of plastic box containing crack cocaine, which was found on defendant's person during search incident to arrest for possessing firearm while intoxicated; officer's knowledge that type of glass pipe found on defendant was commonly used to smoke cocaine and that people who smoke cocaine and possess pipe usually carry cocaine, furnished probable cause for arrest of defendant for un-



lawful possession of drugs as well as probable cause for search of contents of plastic box for cocaine, and officer's observations of defendant's erratic behavior while possessing firearm, provided probable cause for officer to believe that defendant was high and thus to search defendant's person for cocaine. AS 11.61.200(a)(1), [11.71.040\(a\)\(3\)\(A\)](#). [Snider v. State \(1998\) Alaska App., 958 P.2d 1114. Arrest ↪71.1\(6\)](#)

Where officer knew that hand guns and ammunition had been taken in recent burglary committed near where defendant was walking, he knew defendant had a criminal record, the hour was late, protrusions in defendant's coat were unusual and the position of his hand suggested that he was carrying a hand gun, officer was justified in stopping defendant and, when defendant kept his hand positioned so as to suggest that he was carrying unholstered gun, a search of defendant was also proper and gun uncovered by search should not be suppressed. AS 11.20.100, 11.55.010, 11.55.03 (Repealed); [Const. Art. 1, § 14. Ozenna v. State, 1980, 619 P.2d 477. Arrest ↪63.5\(5\); Arrest ↪63.5\(8\)](#)

### 13. Joint or separate trial

Trial judge did not abuse his discretion in denying defendant's motion for severance filed on morning of trial on ground that it was not timely where misconduct involving weapons in first degree was properly joined to kidnapping and other charges since all the charges were based on the same act or transaction, severance of the misconduct involving weapons charged would have resulted in essentially the same evidence being presented twice to two different juries, defendant made no showing that his failure to move for a severance was in any way related to State's misconduct in making late discovery, there was no claim that counsel obtained any new information which would justify failure to move for severance at earlier time and where it appeared that there could have been strategic reasons for the fact that defendant did not make his motion to sever at an earlier time. Rules Crim.Proc., Rules 8(a), 12(b, c, e), 16(f)(3); [AS 11.41.200\(a\)\(1, 3\)](#), 11.61.200(a). [Wortham v. State, 1984, 689 P.2d 1133. Criminal Law ↪620\(7\)](#)

Joint trial of defendant for not only crimes of burglary and larceny but also the crime of possession, by a person convicted of felony, of a firearm capable of being concealed on person was not so prejudicial as to require reversal of judgment and ordering of separate trials where jury was not told nature of prior conviction involved possession of firearm count and there was nothing inflammatory about way fact of prior conviction was presented to jury. [Mead v. State, 1968, 445 P.2d 229](#), certiorari denied [90 S.Ct. 117, 396 U.S. 855, 24 L.Ed.2d 104. Criminal Law ↪1166\(6\)](#)


### 14. Pleas


Refusing to let defendant withdraw guilty plea to charge of possessing weapon after having been convicted of felony was error given that defendant was entitled to set aside of previous conviction after completing probation on suspended imposition of sentence, and defendant was misinformed by his attorney when defendant entered his plea. AS 11.61.200; Rules Crim.Proc., Rules 11(h)(2), 35.2. [Hansen v. State, 1992, 824 P.2d 1384. Criminal Law ↪274\(4\); Criminal Law ↪274\(8\)](#)


### 15. Admissibility of evidence


Trial judge acted within his discretion, during prosecution for possession of altered firearm, in permitting police officer to testify as to why serial number would be removed from firearm; officer's testimony was not speculative, but was instead based on her experience and training with handguns. AS 11.61.200(a)(6). [Collins v. State \(1999\) Alaska App., 977 P.2d 741. Criminal Law ↪474.5; Criminal Law ↪476.1](#)


Evidence of defendant's prior conviction was admissible in prosecution for misconduct involving weapon, even though defendant had conceded existence of prior felony conviction and that his prior conviction precluded him from possessing concealable firearm, as jury had legitimate right to be informed of all elements of crime charged and of proof bearing on those elements so that jurors would not be misled to think that they were being asked to convict

defendant for mere possession of firearm. AS 11.61.200(a)(1); [Rules of Evid., Rule 404](#)(b)(1). [State v. McLaughlin, 1993, 860 P.2d 1270, Criminal Law](#)  661


Any error in trial court's failure to withhold from jury evidence of defendant's prior convictions in light of his proffered stipulation, for purposes of charge of misconduct involving weapons in first degree, that he had prior felony conviction, was harmless, given strength of state's case against defendant on robbery, murder, assault, and attempted murder charges; defendant conceded that he was guilty of robbery, was in possession of handgun, and had previously been convicted of felony, defendant was arrested at scene, his identity was not in doubt, and evidence of intent in shooting at police officers was overwhelming. [Rules of Evid., Rule 403](#); [Rules Crim.Proc., Rule 47](#)(a); AS 11.61.200(a)(1). [Weitz v. State, 1990, 794 P.2d 952, Criminal Law](#)  1168(2)


Admission of prior felony charge in prosecution of defendant for kidnapping and misconduct involving weapons in first degree did not result in such unfair prejudice to defendant that he was entitled to new trial in spite of fact that his motion to sever was untimely, where defendant stipulated to existence of prior felony, jury was not informed of nature of conviction, evidence of prior conviction came in with minimum emphasis, and there was no emphasis on existence of prior conviction during remainder of trial, notwithstanding that court failed to give limiting instruction that prior felony was admissible only for purpose of proving misconduct involving weapons charge. [AS 11.41.200](#)(a)(1, 3), 11.61.200(a). [Wortham v. State, 1984, 689 P.2d 1133, Criminal Law](#)  1169.11


In prosecution of defendant for kidnapping, assault, robbery and misconduct involving weapons, trial judge did not abuse his discretion in refusing to admit testimony of defendant's proffered witness which was offered on narrow ground that pimp would not go to police if he had dispute with someone like defendant but that pimp and defendant would try to work things out, where defendant was able to introduce evidence through another witness' testimony that victim was a pimp, jurors could reason that pimp would prefer not to contact police and proffered witness' testimony would not have assisted jury in understanding defendant's case that victim was pimp who had disagreement with defendant and would be biased against him. [AS 11.41.200](#)(a)(1, 3), [11.41.300](#)(a)(1), (a)(1)(E), 11.61.200(a); [Rules of Evid., Rules 403, 702, Wortham v. State, 1984, 689 P.2d 1133, Witnesses](#)  374(1)


Eyewitness' testimony, in prosecution for being a convict in possession of a prohibited weapon, that defendant took knife from his pocket, described how he had stabbed and raped his sister-in-law, mentioned he was on parole, and kissed witness was admissible to explain why defendant would be the kind of person who would carry a concealed weapon in a public building and exhibit it to a virtual stranger. [McKee v. State, 1971, 488 P.2d 1039, Weapons](#)  17(3)


## 16. Instructions


Ambiguity of definition of constructive possession in defendant's trial for weapons offenses after the police recovered a pistol from under the passenger seat of the vehicle in which he was riding, was harmless; the defense was that defendant did not know the pistol was under the seat, but the alleged flaw in the instruction would make a difference only if defendant conceded he was aware of the pistol; moreover, defendant was also convicted of possession of firearm in furtherance of a drug felony, so jury necessarily found that defendant knowingly possessed the pistol in aid or in furtherance of his drug offense. AS 11.61.200(a)(1). [Alex v. State \(2006\) Alaska App., 127 P.3d 847, rehearing denied, dismissal of post-conviction relief vacated 210 P.3d 1225, Criminal Law](#)  1172.1(3)

Defendant was not entitled to instruction on defense of necessity in trial for misconduct involving weapons in the first degree, despite defendant's testimony that he received threats from relatives of victim of defendant's former felony offense, absent showing that defendant had taken reasonable steps, other than illegally purchasing concealable firearm, in order to defend himself. AS 11.61.200(a)(1), [11.81.320, McCracken v. State, 1987, 743 P.2d 382, dismissal of habeas corpus reversed 985 F.2d 573, Weapons](#)  17(6)


In prosecution of defendant for kidnapping and misconduct involving weapons in first degree, trial court's failure to give limiting instruction that prior felony was admissible only for purpose of proving the misconduct involving the weapons charge was not plain error where defendant never requested limiting instruction, although defendant was entitled to limiting instruction if he had requested one and better practice would have been for trial judge to have offered to give limiting instruction. [AS 11.41.200\(a\)\(1, 3\)](#), 11.61.200(a). [Wortham v. State, 1984, 689 P.2d 1133. Criminal Law](#) 1038.2


In prosecution of defendant for kidnapping, assault, robbery, and misconduct involving weapons, trial court did not err in refusing to give defendant's proposed instruction which summarized his theory of the case that victim voluntarily accompanied defendant, that victim had possessed the firearm involved and that victim was wounded as a result of his own actions in a struggle over the weapon, where instructions informed jury of elements of the crimes, law of self-defense and necessity, burden of proof, witness credibility and bias, defendant's theory of defense was adequately covered in the instructions which were given and defendant's attorney was able to argue the defense theory in closing argument. [AS 11.41.200\(a\)\(1, 3\)](#), [11.41.300\(a\)\(1\)](#), (a)(1)(E), 11.61.200(a). [Wortham v. State, 1984, 689 P.2d 1133. Criminal Law](#) 829(4)


Where possession of concealable firearm by defendant, a convicted felon, was the only crime charged, where idea of obtaining firearm originated with defendant while he was in prison, where defendant retained exclusive control over firearm until it was later found by prison officials, and where defendant's cell mate shared no dominion and control over the gun, there was no basis from which jury could have reasonably inferred that cell mate was an accomplice, and thus trial judge did not err in refusing to give accomplice instruction to jury. AS 11.55.030; Rules of Criminal Procedure, rule 30(b)(2). [Gordon v. State, 1975, 533 P.2d 25. Criminal Law](#) 780(1)


Defendant charged with being a convict in possession of a prohibited concealed weapon was entitled to an instruction defining the term "concealed." AS 11.55.030. [McKee v. State, 1971, 488 P.2d 1039. Criminal Law](#) 800(2)

#### 17. Sufficiency of evidence


Evidence that accused had been convicted of assault with intent to rob under the laws of Oregon and that at time of his subsequent arrest he had in his possession a .45 caliber Colt Automatic pistol justified conviction under Alaska statute forbidding persons convicted of a felony involving assault and like crimes from carrying a firearm capable of being concealed upon the person. Laws Alaska 1947, c. 70. [U.S. v. Farwell, 1948, 11 Alaska 507, 76 F.Supp. 35. Weapons](#) 17(4)





There was sufficient evidence that defendant possessed firearm knowing that its serial number had been altered with intent of rendering firearm untraceable to support his conviction for possession of altered firearm; defendant admitted that he purchased two handguns, including the altered handgun, on street from person he did not know for \$50, the loaded handguns were found under mattress of bed in bedroom where defendant was found, and police officers testified that removal of serial number from weapon exhibited intent to render that firearm untraceable. AS 11.61.200(a)(6). [Collins v. State \(1999\) Alaska App., 977 P.2d 741. Weapons](#) 17(4)


In prosecution of an ex-convict for possessing a concealable weapon, State fully satisfied its burden of establishing defendant's culpable mental state by showing: that defendant knew he had been convicted of a felony; that he knew he had been discharged from probation for the felony within the past five years; and that he knew he was in possession of a concealable firearm. AS 11.61.200(a)(1), [11.81.610\(b\)\(2\)](#). [Afcan v. State, 1986, 711 P.2d 1198. Weapons](#) 17(4)


Evidence sustained conviction for possession of pistol by felon, despite claim that exclusive possession was not established and although pistol did not have clip. AS 11.55.030. [Davis v. State, 1972, 499 P.2d 1025](#), certiorari granted [93 S.Ct. 1392, 410 U.S. 925, 35 L.Ed.2d 586](#), reversed [94 S.Ct. 1105, 415 U.S. 308, 39 L.Ed.2d 347. Weapons](#) 17(4)


### 18. Sentence and punishment--In general



Imposition of maximum sentence upon conviction for misconduct involving weapons in first degree was not clearly mistaken where state proved that defendant's prior criminal history included repeated instances of assaultive behavior and that defendant had three or more prior felony convictions. AS 11.61.200(a)(1), [12.55.125\(e\)\(2\)](#), [12.55.155\(c\)\(8, 15\)](#). [Simmons v. State, 1995, 899 P.2d 931](#). [Weapons](#) 17(8)


Sentence of 11 years in prison for combination of crimes consisting of first-degree burglary, second-degree theft, first-degree weapons misconduct, and forgery was not excessive, where trial court found that defendant was third felony offender who could not be deterred or easily rehabilitated, and maximum term for defendant's single most serious offense was ten years. [AS 11.46.130\(b\)](#), [11.46.300\(b\)](#), 11.61.200(f); [AS 12.55.185\(9\)](#) (1990). [Wesolic v. State, 1992, 837 P.2d 130](#). [Burglary](#) 49; [Forgery](#) 51; [Larceny](#) 88; [Weapons](#) 17(8)


Defendant's abuse of his landlord's trust by burglarizing locked bedrooms and garage of home while landlord was absent was proper factor to consider when judging seriousness of burglary for purposes of sentencing. [AS 11.46.130\(b\)](#), [11.46.300\(b\)](#), 11.61.200(f), [12.55.155\(c\)\(15, 20, 21\)](#), (d)(9); [AS 12.55.185\(9\)](#) (1990). [Wesolic v. State, 1992, 837 P.2d 130](#). [Burglary](#) 49


Defendant's prior sentences in Oregon for unauthorized use of motor vehicle and in Fairbanks for first-degree burglary and driving while intoxicated were sufficiently significant to support finding that defendant was danger to community, as basis for making defendant's sentence for misconduct involving weapons consecutive to defendant's sentences for first-degree burglary counts. [AS 11.46.300\(a\)\(2\)\(A\)](#), 11.61.200(a)(1), [12.55.125\(d\)\(1\)](#), (e)(1), [12.55.155\(c\)\(20\)](#). [Ecklund v. State, 1986, 730 P.2d 161](#). [Sentencing And Punishment](#) 602


Trial court should, prior to imposing sentence, inquire of defendant and his counsel and resolve any factual questions in dispute regarding defendant's credit for time served based on conditions of presentence release, and should expressly identify those periods of time for which credit is to be allowed. [AS 11.41.220\(a\)\(2\)](#), 11.61.200(a)(1), [12.55.125\(e\)\(1\)](#). [Ackermann v. State, 1986, 716 P.2d 5](#). [Sentencing And Punishment](#) 354



In sentencing defendant on convictions of assault in the first degree, kidnapping, robbery in the first degree, and misconduct involving weapons in the first degree, trial judge was authorized to impose consecutive sentences and was also free to give little weight to mitigating factor that, except for misconduct involving weapons charge, defendant's former charges consisting of five prior felony offenses were less serious offenses than his current charges. [AS 11.41.200\(a\)\(1, 3\)](#), [11.41.300\(a\)\(1\)](#), (a)(1)(E), 11.61.200(a); [AS 12.55.155\(d\)\(8\)](#) (Repealed). [Wortham v. State, 1984, 689 P.2d 1133](#). [Sentencing And Punishment](#) 94; [Sentencing And Punishment](#) 590


Three-judge panel could legitimately conclude that conduct of defendant, who was convicted of first-degree misconduct involving weapons on basis of his possession of a handgun, was not the least serious included in the definition of the offense; furthermore, review of defendant's entire criminal record supported finding by three-judge panel and by original sentencing judge that defendant's conduct exhibited contempt for the law and law enforcement warranting a substantial sanction. AS 11.61.200(a), [12.55.155\(d\)\(9, 13\)](#). [Shaw v. State, 1983, 673 P.2d 781](#), modified on rehearing [677 P.2d 259](#), appeal after new sentencing hearing [1985 WL 1078167](#). [Weapons](#) 17(8)


Three-judge panel was not clearly mistaken in determining that presumptive sentence for misconduct involving weapons in the first degree was not manifestly unjust. AS 11.61.200(a)(1), (f). [Shaw v. State, 1983, 673 P.2d 781](#), modified on rehearing [677 P.2d 259](#), appeal after new sentencing hearing [1985 WL 1078167](#). [Sentencing And Punishment](#) 77


Defendant convicted of misconduct involving weapons in the first degree, with prior convictions for assault with dangerous weapon and felon in possession of weapon, could properly be sentenced as third offender, even though a prior conviction was necessary element of both the present charge of misconduct involving weapons and the prior conviction of felon in possession of a weapon; same conviction could be used to prove element of misconduct involving weapons as well as to trigger application of presumptive sentencing. AS 11.61.200(a)(1), [12.55.125\(e\)\(2\)](#), [12.55.155\(c\)](#). [Gilbreath v. State, 1983, 668 P.2d 1354](#). [Sentencing And Punishment](#) 1349


Even though defendant's prior felony conviction was a necessary element of the offense involving violation of statute prohibiting felons from possessing any concealable firearm, such conviction could form basis for applying presumptive sentence applicable to second felony offender. AS 11.61.200(a)(1), [12.55.125](#), [12.55.155](#), [12.55.185\(7\)](#). [Fry v. State, 1983, 655 P.2d 789](#). [Sentencing And Punishment](#) 94

In prosecution for assault in third degree and misconduct involving weapons in first degree, trial court erred in imposing sentence in excess of presumptive sentence absent finding of aggravating factors, even if excess term was suspended. [AS 11.41.220](#), 11.61.200(a)(1), [12.55.155-12.55.175](#). [McManners v. State, 1982, 650 P.2d 414](#). [Assault And Battery](#) 100; [Weapons](#) 17(8)


Fact that, with regard to process of determining sentence to be imposed for offense of being a felon in possession of a prohibited weapon, accused's prior "police contacts" not leading to convictions were discussed in ascertaining length of time he had served on a prior conviction and other matters did not prejudice accused, in view of indication that such police contacts were not a significant factor in trial court's decision to impose four-year sentence. AS 11.55.030, 11.55.040. [Deveroux v. State, 1976, 548 P.2d 1296](#). [Criminal Law](#) 1177.3(2)

Where plea bargain entered into by accused, who pled guilty to being a felon in possession of a prohibited weapon, entailed his admitting, for purposes of sentencing, a charge of larceny in a building, such charge could be considered for sentencing purposes, though the charge was dropped. AS 11.55.030, 11.55.040. [Deveroux v. State, 1976, 548 P.2d 1296](#). [Sentencing And Punishment](#) 98

Though some of accused's prior convictions of 11 criminal offenses and 13 traffic offenses were petty in nature, the number of such convictions warranted their consideration in determining sentence to be imposed for accused's offense of being a felon in possession of a prohibited weapon. AS 11.55.030, 11.55.040. [Deveroux v. State, 1976, 548 P.2d 1296](#). [Sentencing And Punishment](#) 95

Trial court, in stating that "there is no question in my mind that \* \* \* [defendant] is a danger to society" and in indicating that court had considered and rejected the possibility of rehabilitation "at least \* \* \* unless there is a complete change of attitude by the defendant," sufficiently articulated court's reasons for and purpose to be served by imposition of four-year sentence against defendant for offense of being a felon in possession of a prohibited weapon. AS 11.55.030, 11.55.040. [Deveroux v. State, 1976, 548 P.2d 1296](#). [Sentencing And Punishment](#) 373

#### 19. ---- Aggravation and mitigation, sentence and punishment

Defendant's actions which formed the basis of his third-degree weapons misconduct conviction were not among the least serious forms of conduct encompassed by the crime of weapons misconduct, and thus was not a mitigating factor for sentencing purposes; court found that defendant was legally intoxicated and had concealed his loaded weapon under his clothing. AS 11.61.200(a)(1), [12.55.155\(d\)\(9\)](#). [Brockway v. State \(2001\) Alaska App., 37 P.3d 427](#). [Sentencing And Punishment](#) 66

Fact that defendant waited until owner of home was absent before burglarizing home was not mitigating factor with respect to sentencing for first-degree burglary conviction. [AS 11.46.130\(b\)](#), [11.46.300\(b\)](#), 11.61.200(f),

[12.55.155\(c\)\(15, 20, 21\)](#), [\(d\)\(9\)](#); [AS 12.55.185\(9\)](#) (1990). [Wesolic v. State, 1992, 837 P.2d 130](#). [Burglary](#) 49

Mitigating factor for cases where defendant's conduct is among least serious conduct within definition of offense may be applied to offense of felon in possession of concealable firearm. AS 11.61.200(a)(1), [12.55.155\(d\)\(9\)](#). [State v. LaPorte, 1983, 672 P.2d 466](#). [Weapons](#) 17(8)

Though offense of misconduct involving weapons in the first degree is defined in terms merely of knowing possession of a firearm, aggravating factor of directing the “conduct constituting the offense” at a law enforcement officer was shown by evidence that gun was pointing directly at officer when defendant first turned, that defendant refused at least three times to drop the weapon, and that defendant knew that person confronting him was a police officer. AS 11.61.200(a)(1), [12.55.155\(c\)\(13\)](#). [Gilbreath v. State, 1983, 668 P.2d 1354](#). [Sentencing And Punishment](#) 124

Aggravating factor of directing “conduct constituting the offense” at a law enforcement officer was applicable, despite defendant's contention that offense of misconduct involving weapons in the first degree was “complete” when police officer first saw him with the gun, before defendant was even aware of officer's presence. AS 11.61.200(a)(1), [12.55.155\(c\)\(13\)](#). [Gilbreath v. State, 1983, 668 P.2d 1354](#). [Sentencing And Punishment](#) 124

“Most serious conduct” aggravating factor with respect to offense of misconduct involving weapons in the first degree was shown by possession of concealable weapon by defendant, who was a felon, under circumstances indicating possible intent to use the weapon against a police officer or another. AS 11.61.200(a)(1), [12.55.155\(c\)\(10\)](#). [Gilbreath v. State, 1983, 668 P.2d 1354](#). [Sentencing And Punishment](#) 79

Finding of mitigating factor that harm caused by defendant's conduct was “consistently minor and inconsistent with the imposition of a substantial period of imprisonment” was not warranted, given circumstances of instant offense of misconduct involving weapon in the first degree and nature of defendant's original felony, an assault with a dangerous weapon in which victim was clearly placed in substantial fear. AS 11.61.200(a)(1), [12.55.155\(d\)\(13\)](#). [Gilbreath v. State, 1983, 668 P.2d 1354](#). [Sentencing And Punishment](#) 84

#### 20. ---- Probation and related dispositions, sentence and punishment

Conviction in which person receives probation and suspended imposition of sentence is to be set aside at time defendant is discharged from probation, unless State can meet its burden of showing good cause why conviction should not be set aside. AS 11.61.200. [Hansen v. State, 1992, 824 P.2d 1384](#). [Sentencing And Punishment](#) 1953

#### 21. ---- Sufficiency, sentence and punishment

Composite sentence of 20 years for 12 offenses in six separate criminal cases was not excessive; defendant could have been sentenced to a term of 20 years imprisonment alone for class A felony burglary, the most serious of the crimes committed by defendant, trial judge found that defendant had not responded to five years worth of prior rehabilitative efforts and that it would be fruitless to place defendant on probation, defendant conceded to two aggravating factors during sentencing, and defendant had been under State supervision since he was 12-years-old. [Smith v. State \(2008\) Alaska App., 187 P.3d 511](#). [Sentencing And Punishment](#) 645

Sentencing defendant, for convictions of two counts of first-degree burglary and one count of first-degree misconduct involving weapons, to concurrent six-year terms with two years suspended for two burglaries and consecutive two-year term for weapons misconduct, was not clearly mistaken. [AS 11.46.300\(a\)\(2\)\(A\)](#), 11.61.200(a)(1), [12.55.125\(d\)\(1\)](#), [\(e\)\(1\)](#), [12.55.155\(c\)\(20\)](#). [Ecklund v. State, 1986, 730 P.2d 161](#). [Burglary](#) 49; [Weapons](#) 17(8)

Defendant's sentence totaling 53 years of imprisonment for convictions of assault in the first degree, misconduct involving weapons in the first degree, kidnapping, and robbery in the first degree was not excessive where trial judge could have properly given great weight to jury's finding that defendant kidnapped victim, intending to injure him and that defendant intentionally shot victim and then robbed him, defendant had record of five prior felony convictions, defendant had served sentences of greater than one year and had not been deterred by these former sentences, and defendant was on parole at time of the offenses and had just completed lengthy sentence four months before. [AS 11.41.200\(a\)\(1, 3\)](#), [11.41.300\(a\)\(1\)](#), [\(a\)\(1\)\(E\)](#), 11.61.200(a). [Wortham v. State, 1984, 689 P.2d 1133. Sentencing And Punishment](#) 🔑645

Sentence on charge of misconduct involving weapons in the first degree was illegal, since sentencing judge gave less than presumptive sentence of two years without finding any mitigating factors, and sentence therefore had to be vacated. AS 11.61.200(a)(1), [12.55.125\(e\)\(1\)](#), (g), [12.55.165. State v. LaPorte, 1983, 672 P.2d 466. Sentencing And Punishment](#) 🔑995

Sentence of five years with 18 months suspended, imposed on conviction of defendant for misconduct involving weapon in the first degree, with two aggravating factors, was not excessive. AS 11.61.200(a)(1), [12.55.155\(c\)\(10, 13\)](#), (d)(13). [Gilbreath v. State, 1983, 668 P.2d 1354. Weapons](#) 🔑17(8)

Imposition of four-year sentence for offense of being a felon in possession of a prohibited weapon was not clearly erroneous with regard to accused who had prior convictions for 13 traffic offenses and 11 criminal offenses including burglary, and who had recently committed a larceny in a building. AS 11.55.030, 11.55.040. [Deveroux v. State, 1976, 548 P.2d 1296. Weapons](#) 🔑17(8)

## 22. Review

In determining meaning of terms “switchblade” and “gravity knife” that are included in definition of prohibited weapons which it is felony to possess, Court of Appeals had to look to general usage for meaning of terms, where neither of the terms was defined in statutes. [AS 01.10.040](#), 11.61.200(a)(3), (e)(1)(D). [State v. Strange, 1990, 785 P.2d 563. Weapons](#) 🔑4

Trial court's failure to make factual finding as to whether knife seized from defendant was “gravity knife” within meaning of statute making possession of such weapon a felony required remand for further proceedings. AS 11.61.200(a)(3). [State v. Weaver, 1987, 736 P.2d 781. Criminal Law](#) 🔑1181.5(3.1)

AS § 11.61.200, AK ST § 11.61.200

Current through the 2009 First Regular Session and First Special Session of the 26th Legislature

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