



Sponsored by: Vice Mayor Molloy and
Council Member Navarre

CITY OF KENAI

RESOLUTION NO. 2020-05

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, SUPPORTING ALASKA HOUSE BILL 198, AN ACT RELATING TO AGGRAVATING FACTORS CONSIDERED AT SENTENCING.

WHEREAS, the City of Kenai is a diverse community, with residents who fall along the full range of sexual orientation and gender identity spectrums; and,

WHEREAS, a series of escalating incidents of harassment and assault in the Central Kenai Peninsula, which were apparently targeted against an individual based on sexual orientation, led to a town hall meeting on January 4, 2020 on the issue of public safety; and,

WHEREAS, law enforcement officials, elected officials, and over 100 Kenai Peninsula residents attended the public town hall meeting, including many residents of the City of Kenai, who discussed hate crime generally and in the Central Kenai Peninsula; and,

WHEREAS, a hate crime may be defined as a criminal offense against a person or property motivated in whole or in part by an offender's bias against the victim's race, religion, disability, sexual orientation, ethnicity, gender, or gender identity; and,

WHEREAS, at present, Alaska Statute 12.55.155(c)(22) provides as an aggravating factor for sentencing for a serious crime that "the defendant knowingly directed the conduct constituting the offense at a victim because of that person's race, sex, color, creed, physical or mental disability, ancestry, or national origin," but does not currently include sexual orientation or gender identity as an aggravating factor for sentencing of a person convicted of the crime; and,

WHEREAS, the fundamental civil and human rights of all individuals should be upheld regardless of a person's race, sex, color, creed, disability, ancestry, national origin, sexual orientation, or gender identity; and,

WHEREAS, criminal offenses motivated in whole or in part by an offender's bias against the victim's sexual orientation or gender identity have no place in our community; and,

WHEREAS, after the town hall meeting, Rep. Andy Josephson introduced HB 198; and,

WHEREAS, Alaska House Bill 198 would amend AS 12.55.155(c)(22) to expand hate crime protections to include "sexual orientation or gender identity";

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA:

Section 1. That the City of Kenai supports the expansion of hate crime protection under AS 12.55.155(c)(22) to include "sexual orientation or gender identity" as an aggravating factor for

sentencing of a person convicted of a crime through Alaska House Bill 198 if the substance of HB 198 as enacted is substantially the same as pre-filed HB 198.

Section 2. That copies of this resolution shall be forwarded to Alaska Representative Gary Knopp, Alaska Representative Ben Carpenter, Alaska Representative Sara Vance, and Alaska Senator Peter Micciche.

Section 3. That this resolution takes effect immediately upon passage.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 5th day of February, 2020.



BRIAN GABRIEL, SR., MAYOR

ATTEST:



Jamie Heinz, CMC, City Clerk





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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council Members
CC: Paul Ostrander, City Manager; Administration
FROM: Vice-Mayor Bob Molloy and Council Member Tim Navarre
DATE: January 27, 2020
SUBJECT: **Resolution No. 2020-05 – Supporting Alaska House Bill 198**

Resolution 2020-05 expresses the Kenai City Council's support of House Bill 198, *An Act Relating To Aggravating Factors Considered At Sentencing*, pre-filed by Rep. Andy Josephson of Anchorage for the Alaska State Legislature's session in 2020, if the substance of HB 198 as enacted is substantially the same as pre-filed HB 198.

A series of escalating incidents of harassment and assault in the Central Kenai Peninsula in 2019, which apparently were targeted against an individual based on sexual orientation, led to a town hall meeting on January 4, 2020 on the issue of public safety. This town hall meeting, open to the public, was attended by over 100 Kenai Peninsula residents, including many residents of the City of Kenai, as well as law enforcement officials and elected officials. Many individuals spoke about incidents of harassment and violence that they had experienced based on their sexual orientation or gender identity.

At the town hall meeting, protection against hate crime was discussed. A hate crime may be defined as a criminal offense against a person or property motivated in whole or in part by an offender's bias against the victim's race, religion, disability, sexual orientation, ethnicity, gender, or gender identity. At present, Alaska Statute 12.55.155(c)(22) provides as an aggravating factor for sentencing for a serious crime that "the defendant knowingly directed the conduct constituting the offense at a victim because of that person's race, sex, color, creed, physical or mental disability, ancestry, or national origin," but does not include sexual orientation or gender identity as an aggravating factor for sentencing of a person convicted of the crime.

After the town hall meeting, Rep. Andy Josephson of Anchorage pre-filed HB 198, and cited incidents in 2019 and this town hall meeting as some of the reasons for this bill. HB 198 would amend AS 12.55.155(c)(22) to expand hate crime protections to include "sexual orientation or gender identity" as aggravating factors for sentencing of a person convicted of a crime. A finding of an aggravating factor allows the sentencing court to increase a presumptive sentence for a crime up to the maximum sentence for that crime.



The City of Kenai is a diverse community, with residents who fall along the full range of sexual orientation and gender identity spectrums. As a matter of public safety, criminal offenses motivated in whole or in part by an offender's bias against the victim's sexual orientation or gender identity have no place in our community.

Council's support of Resolution 2020-05 is respectfully requested.

HOUSE BILL NO. 198

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES JOSEPHSON, Hopkins, Knopp, Kreiss-Tomkins, Spohnholz, Tuck

Introduced: 1/21/20

Referred: State Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to aggravating factors considered at sentencing."**

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

3 *** Section 1.** AS 12.55.155(c) is amended to read:

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

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

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

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

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

15 (5) the defendant knew or reasonably should have known that the

1 victim of the offense was particularly vulnerable or incapable of resistance due to
2 advanced age, disability, ill health, homelessness, consumption of alcohol or drugs, or
3 extreme youth or was for any other reason substantially incapable of exercising
4 normal physical or mental powers of resistance;

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

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

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

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

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

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

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

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

31 (14) the defendant was a member of an organized group of five or

1 more persons, and the offense was committed to further the criminal objectives of the
2 group;

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

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

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

10 (18) the offense was a felony

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

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

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

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

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

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

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

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

5 (22) the defendant knowingly directed the conduct constituting the
6 offense at a victim because of that person's race, sex, **sexual orientation or gender**
7 **identity**, color, creed, physical or mental disability, ancestry, or national origin;

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

9 (A) the offense involved the delivery of a controlled substance
10 under circumstances manifesting an intent to distribute the substance as part of
11 a commercial enterprise; or

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

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

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

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

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

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

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

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

31 (29) the defendant committed the offense for the benefit of, at the

1 direction of, or in association with a criminal street gang;

2 (30) the defendant is convicted of an offense specified in AS 11.41.410
3 - 11.41.455, and the defendant knowingly supplied alcohol or a controlled substance to
4 the victim in furtherance of the offense with the intent to make the victim
5 incapacitated; in this paragraph, "incapacitated" has the meaning given in
6 AS 11.41.470;

7 (31) the defendant's prior criminal history includes convictions for five
8 or more crimes in this or another jurisdiction that are class A misdemeanors under the
9 law of this state, or having elements similar to a class A misdemeanor; two or more
10 convictions arising out of a single continuous episode are considered a single
11 conviction; however, an offense is not a part of a continuous episode if committed
12 while attempting to escape or resist arrest or if it is an assault on a uniformed or
13 otherwise clearly identified peace officer or correctional employee; notice and denial
14 of convictions are governed by AS 12.55.145(b) - (d);

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

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

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

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

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

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

31 (35) the defendant knowingly directed the conduct constituting the

1 offense at a victim because that person was 65 years of age or older;

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

6 (A) "health care facility" has the meaning given in
7 AS 18.07.111;

8 (B) "medical professional" has the meaning given in
9 AS 12.55.135(k);

10 (37) the defendant knowingly caused the victim to become
11 unconscious by means of a dangerous instrument; in this paragraph, "dangerous
12 instrument" has the meaning given in AS 11.81.900(b)(15)(B).