



# LAWS OF ALASKA

1988

**Source**

CSHB 237 (Jud)

**Chapter No.**

66

**AN ACT**

Relating to physical and sexual offenses against children; amending the definitions of the crimes of murder in the second degree and assault in the first degree; relating to the joinder of offenses of the same or similar character and the admissibility in a criminal proceeding of evidence of prior acts; amending Rule 8(a) of the Alaska Rules of Criminal Procedure; amending Rule 404(b) of the Alaska Rules of Evidence; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1, LINE 17.

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: May 27, 1988  
Actual Effective Date: May 28, 1988

AN ACT

Relating to physical and sexual offenses against children; amending the definitions of the crimes of murder in the second degree and assault in the first degree; relating to the joinder of offenses of the same or similar character and the admissibility in a criminal proceeding of evidence of prior acts; amending Rule 8(a) of the Alaska Rules of Criminal Procedure; amending Rule 404(b) of the Alaska Rules of Evidence; and providing for an effective date.

\* Section 1. 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 [INTENTIONALLY PERFORMS AN ACT] that results in the death of another person under circumstances manifesting an extreme indifference to the value of human life; or

(3) acting either alone or with one or more persons, the person commits or attempts to commit arson in the first degree, kidnapping, sexual assault in the first degree under AS 11.41.410(a)(1)

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or (2), sexual assault in the second degree, burglary in the first degree, escape in the first or second degree, or robbery in any degree and, in the course of or in furtherance of that crime, or in immediate flight from that crime, any person causes the death of a person other than one of the participants.

\* Sec. 2. AS 11.41.200(a) is amended to read:

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

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

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

(3) the person knowingly engages in conduct [INTENTIONALLY PERFORMS AN ACT] that results in serious physical injury to another under circumstances manifesting extreme indifference to the value of human life.

\* Sec. 3. AS 11.41.434(a) is amended to read:

(a) An offender commits the crime of sexual abuse of a minor in the first degree if

(1) being 16 years of age or older, the offender engages in sexual penetration with a person who is under 13 years of age or aids, induces, causes, or encourages a person who is under 13 years of age to engage in sexual penetration with another person; [OR]

(2) being 18 years of age or older, the offender engages in sexual penetration with a person who is under 18 years of age and who

(A) is entrusted to the offender's care by authority of law; or

(B) is the offender's son or daughter, including an illegitimate or adopted child, or a stepchild; or

(3) being 18 years of age or older, the offender engages in

1 sexual penetration with a person who is under 16 years of age, and the  
2 victim at the time of the offense is

3 (A) residing as a member of the social unit in the  
4 same household as the offender and the offender is in a position  
5 of authority over the victim; or

6 (B) temporarily entrusted to the offender's care.

7 \* Sec. 4. AS 11.41.436(a) is amended to read:

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

10 (1) being 16 years of age or older, the offender engages in  
11 sexual penetration with a person who is 13, 14, or 15 years of age and  
12 at least three years younger than the offender, or aids, induces,  
13 causes or encourages a person who is 13, 14, or 15 years of age and at  
14 least three years younger than the offender to engage in sexual pene-  
15 tration with another person;

6 (2) being 16 years of age or older, the offender engages in  
7 sexual contact with a person who is under 13 years of age or aids,  
8 induces, causes, or encourages a person under 13 years of age to  
9 engage in sexual contact with another person;

3 (3) being 18 years of age or older, the offender engages in  
4 sexual contact with a person who is under 18 years of age and who

(A) is entrusted to the offender's care by authority  
of law; or

(B) is the offender's son or daughter, including an  
illegitimate or adopted child, or a stepchild; [OR]

(4) being 16 years of age or older, the offender aids,  
induces, causes, or encourages a person who is under 16 years of age  
to engage in conduct described in AS 11.41.455(a)(2) - (6); or

(5) being 18 years of age or older, the offender engages in

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1 sexual contact with a person who is under 16 years of age, and the  
2 victim at the time of the offense is

3 (A) residing as a member of the social unit in the  
4 same household as the offender and the offender is in a position  
5 of authority over the victim; or

6 (B) temporarily entrusted to the offender's care.

7 \* Sec. 5. AS 12.55.025(e) is amended to read:

8 (e) Except as provided in (g) and (h) of this section, if the  
9 defendant has been convicted of two or more crimes, sentences of  
10 imprisonment shall run consecutively. If the defendant is imprisoned  
11 upon a previous judgment of conviction for a crime, the judgment shall  
12 provide that the imprisonment commences at the expiration of the term  
13 imposed by the previous judgment.

14 \* Sec. 6. AS 12.55.025 is amended by adding a new subsection to read:

15 (h) If the defendant has been convicted of two or more crimes  
16 under AS 11.41.200 - 11.41.250 or 11.41.410 - 11.41.455 in which the  
17 victim or victims of the crimes were minors and the judgment on any of  
18 the convictions has not been entered, the court shall impose some  
19 consecutive period of imprisonment for each conviction.

20 \* Sec. 7. AS 12.55.155(c) is amended to read:

21 (c) The following factors shall be considered by the sentencing  
22 court and may aggravate the presumptive terms set out in AS 12.55.125:

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

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

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

29 (4) the defendant employed a dangerous instrument i

1 furtherance of the offense;

2 (5) the defendant knew or reasonably should have known that  
3 the victim of the offense was particularly vulnerable or incapable of  
4 resistance due to advanced age, disability, ill health, or extreme  
5 youth or was for any other reason substantially incapable of exercis-  
6 ing normal physical or mental powers of resistance;

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

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

12 (8) the defendant's prior criminal history includes conduct  
13 involving aggravated or repeated instances of assaultive behavior;

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

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

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

22 (12) the defendant was on release under AS 12.30.020 or  
23 12.30.040 for another felony charge or conviction or for a misdemeanor  
24 charge or conviction having assault as a necessary element;

25 (13) the defendant knowingly directed the conduct constitut-  
ing the offense at an active officer of the court or at an active or  
former judicial officer, prosecuting attorney, law enforcement offi-  
cer, correctional employee, fire fighter, emergency medical techni-  
cian, paramedic, ambulance attendant, or other emergency responder.

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during or because of the exercise of official duties;

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

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

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

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

(18) the offense was a crime

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

(B) specified in AS 11.41.410 - 11.41.460 and was committed against a minor, and the defendant has engaged in the same or similar conduct involving the same or another victim who was a minor;

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

(20) the defendant was on furlough under AS 33.30 or on parole or probation for another felony charge or conviction;

(21) the defendant has a criminal history of repeated instances of conduct violative of criminal laws, whether punishable as felonies or misdemeanors, similar in nature to the offense for which

1 the defendant is being sentenced under this section;

2 (22) the defendant knowingly directed the conduct constitut-  
3 ing the offense at a victim because of that person's race, sex, color,  
4 creed, physical or mental disability, ancestry, or national origin;

5 (23) the defendant is convicted of an offense specified in  
6 AS 11.71 and the offense involved the delivery of a controlled sub-  
7 stance under circumstances manifesting an intent to distribute the  
8 substance as part of a commercial enterprise;

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

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

15 (26) the defendant is convicted of an offense specified in  
16 AS 11.71 and the offense involved the distribution of a controlled  
17 substance that had been adulterated with a toxic substance.

18 \* Sec. 8. Rule 8(a), Alaska Rules of Criminal Procedure, is amended to  
19 read:

20 (a) JOINDER OF OFFENSES. Two or more offenses may be charged in  
21 the same indictment or information in a separate count for each of-  
22 fense if the offenses charged, whether felonies, misdemeanors or both,

23 (1) are of the same or similar character and it can be  
24 determined before trial that it is likely that evidence of one charged  
25 offense would be admissible to prove another charged offense.

26 (2) [OR] are based on the same act or transaction, or

27 (3) are based on two or more acts or transactions connected  
28 together or constituting parts of a common scheme or plan.

29 \* Sec. 9. Rule 404(b), Alaska Rules of Evidence, is amended to read:

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(b) Other Crimes, Wrongs, or Acts

(1) Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(2) In a prosecution for a crime involving a physical or sexual assault or abuse of a minor, evidence of other acts by the defendant toward the same or another child is admissible to show a common scheme or plan if admission of the evidence is not precluded by another rule of evidence and if the prior offenses

(i) are not too remote in time;

(ii) are similar to the offense charged; and

(iii) were committed upon persons similar to the prosecuting witness.

\* Sec. 10. Section 9 of this Act is retroactive and applies

(1) to evidence of acts committed before the effective date of this Act; and

(2) in trials involving offenses committed before the effective date of this Act.

\* Sec. 11. This Act takes effect immediately under AS 01.10.070(c).