



LAWS OF ALASKA

1990

Source

CSHB 238(Jud)

Chapter No.

4

AN ACT

Eliminating the age limitations in the definitions of crimes of sexual assault and the distinctions between types of first degree sexual assault in certain criminal statutes; relating to causes of action brought by adult victims based on injury suffered as a result of sexual abuse to a minor under 16 years of age, and to the statute of limitations applicable to those causes of action; extending the period in which civil actions are tolled for persons with mental disabilities, and extending to three years the statute of limitations for civil actions brought by victims of sexual abuse; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1, LINE 20

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TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.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: February 1, 1990
Actual Effective Date: February 2, 1990

AN ACT

Eliminating the age limitations in the definitions of crimes of sexual assault and the distinctions between types of first degree sexual assault in certain criminal statutes; relating to causes of action brought by adult victims based on injury suffered as a result of sexual abuse to a minor under 16 years of age, and to the statute of limitations applicable to those causes of action; extending the period in which civil actions are tolled for persons with mental disabilities, and extending to three years the statute of limitations for civil actions brought by victims of sexual abuse; and providing for an effective date.

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

* Section 1. AS 09.10.060 is amended by adding a new subsection to read:

(c) A person who was the victim of sexual abuse may not maintain an action for recovery of damages against the perpetrator of the act or acts of sexual abuse based on the perpetrator's intentional conduct for an injury or condition suffered as a result of the sexual abuse unless commenced within three years. In this subsection, "sexual abuse" means an act committed by the defendant against the plaintiff maintaining the cause of action if the defendant's conduct would have violated a provision of AS 11.41.410 - 11.41.440 or 11.41.450 -

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11.41.455 at the time it was committed.

* Sec. 2. AS 09.10.140 is amended to read:

Sec. 09.10.140. DISABILITIES OF MINORITY AND INCOMPETENCY. If a person entitled to bring an action mentioned in this chapter is at the time the cause of action accrues either (1) under the age of majority, or (2) incompetent by reason of mental illness or mental disability, the time of a [THE] disability identified in (1) or (2) of this section is not a part of the time limit [LIMITED] for the commencement of the action. Except as provided in (b) of this section, the [THE] period within which the action may be brought is not extended in any case longer than two years after the disability ceases.

* Sec. 3. AS 09.10.140 is amended by adding a new subsection to read:

(b) An action based on a claim of sexual abuse under AS 09.55.-650 may be brought more than three years after the plaintiff reaches the age of majority if it is brought under the following circumstances:

(1) if the claim asserts that the defendant committed one act of sexual abuse on the plaintiff, the plaintiff shall commence the action within three years after the plaintiff discovered or through use of reasonable diligence should have discovered that the act caused the injury or condition;

(2) if the claim asserts that the defendant committed more than one act of sexual abuse on the plaintiff, the plaintiff shall commence the action within three years after the plaintiff discovered or through use of reasonable diligence should have discovered the effect of the injury or condition attributable to the series of acts; a claim based on an assertion of more than one act of sexual abuse is not limited to plaintiff's first discovery of the relationship between any one of those acts and the injury or condition, but may be based on

plaintiff's discovery of the effect of the series of acts.

* Sec. 4. AS 09.55 is amended by adding a new section to read:

ARTICLE 8. ACTIONS BY A VICTIM BASED ON
SEXUAL ABUSE AS A MINOR UNDER 16 YEARS OF AGE.

Sec. 09.55.650. CLAIM BASED ON SEXUAL ABUSE AS A MINOR UNDER 16 YEARS OF AGE. (a) A person who, as a minor under 16 years of age, was the victim of sexual abuse may maintain an action for recovery of damages against the perpetrator of the act or acts of sexual abuse based on the perpetrator's intentional conduct for an injury or condition suffered as a result of the sexual abuse.

(b) If the defendant committed more than one act of sexual abuse on the plaintiff, the plaintiff is not required to prove which specific act caused the injury.

(c) In this section "sexual abuse" means an act committed by the defendant against the plaintiff maintaining the cause of action if the defendant's conduct would have violated a provision of AS 11.41.410 - 11.41.440 or 11.41.450 - 11.41.455, former AS 11.15.120, 11.15.134, or 11.15.160, or former AS 11.40.110 at the time it was committed.

* Sec. 5. AS 11.41.110(a) is amended to read:

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

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

(2) the person knowingly engages in conduct that results in the death of another person under circumstances manifesting an extreme indifference to the value of human life; or

(3) acting either alone or with one or more persons, the person commits or attempts to commit arson in the first degree,

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1 kidnapping, sexual assault in the first degree [UNDER AS 11.41.-
2 410(a)(1) OR (2)], sexual assault in the second degree, burglary in
3 the first degree, escape in the first or second degree, or robbery in
4 any degree and, in the course of or in furtherance of that crime, or
5 in immediate flight from that crime, any person causes the death of a
6 person other than one of the participants.

7 * Sec. 6. AS 11.41.300(d) is amended to read:

8 (d) In a prosecution for kidnapping, it is an affirmative de-
9 fense which reduces the crime to a class A felony that the defendant
10 voluntarily caused the release of the victim alive in a safe place
11 before arrest, or within 24 hours after arrest, without having caused
12 serious physical injury to the victim and without having engaged in
13 conduct described in AS 11.41.410(a) [AS 11.41.410(a)(1) OR (2)] or
14 11.41.420.

15 * Sec. 7. AS 11.41.410(a) is amended to read:

16 (a) A person commits the crime of sexual assault in the first
17 degree if [,]

18 (1) [BEING ANY AGE,] the defendant engages in sexual pene-
19 tration with another person without consent of that person;

20 (2) [BEING ANY AGE,] the defendant attempts to engage in
21 sexual penetration with another person without consent of that person
22 and causes serious physical injury to that person; or

23 (3) [BEING OVER THE AGE OF 18,] the defendant engages in
24 sexual penetration with another person

25 (A) who the defendant knows is mentally incapable; and

26 (B) who is entrusted to the defendant's care

27 (i) by authority of law; or

28 (ii) in a facility or program that is required by
29 law to be licensed by the Department of Health and Social

Services.

* Sec. 8. AS 11.41.420(a) is amended to read:

(a) An offender commits the crime of sexual assault in the second degree if

(1) the offender engages in sexual contact with another person without consent of that person;

(2) [BEING OVER THE AGE OF 18,] the offender engages in sexual contact with a person

(A) who the offender knows is mentally incapable; and

(B) who is entrusted to the offender's care

(i) by authority of law; or

(ii) in a facility or program that is required by law to be licensed by the Department of Health and Social Services; or

(3) [BEING OVER THE AGE OF 18,] the offender engages in sexual penetration with a person who the offender knows is

(A) mentally incapable; or

(B) incapacitated.

* Sec. 9. AS 11.41.425(a) is amended to read:

(a) An offender commits the crime of sexual assault in the third degree if [BEING OVER THE AGE OF 18,] the offender engages in sexual contact with a person who the offender knows is

(1) mentally incapable; or

(2) incapacitated [TEMPORARILY INCAPABLE OF APPRAISING THE NATURE OF THE PERSON'S CONDUCT AND IS PHYSICALLY UNABLE TO EXPRESS UNWILLINGNESS TO ACT].

* Sec. 10. AS 11.81.335(a) is amended to read:

(a) Except as provided in (b) of this section, a person may use deadly force upon another person when and to the extent

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1 (1) the use of nondeadly force is justified under AS 11.81.-
2 330; and

3 (2) the person reasonably believes the use of deadly force
4 is necessary for self defense against death, serious physical injury,
5 kidnapping, sexual assault in the first degree [UNDER AS 11.41.-
6 410(a)(1) OR (2)], sexual assault in the second degree, or robbery in
7 any degree.

8 * Sec. 11. APPLICABILITY. Sections 2 - 4 of this Act apply to all
9 actions commenced on or after the effective date of this Act, regardless of
10 when the cause of action may have arisen.

11 * Sec. 12. This Act takes effect immediately under AS 01.10.070(c).
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