

CS FOR HOUSE BILL NO. 205(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 5/3/95

Referred: State Affairs, Judiciary

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to a claim based on criminal street gang activity; relating to
2 offenses related to criminal street gang activities; relating to the crime of
3 recruitment for, sentencing for, and forfeiture of property relating to criminal
4 street gang activities; restricting criminal street gang offenders from obtaining a
5 permit to carry a concealed handgun; amending Alaska Rule of Civil Procedure
6 82; and providing for an effective date."

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

8 * **Section 1.** AS 09.55 is amended by adding a new section to read:

9 Sec. 09.55.700. CLAIM BASED ON CRIMINAL GANG ACTIVITY. (a)

10 A person who has been coerced, intimidated, threatened, or otherwise harmed by
11 another person as a result of that other person's participation in a criminal street gang
12 has a civil cause of action for treble damages against that other person and, if that
13 other person is an unemancipated minor under the age of 18, against the parent of the

1 minor for acts that were committed by the minor. However, a parent of a minor who
2 is a runaway or missing person is not liable under this subsection for the acts of the
3 minor that are committed by the minor after the parent has made a report to a law
4 enforcement agency, as authorized by AS 47.10.141(a), that the minor has run away
5 or is missing. In this subsection, "minor who is a runaway or missing person" means
6 a minor who a parent reasonably believes is absent from the minor's residence for the
7 purpose of evading the parent or who is otherwise missing from the minor's usual
8 place of abode without the consent of the parent.

9 (b) A prevailing party who had a civil cause of action for treble damages
10 under (a) of this section may recover full reasonable attorney fees.

11 (c) In this section, "criminal street gang" has the meaning given in
12 AS 11.81.900(b).

13 * **Sec. 2.** AS 11.61 is amended by adding new sections to article 1 to read:

14 Sec. 11.61.160. RECRUITING A GANG MEMBER IN THE FIRST
15 DEGREE. (a) A person commits the crime of recruiting a gang member in the first
16 degree if the person uses or threatens the use of force against a person or property to
17 induce another person to participate in a criminal street gang or to commit a crime on
18 behalf of a criminal street gang.

19 (b) Recruiting a gang member in the first degree is a class C felony.

20 Sec. 11.61.165. RECRUITING A GANG MEMBER IN THE SECOND
21 DEGREE. (a) A person commits the crime of recruiting a gang member in the
22 second degree if the person is over 18 years of age and, without force or the threat of
23 force, encourages or recruits a person who is under 18 years of age and at least three
24 years younger than the offender to participate in a criminal street gang.

25 (b) Recruiting a gang member in the second degree is a class A misdemeanor.

26 * **Sec. 3.** AS 11.81.900(b) is amended by adding a new paragraph to read:

27 (59) "criminal street gang" means a group of three or more persons
28 who

29 (A) have in common a name or identifying sign, symbol, tattoo
30 or other physical marking, style of dress, or use of hand signs; and

31 (B) either individually, jointly, or in combination, have

1 committed or attempted to commit, within the preceding three years, for the
2 benefit of, at the direction of, or in association with the group, two or more
3 offenses under any, or any combination of, the following:

4 (i) AS 11.41;

5 (ii) AS 11.46; or

6 (iii) any other felony offense.

7 * **Sec. 4.** AS 12.55.015(a) is amended to read:

8 (a) Except as limited by AS 12.55.125 - 12.55.175, the court, in imposing
9 sentence on a defendant convicted of an offense, may singly or in combination

10 (1) impose a

11 (A) fine when authorized by law and as provided in
12 AS 12.55.035; or

13 (B) [A] day fine when authorized by law and as provided in
14 AS 12.55.036, if the court does not impose a term of periodic or continuous
15 imprisonment or place the defendant on probation;

16 (2) order the defendant to be placed on probation under conditions
17 specified by the court that may include provision for active supervision;

18 (3) impose a definite term of periodic imprisonment;

19 (4) impose a definite term of continuous imprisonment;

20 (5) order the defendant to make restitution under AS 12.55.045;

21 (6) order the defendant to carry out a continuous or periodic program
22 of community work under AS 12.55.055;

23 (7) suspend execution of all or a portion of the sentence imposed under
24 AS 12.55.080;

25 (8) suspend imposition of sentence under AS 12.55.085;

26 (9) order the forfeiture to the commissioner of public safety of a deadly
27 weapon that was in the actual possession of or used by the defendant during the
28 commission of an offense described in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

29 (10) order the defendant, while incarcerated, to participate in or comply
30 with the treatment plan of a rehabilitation program that is related to the defendant's
31 offense or to the defendant's rehabilitation if the program is made available to the

1 defendant by the Department of Corrections;

2 (11) order the forfeiture to the state of a motor vehicle, weapon,
3 electronic communication device, or money or other valuables, used in or obtained
4 through an offense that was committed for the benefit of, at the direction of, or
5 in association with a criminal street gang.

6 * **Sec. 5.** AS 12.55 is amended by adding a new section to read:

7 Sec. 12.55.137. PENALTIES FOR GANG ACTIVITIES. (a) If a class B
8 misdemeanor offense was committed for the benefit of, at the direction of, or in
9 association with a criminal street gang, the offense is a class A misdemeanor.

10 (b) If a class A misdemeanor offense was committed for the benefit of, at the
11 direction of, or in association with a criminal street gang, the offense is a class C
12 felony.

13 * **Sec. 6.** AS 12.55.155(c) is amended by adding a new paragraph to read:

14 (29) the defendant committed the offense for the benefit of, at the
15 direction of, or in association with a criminal street gang.

16 * **Sec. 7.** AS 12.55.185 is amended by adding a new paragraph to read:

17 (14) "criminal street gang" has the meaning given in AS 11.81.900(b).

18 * **Sec. 8.** AS 18.65.705(4) is amended to read:

19 (4) has not been convicted, within the five years immediately preceding
20 the application, of, and is not currently charged under a complaint, information,
21 indictment, or presentment with, any of the following misdemeanor offenses or similar
22 laws of another jurisdiction:

23 (A) AS 11.41.230, 11.41.250, 11.41.270;

24 (B) AS 11.46.315, 11.46.320, 11.46.330, 11.46.430, 11.46.484;

25 (C) AS 11.51.130;

26 (D) AS 11.56.330, 11.56.350, 11.56.380, 11.56.545, 11.56.700,
27 11.56.710, 11.56.740, 11.56.780, 11.56.790, 11.56.800, 11.56.805;

28 (E) AS 11.61.110, 11.61.120, **11.61.165**, 11.61.210, 11.61.220,
29 11.61.240; or

30 (F) AS 11.71.050, 11.71.060;

31 * **Sec. 9.** AS 18.65.705 is amended by adding a new paragraph to read:

1 (17) has not been sentenced under AS 12.55.137 for an offense.

2 * **Sec. 10.** This Act applies to an act that occurred on or after the effective date of this Act.

3 * **Sec. 11.** AS 09.55.700(b), added by sec. 1 of this Act, has the effect of changing Alaska
4 Rule of Civil Procedure 82 by requiring an award of full reasonable attorney fees to persons
5 who have been harmed as a result of certain criminal gang activity.

6 * **Sec. 12.** AS 09.55.700(b), added by sec. 1 of this Act, takes effect July 1, 1995, only if
7 sec. 11 of this Act receives the two-thirds majority vote of each house required by art. IV,
8 sec. 15, Constitution of the State of Alaska.

9 * **Sec. 13.** Except as provided in sec. 12 of this Act, this Act takes effect July 1, 1995.