

SENATE BILL NO. 194

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY SENATORS KELLY, Phillips, Leman, Pearce, Green, Donley

Introduced: 1/8/96

Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to offenses associated with criminal street gangs, and to
2 sentencing for those offenses; and amending Rule 702(a), Alaska Rules of
3 Evidence."

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

5 * **Section 1.** AS 11.41.110(a) is amended to read:

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

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

10 (2) the person knowingly engages in conduct that results in the death
11 of another person under circumstances manifesting an extreme indifference to the value
12 of human life; [OR]

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

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

5 (4) acting for the benefit of, at the direction of, or in association
6 with a criminal street gang, the person commits or attempts to commit a crime
7 that is a felony and, in the course of or in furtherance of that crime or in
8 immediate flight from that crime, any person committing or attempting to commit
9 the crime causes the death of another person other than one of the participants.

10 * Sec. 2. AS 11.61.195(a) is amended to read:

11 (a) A person commits the crime of misconduct involving weapons in the
12 second degree if the person [KNOWINGLY]

13 (1) knowingly possesses a firearm during the commission of an offense
14 under AS 11.71.010 - 11.71.040; [OR]

15 (2) knowingly violates AS 11.61.200(a)(1) and is within the grounds
16 of or on a parking lot immediately adjacent to

17 (A) a public or private preschool, elementary, junior high, or
18 secondary school without the permission of the chief administrative officer of
19 the school or district or the designee of the chief administrative officer; or

20 (B) a center, other than a private residence, licensed under
21 AS 47.33 or AS 47.35 or recognized by the federal government for the care of
22 children; or

23 (3) participates as a member of a criminal street gang and, acting
24 for the benefit of, at the direction of, or in association with a criminal street gang
25 or any of its members, the person knowingly discharges a firearm from a
26 propelled vehicle while the vehicle is being operated and under circumstances
27 manifesting a reckless disregard for a risk of damage to property or a risk of
28 physical injury to a person.

29 * Sec. 3. AS 11.61.200(a) is amended to read:

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

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

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

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

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

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

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

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

23 (8) violates AS 11.46.320 or 11.46.330 by entering or remaining
24 unlawfully on premises or in a propelled vehicle in violation of a provision of an order
25 issued under AS 25.35.010(b) or 25.35.020 and, during the violation, possesses on the
26 person a defensive weapon or a deadly weapon, other than an ordinary pocketknife;

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

30 (10) resides in a dwelling knowing that there is a firearm capable of
31 being concealed on one's person or a prohibited weapon in the dwelling if the person

1 has been convicted of a felony by a court of this state, a court of the United States,
2 or a court of another state or territory, unless the person has written authorization to
3 live in a dwelling in which there is a concealable weapon described in this paragraph
4 from a court of competent jurisdiction or from the head of the law enforcement agency
5 of the community in which the dwelling is located; or

6 (11) discharges a firearm from a propelled vehicle while the vehicle is
7 being operated **in circumstances other than described in AS 11.61.195(a)(3)**.

8 * **Sec. 4.** AS 11.61.210(a) is amended to read:

9 (a) A person commits the crime of misconduct involving weapons in the fourth
10 degree if the person

11 (1) possesses on the person, or in the interior of a vehicle in which the
12 person is present, a firearm when the person's physical or mental condition is impaired
13 as a result of the introduction of an intoxicating liquor or a controlled substance into
14 the person's body in circumstances other than described in AS 11.61.200(a)(7);

15 (2) discharges a firearm from, on, or across a highway;

16 (3) discharges a firearm with reckless disregard for a risk of damage
17 to property or a risk of physical injury to a person **in circumstances other than**
18 **described in AS 11.61.195(a)(3)**;

19 (4) manufactures, possesses, transports, sells, or transfers metal
20 knuckles;

21 (5) manufactures, sells, or transfers a switchblade or a gravity knife;

22 (6) knowingly sells a firearm or a defensive weapon to a person under
23 18 years of age;

24 (7) other than a preschool, elementary, junior high, or secondary school
25 student, knowingly possesses a deadly weapon or a defensive weapon, without the
26 permission of the chief administrative officer of the school or district or the designee
27 of the chief administrative officer, within the buildings of, on the grounds of, or on the
28 school parking lot of a public or private preschool, elementary, junior high, or
29 secondary school or while participating in a school-sponsored event, except that a
30 person 21 years of age or older may possess

31 (A) a deadly weapon, other than a loaded firearm, in the trunk

1 of a motor vehicle or encased in a closed container in a motor vehicle;

2 (B) a defensive weapon;

3 (C) an unloaded firearm if the person is traversing school
4 premises in a rural area for the purpose of entering public or private land that
5 is open to hunting and the school board with jurisdiction over the school
6 premises has elected to have this exemption apply to the school premises; in
7 this subparagraph, "rural" means a community with a population of 5,500 or
8 less that is not connected by road or rail to Anchorage or Fairbanks or with a
9 population of 1,500 or less that is connected by road or rail to Anchorage or
10 Fairbanks; [OR]

11 (8) being a preschool, elementary, junior high, or secondary school
12 student, knowingly possesses a deadly weapon or a defensive weapon, within the
13 buildings of, on the grounds of, or on the school parking lot of a public or private
14 preschool, elementary, junior high, or secondary school or while participating in a
15 school-sponsored event, except that a student may possess a deadly weapon, other than
16 a firearm as defined under 18 U.S.C. 921, or a defensive weapon if the student has
17 obtained the prior permission of the chief administrative officer of the school or
18 district or the designee of the chief administrative officer for the possession; or

19 **(9) participating as a member of a criminal street gang and acting**
20 **for the benefit of, at the direction of, or in association with a criminal street gang**
21 **or any of its members, knowingly remains in a propelled vehicle after another**
22 **criminal street gang member present in the vehicle has violated**
23 **AS 11.61.195(a)(3).**

24 * Sec. 5. AS 11.61 is amended by adding new sections to read:

25 ARTICLE 3. CRIMINAL STREET GANGS.

26 Sec. 11.61.300. PARTICIPATION IN CRIMINAL STREET GANG. (a) A
27 person commits the crime of participation in a criminal street gang if the person

28 (1) actively participates in a criminal street gang with knowledge that
29 its members engage in or have engaged in a pattern of criminal gang activity; and

30 (2) knowingly engages in conduct to promote, further, or assist in any
31 conduct by a member of that gang that constitutes an offense punishable as a felony.

1 (b) In this section, "pattern of criminal gang activity" means the commission
2 or attempted commission, within the preceding three years, for the benefit of, at the
3 direction of, or in association with the members of the criminal street gang, two or
4 more offenses punishable as a felony.

5 (c) Participation in a criminal street gang is a class C felony.

6 Sec. 11.61.305. FORFEITURE OF PROPERTY UPON CONVICTION. (a)
7 Upon conviction under AS 11.41.110(a)(4), AS 11.61.195(a), or 11.61.300, the
8 following shall be forfeited to the state:

9 (1) a deadly weapon and ammunition that may be used with the deadly
10 weapon that

11 (A) is owned or possessed by a person who actively participated
12 in a criminal street gang during the criminal gang activity that provided the
13 basis for the offender's conviction; or

14 (B) was acquired during the course of a pattern of criminal gang
15 activity for which the offender was convicted;

16 (2) the property of the offender who led, organized, supervised, or
17 managed the criminal street gang

18 (A) constituting, or derived from, proceeds the offender
19 obtained, directly or indirectly, as the result of the criminal gang activity that
20 provided the basis for the offender's conviction; and

21 (B) used, or intended to be used, in any manner or part, to
22 commit, or to facilitate the commission of, the criminal gang activity.

23 * **Sec. 6.** AS 11.81.900(b) is amended by adding a new paragraph to read:

24 (59) "criminal street gang" means a group of three or more persons

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

27 (B) who, individually, jointly, or in combination, have
28 committed or attempted to commit, within the preceding three years, for the
29 benefit of, at the direction of, or in association with the group, two or more
30 offenses under any of, or any combination of, the following:

31 (i) AS 11.41; or

1 (ii) a felony offense.

2 * **Sec. 7.** AS 12.25 is amended by adding a new section to read:

3 Sec. 12.25.034. ARREST WITHOUT WARRANT FOR MISDEMEANOR
4 OFFENSE INVOLVING CRIMINAL STREET GANG MEMBERSHIP. A peace
5 officer may arrest a person without a warrant, whether or not the offense is committed
6 in the presence of the officer, when the officer has probable cause to believe that the
7 person to be arrested has violated AS 11.61.210(a)(9), if the violation is alleged to
8 have occurred less than eight hours before the time of arrest.

9 * **Sec. 8.** AS 12.45 is amended by adding a new section to read:

10 Sec. 12.45.037. ADMISSIBILITY OF EXPERT TESTIMONY RELATING
11 TO CRIMINAL STREET GANG ACTIVITY. (a) In an action or proceeding under
12 AS 11.41.110(a)(4), AS 11.61.195(a)(3), 11.61.210(a)(9), or 11.61.300 - 11.61.305,
13 expert testimony is admissible to show particular conduct, status, and customs
14 indicative of criminal street gangs, including

15 (1) common characteristics of persons who are members of criminal
16 street gangs;

17 (2) rivalries between specific criminal street gangs;

18 (3) common practices and operations of criminal street gangs and the
19 members of those gangs;

20 (4) social customs and behavior of members of criminal street gangs;

21 (5) terminology used by members of criminal street gangs;

22 (6) codes of conduct of particular criminal street gangs; and

23 (7) the types of crimes that are likely to be committed by a particular
24 criminal street gang or by criminal street gangs in general.

25 (b) In this section, "criminal street gang" has the meaning given in
26 AS 11.81.900(b).

27 * **Sec. 9.** AS 12.55.125(b) is amended to read:

28 (b) A defendant convicted of

29 (1) [MURDER IN THE SECOND DEGREE,] attempted murder in the
30 first degree, conspiracy to commit murder in the first degree, kidnapping, or
31 misconduct involving a controlled substance in the first degree shall be sentenced to

1 a definite term of imprisonment of at least five years but not more than 99 years;

2 **(2) murder in the second degree under AS 11.41.110(a)(1) - (3) shall**
3 **be sentenced to a definite term of imprisonment of at least five years but not**
4 **more than 99 years;**

5 **(3) murder in the second degree under AS 11.41.110(a)(4) shall be**
6 **sentenced to a definite term of imprisonment of at least seven years but not more**
7 **than 99 years.**

8 * **Sec. 10.** AS 12.45.037, added by sec. 8 of this Act, has the effect of amending Rule
9 702(a), Alaska Rules of Evidence, to allow the admissibility of expert testimony to show
10 criminal gang characteristics, activity, and practices by a person having that specialized
11 knowledge based on the person's knowledge, skill, experience, training, or education.

12 * **Sec. 11.** APPLICABILITY. This Act applies to an act that occurs on or after the
13 effective date of this Act.