

CS FOR SENATE BILL NO. 218(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 2/12/98
Referred: Finance

Sponsor(s): SENATORS HALFORD, Green, Donley, Taylor, Leman

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the crimes of murder, manslaughter, and criminally negligent
2 homicide and to homicides of children."

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

4 * **Section 1.** AS 11.41.100(a) is amended to read:

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

6 (1) with intent to cause the death of another person, the person

7 (A) causes the death of any person; or

8 (B) compels or induces any person to commit suicide through
9 duress or deception; [OR]

10 (2) the person knowingly engages **in conduct directed toward** [,
11 UNDER CIRCUMSTANCES MANIFESTING EXTREME INDIFFERENCE TO THE
12 VALUE OF HUMAN LIFE, IN A PATTERN OR PRACTICE OF ASSAULT OR
13 TORTURE OF] a child under the age of 16 **and the person with criminal negligence**
14 [, AND ONE OF THE ACTS OF ASSAULT OR TORTURE RESULTS IN THE

1 DEATH OF THE CHILD; FOR PURPOSES OF THIS PARAGRAPH, A PERSON
 2 "ENGAGES IN A PATTERN OR PRACTICE OF ASSAULT OR TORTURE" IF
 3 THE PERSON] inflicts serious physical injury on the [A] child by at least two
 4 separate acts, and one of the acts results in the death of the child; or

5 (3) acting alone or with one or more persons, the person commits
 6 or attempts to commit a sexual offense or kidnapping against a child under 16
 7 years of age and, in the course of or in furtherance of the offense or in immediate
 8 flight from that offense, any person causes the death of the child; in this
 9 paragraph, "sexual offense" means an offense defined in AS 11.41.410 - 11.41.470.

10 * Sec. 2. AS 11.41.110(a) is amended to read:

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

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

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

18 (3) under circumstances not amounting to murder in the first
 19 degree under AS 11.41.110(a)(3), while acting either alone or with one or more
 20 persons, the person commits or attempts to commit arson in the first degree,
 21 kidnapping, sexual assault in the first degree, sexual assault in the second degree,
 22 sexual abuse of a minor in the first degree, sexual abuse of a minor in the second
 23 degree, burglary in the first degree, escape in the first or second degree, robbery in
 24 any degree, or misconduct involving a controlled substance under AS 11.71.010(a),
 25 11.71.020(a), 11.71.030(a)(1) or (2), or 11.71.040(a)(1) or (2) and, in the course of or
 26 in furtherance of that crime [,] or in immediate flight from that crime, any person
 27 causes the death of a person other than one of the participants; [OR]

28 (4) acting with a criminal street gang, the person commits or attempts
 29 to commit a crime that is a felony and, in the course of or in furtherance of that crime
 30 or in immediate flight from that crime, any person causes the death of a person other
 31 than one of the participants; or

1 **(5) the person with criminal negligence causes the death of a child**
 2 **under the age of 16, and the person has been previously convicted of a crime**
 3 **involving a child under the age of 16 that was**

4 **(A) in violation of AS 11.41;**

5 **(B) in violation of a law or ordinance in another jurisdiction**
 6 **with elements similar to a crime under AS 11.41; or**

7 **(C) an attempt, a solicitation, or a conspiracy to commit a**
 8 **crime listed in (A) or (B) of this paragraph.**

9 * **Sec. 3.** AS 11.41.130(b) is amended to read:

10 (b) Criminally negligent homicide is a class **B** [C] felony.

11 * **Sec. 4.** AS 12.55.125(b) is amended to read:

12 (b) A defendant convicted of murder in the second degree, attempted murder
 13 in the first degree, conspiracy to commit murder in the first degree, kidnapping, or
 14 misconduct involving a controlled substance in the first degree shall be sentenced to
 15 a definite term of imprisonment of at least five years but not more than 99 years. **A**
 16 **defendant convicted of murder in the second degree shall be sentenced to a**
 17 **definite term of imprisonment of at least 20 years but not more than 99 years**
 18 **when the defendant is convicted of the murder of a child under 16 years of age**
 19 **and the court finds by clear and convincing evidence that the defendant (1) was**
 20 **a legal guardian or a person occupying a position of authority in relation to the**
 21 **child; or (2) caused the death of the child by committing a crime against a person**
 22 **under AS 11.41.200 - 11.41.530. In this subsection, "legal guardian" and**
 23 **"position of authority" have the meanings given in AS 11.41.470.**

24 * **Sec. 5.** AS 12.55.125(c) is amended to read:

25 (c) A defendant convicted of a class A felony may be sentenced to a definite
 26 term of imprisonment of not more than 20 years, and shall be sentenced to the
 27 following presumptive terms, subject to adjustment as provided in AS 12.55.155 -
 28 12.55.175:

29 (1) if the offense is a first felony conviction and does not involve
 30 circumstances described in (2) of this subsection, five years;

31 (2) if the offense is a first felony conviction

1 (A) [,] other than for manslaughter [,] and the defendant
 2 possessed a firearm, used a dangerous instrument, or caused serious physical
 3 injury during the commission of the offense, or knowingly directed the conduct
 4 constituting the offense at a uniformed or otherwise clearly identified peace
 5 officer, fire fighter, correctional employee, emergency medical technician,
 6 paramedic, ambulance attendant, or other emergency responder who was
 7 engaged in the performance of official duties at the time of the offense, seven
 8 years;

9 **(B) for manslaughter and the victim is a child under the age**
 10 **of 16, seven years;**

11 (3) if the offense is a second felony conviction, 10 years;

12 (4) if the offense is a third felony conviction and the defendant is not
 13 subject to sentencing under (l) of this section, 15 years.

14 * **Sec. 6.** AS 12.55.125(k) is amended to read:

15 (k) A first felony offender convicted of an offense for which a presumptive
 16 term of imprisonment is not specified under this section

17 **(1) may be sentenced to a term of unsuspended imprisonment that**
 18 **exceeds the presumptive term for a second or third felony offender convicted of**
 19 **the same crime if the offender is convicted of criminally negligent homicide and**
 20 **the victim is a child under the age of 16;**

21 **(2) except as provided in (1) of this subsection,** may not be sentenced
 22 to a term of unsuspended imprisonment that exceeds the presumptive term for a second
 23 felony offender convicted of the same crime unless the court finds by clear and
 24 convincing evidence that an aggravating factor under AS 12.55.155(c) is present, or
 25 that circumstances exist that would warrant a referral to the three-judge panel under
 26 AS 12.55.165.

27 * **Sec. 7.** This Act applies to offenses committed on or after the effective date of this Act.
 28 However, previous convictions refer to convictions occurring before, on, or after the effective
 29 date of this Act.