

SENATE BILL NO. 3

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY SENATORS HALFORD, Phillips, Donley, Green, Leman, Taylor

Introduced: 1/19/99

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the crimes of murder, solicitation to commit murder in the
2 first degree, manslaughter, and criminally negligent homicide; relating to homicides
3 of children; and relating to the crime of interference with custody of a child or
4 incompetent person."

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

6 * **Section 1.** AS 11.31.110(c) is repealed and reenacted to read:

7 (c) Solicitation is

8 (1) an unclassified felony if the crime solicited is murder in the first
9 degree;

10 (2) a class A felony if the crime solicited is an unclassified felony other
11 than murder in the first degree;

12 (3) a class B felony if the crime solicited is a class A felony;

13 (4) a class C felony if the crime solicited is a class B felony;

14 (5) a class A misdemeanor if the crime solicited is a class C felony;

1 (6) a class B misdemeanor if the crime solicited is a class A or class
2 B misdemeanor.

3 * **Sec. 2.** AS 11.41.100(a) is amended to read:

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

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

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

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

9 (2) the person knowingly engages **in conduct directed toward** [,
10 UNDER CIRCUMSTANCES MANIFESTING EXTREME INDIFFERENCE TO THE
11 VALUE OF HUMAN LIFE, IN A PATTERN OR PRACTICE OF ASSAULT OR
12 TORTURE OF] a child under the age of 16 **and the person with criminal negligence**
13 [, AND ONE OF THE ACTS OF ASSAULT OR TORTURE RESULTS IN THE
14 DEATH OF THE CHILD; FOR PURPOSES OF THIS PARAGRAPH, A PERSON
15 "ENGAGES IN A PATTERN OR PRACTICE OF ASSAULT OR TORTURE" IF
16 THE PERSON] inflicts serious physical injury on **the** [A] child by at least two
17 separate acts, and one of the acts results in the death of the child; **or**

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

23 * **Sec. 3.** AS 11.41.110(a) is amended to read:

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

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

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

31 (3) **under circumstances not amounting to murder in the first**

1 degree under AS 11.41.100(a)(3), while acting either alone or with one or more
 2 persons, the person commits or attempts to commit arson in the first degree,
 3 kidnapping, sexual assault in the first degree, sexual assault in the second degree,
 4 sexual abuse of a minor in the first degree, sexual abuse of a minor in the second
 5 degree, burglary in the first degree, escape in the first or second degree, robbery in
 6 any degree, or misconduct involving a controlled substance under AS 11.71.010(a),
 7 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
 8 in furtherance of that crime [,] or in immediate flight from that crime, any person
 9 causes the death of a person other than one of the participants; [OR]

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

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

17 (A) in violation of AS 11.41;

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

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

22 * **Sec. 4.** AS 11.41.130(b) is amended to read:

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

24 * **Sec. 5.** AS 11.41.320(a) is amended to read:

25 (a) A person commits the crime of custodial interference in the first degree if
 26 the person violates AS 11.41.330 and causes the child or incompetent person
 27 [VICTIM] to be

28 (1) removed from the state; or

29 (2) kept outside the state.

30 * **Sec. 6.** AS 12.55.125(b) is amended to read:

31 (b) A defendant convicted of murder in the second degree, attempted murder

1 in the first degree, **solicitation to commit murder in the first degree**, conspiracy to
 2 commit murder in the first degree, kidnapping, or misconduct involving a controlled
 3 substance in the first degree shall be sentenced to a definite term of imprisonment of
 4 at least five years but not more than 99 years. **A defendant convicted of murder in**
 5 **the second degree shall be sentenced to a definite term of imprisonment of at least**
 6 **20 years but not more than 99 years when the defendant is convicted of the**
 7 **murder of a child under 16 years of age and the court finds by clear and**
 8 **convincing evidence that the defendant (1) was a natural parent, a stepparent, an**
 9 **adopted parent, a legal guardian, or a person occupying a position of authority**
 10 **in relation to the child; or (2) caused the death of the child by committing a crime**
 11 **against a person under AS 11.41.200 - 11.41.530. In this subsection, "legal**
 12 **guardian" and "position of authority" have the meanings given in AS 11.41.470.**

13 * Sec. 7. AS 12.55.125(c) is amended to read:

14 (c) A defendant convicted of a class A felony may be sentenced to a definite
 15 term of imprisonment of not more than 20 years, and shall be sentenced to the
 16 following presumptive terms, subject to adjustment as provided in AS 12.55.155 -
 17 12.55.175:

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

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

21 (A) [,] other than for manslaughter [,] and the defendant
 22 possessed a firearm, used a dangerous instrument, or caused serious physical
 23 injury during the commission of the offense, or knowingly directed the conduct
 24 constituting the offense at a uniformed or otherwise clearly identified peace
 25 officer, fire fighter, correctional employee, emergency medical technician,
 26 paramedic, ambulance attendant, or other emergency responder who was
 27 engaged in the performance of official duties at the time of the offense, seven
 28 years;

29 (B) **for manslaughter and the conduct resulting in the**
 30 **conviction was knowingly directed towards a child under the age of 16,**
 31 **seven years;**

- 1 (3) if the offense is a second felony conviction, 10 years;
2 (4) if the offense is a third felony conviction and the defendant is not
3 subject to sentencing under (l) of this section, 15 years.

4 * **Sec. 8.** AS 12.55.125(k) is amended to read:

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

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

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

17 * **Sec. 9.** This Act applies to offenses committed on or after the effective date of this Act.
18 However, previous convictions refer to convictions occurring before, on, or after the effective
19 date of this Act.