

SENATE BILL NO. 246

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY SENATORS LINCOLN, Davis, Ellis

Introduced: 1/12/04

Referred: State Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the commission of an offense or a juvenile delinquency act involving**
2 **the victim's race, sex, color, creed, physical or mental disability, sexual orientation,**
3 **ancestry, or national origin; relating to sentencing, informal adjustment, and**
4 **adjudication for those offenses and acts; relating to a diversity tolerance program for**
5 **certain juvenile delinquency acts; relating to a civil cause of action for certain acts**
6 **involving discriminatory harassment; 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. 09.55.670. Discriminatory harassment action.** (a) An individual may
10 maintain a civil action for discriminatory harassment against another, or against the
11 parent or legal guardian of a minor, who has caused physical injury to the individual,
12 or damage to the property of the individual, with the intent to intimidate or harass the
13 individual because of the individual's actual or perceived race, sex, color, creed,

1 physical or mental disability, sexual orientation, ancestry, or national origin.

2 (b) An action may not be maintained under this section against

3 (1) the state, an agency or instrumentality of the state, or a political
4 subdivision of the state;

5 (2) an agent, officer, or employee of an entity described in (1) of this
6 subsection;

7 (3) an individual working in or responsible for the operation under
8 AS 47 of a foster, receiving, or detention home or children's institution, regarding the
9 acts of an unemancipated minor in the charge or custody of the home or institution; or

10 (4) an employee of or a volunteer with a nonprofit corporation that
11 designates shelters for runaways under AS 47.10.392 - 47.10.399, regarding the acts of
12 a minor sheltered in a shelter for runaways, as defined in AS 47.10.399.

13 (c) Compensatory and punitive damages may be awarded to a prevailing
14 claimant in an action brought under this section. An award of damages against the
15 parent or legal guardian of a minor under this section must be based upon the reckless
16 conduct of the parent or legal guardian having actual care and custody of the minor.

17 (d) An award of damages under this section does not preclude an individual
18 from seeking other remedies available under other law.

19 * **Sec. 2.** AS 11.76 is amended by adding a new section to read:

20 **Sec. 11.76.200. Motivation by prejudice, bias, or hatred.** (a) A person
21 commits the crime of motivation by prejudice, bias, or hatred if the person commits a
22 crime in this title and the person knowingly directed the conduct constituting the crime
23 at the victim of the crime because of the victim's actual or perceived race, sex, color,
24 creed, physical or mental disability, sexual orientation, ancestry, or national origin.

25 (b) Motivation by prejudice, bias, or hatred is a

26 (1) class A misdemeanor if the crime committed is a class B
27 misdemeanor;

28 (2) class C felony if the crime committed is a class A misdemeanor;

29 (3) class B felony if the crime committed is a class C felony;

30 (4) class A felony if the crime committed is a class B felony;

31 (5) unclassified felony if the crime committed is a class A felony or

1 unclassified felony.

2 * **Sec. 3.** AS 11.81.250(a) is amended to read:

3 (a) For purposes of sentencing under AS 12.55, all offenses defined in this
 4 title, except murder in the first and second degree, attempted murder in the first
 5 degree, solicitation to commit murder in the first degree, conspiracy to commit murder
 6 in the first degree, sexual assault in the first degree, sexual abuse of a minor in the first
 7 degree, misconduct involving a controlled substance in the first degree, **a class A**
 8 **felony when motivated by prejudice, bias, or hatred**, and kidnapping, are classified
 9 on the basis of their seriousness, according to the type of injury characteristically
 10 caused or risked by commission of the offense and the culpability of the offender.
 11 Except for murder in the first and second degree, attempted murder in the first degree,
 12 solicitation to commit murder in the first degree, conspiracy to commit murder in the
 13 first degree, sexual assault in the first degree, sexual abuse of a minor in the first
 14 degree, misconduct involving a controlled substance in the first degree, **a class A**
 15 **felony when motivated by prejudice, bias, or hatred**, and kidnapping, the offenses
 16 in this title are classified into the following categories:

17 (1) class A felonies, which characteristically involve conduct resulting
 18 in serious physical injury or a substantial risk of serious physical injury to a person;

19 (2) class B felonies, which characteristically involve conduct resulting
 20 in less severe violence against a person than class A felonies, aggravated offenses
 21 against property interests, or aggravated offenses against public administration or
 22 order;

23 (3) class C felonies, which characteristically involve conduct serious
 24 enough to deserve felony classification but not serious enough to be classified as A or
 25 B felonies;

26 (4) class A misdemeanors, which characteristically involve less severe
 27 violence against a person, less serious offenses against property interests, less serious
 28 offenses against public administration or order, or less serious offenses against public
 29 health and decency than felonies;

30 (5) class B misdemeanors, which characteristically involve a minor
 31 risk of physical injury to a person, minor offenses against property interests, minor

1 offenses against public administration or order, or minor offenses against public health
2 and decency;

3 (6) violations, which characteristically involve conduct inappropriate
4 to an orderly society but which do not denote criminality in their commission.

5 * **Sec. 4.** AS 11.81.250(b) is amended to read:

6 (b) The classification of each felony defined in this title, except murder in the
7 first and second degree, attempted murder in the first degree, solicitation to commit
8 murder in the first degree, conspiracy to commit murder in the first degree, sexual
9 assault in the first degree, sexual abuse of a minor in the first degree, misconduct
10 involving a controlled substance in the first degree, **a class A felony when motivated**
11 **by prejudice, bias, or hatred,** and kidnapping, is designated in the section defining it.
12 A felony under Alaska law defined outside this title for which no penalty is
13 specifically provided is a class C felony.

14 * **Sec. 5.** AS 12.55.085(f) is amended to read:

15 (f) The court may not suspend the imposition of sentence of a person who

16 (1) is convicted of a violation of AS 11.41.100 - 11.41.220, 11.41.260
17 - 11.41.320, 11.41.410 - 11.41.530, [OR] AS 11.46.400, **or AS 11.76.200;**

18 (2) uses a firearm in the commission of the offense for which the
19 person is convicted; [OR]

20 (3) is convicted of a violation of AS 11.41.230 - 11.41.250 or a felony
21 and the person has one or more prior convictions for a misdemeanor violation of
22 AS 11.41 or for a felony or for a violation of a law in this or another jurisdiction
23 having substantially similar elements to an offense defined as a misdemeanor in
24 AS 11.41 or as a felony in this state; for the purposes of this paragraph, a person shall
25 be considered to have a prior conviction even if that conviction has been set aside
26 under (e) of this section or under the equivalent provision of the laws of another
27 jurisdiction; **or**

28 **(4) is convicted of an offense and knowingly directed the conduct**
29 **constituting the offense at a victim because of that person's actual or perceived**
30 **race, sex, color, creed, physical or mental disability, sexual orientation, ancestry,**
31 **or national origin.**

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

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

17 * **Sec. 7.** AS 12.55.135(i) is amended to read:

18 (i) If a defendant is sentenced under (g) **or (k)** of this section,

- 19 (1) execution of sentence may not be suspended and probation or
20 parole may not be granted until the minimum term of imprisonment has been served;
21 (2) imposition of sentence may not be suspended;
22 (3) the minimum term of imprisonment may not otherwise be reduced.

23 * **Sec. 8.** AS 12.55.135(j) is amended by adding a new paragraph to read:

24 (3) "hate crime" means the defendant knowingly directed the conduct
25 constituting the offense at a victim because of that person's actual or perceived race,
26 sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national
27 origin.

28 * **Sec. 9.** AS 12.55.135 is amended by adding a new subsection to read:

29 (k) If a defendant is convicted of an offense other than a violation of
30 AS 11.76.200 and the court finds by clear and convincing evidence that the defendant
31 has committed a misdemeanor hate crime, the court shall sentence the defendant

1 (1) to a minimum term of imprisonment of 60 days if the defendant
2 violated AS 11.41.230(a)(1) or (2) or 11.41.270;

3 (2) to a minimum term of imprisonment of 30 days if the defendant
4 violated AS 11.41.230(a)(3) or 11.41.250;

5 (3) to a minimum term of imprisonment of 10 days if the defendant
6 violated AS 11.61.110 or 11.61.120; or

7 (4) as a worst offender if the defendant violated any other provision of
8 AS 11 that is punishable as a misdemeanor and that is not described in (1) - (3) of this
9 subsection.

10 * **Sec. 10.** AS 12.55.155(c)(22) is amended to read:

11 (22) the defendant knowingly directed the conduct constituting the
12 offense at a victim because of that person's **actual or perceived** race, sex, color, creed,
13 physical or mental disability, **sexual orientation**, ancestry, or national origin;

14 * **Sec. 11.** AS 47.12.060(b) is amended to read:

15 (b) When the department or the entity selected by it decides to make an
16 informal adjustment of a matter under (a)(2) of this section, that informal adjustment

17 (1) must be made with the agreement or consent of the minor and the
18 minor's parents or guardian to the terms and conditions of the adjustment;

19 (2) must give the minor's foster parent an opportunity to be heard
20 before the informal adjustment is made;

21 (3) must include notice that informal action to adjust a matter is not
22 successfully completed unless, among other factors that the department or the entity
23 selected by it considers, as to the victim of the act of the minor that is the basis of the
24 delinquency allegation, the minor pays restitution in the amount set by the department
25 or the entity selected by it or agrees as a term or condition set by the department or the
26 entity selected by it to pay the restitution;

27 (4) for a violation of habitual minor consuming or in possession or
28 control under AS 04.16.050(d) must include an agreement that the minor perform 96
29 hours of community work, provide that the minor's driver's license or permit, privilege
30 to drive, or privilege to obtain a license be revoked for six months, and provide that
31 the driver's license or permit, privilege to drive, or privilege to obtain a license be

1 revoked for an additional six months if the informal adjustment is not successful
 2 because the minor has failed to perform community work as ordered, or has failed to
 3 submit to evaluation or successfully complete the education or treatment
 4 recommended; the department or an entity selected by the department shall notify the
 5 agency responsible for issuing driver's licenses of an informal adjustment under this
 6 paragraph or of an unsuccessful adjustment described in this paragraph;

7 (5) of an offense described in AS 28.15.185(a)(1) must include an
 8 agreement that the minor's driver's license or permit, privilege to drive, or privilege to
 9 obtain a license be revoked as provided in AS 28.15.185(b); the department or an
 10 entity selected by the department shall notify the agency responsible for issuing
 11 driver's licenses of an informal adjustment under this paragraph;

12 **(6) must, if there is reason to believe that the minor knowingly**
 13 **directed the conduct constituting a delinquent act at a victim because of that**
 14 **person's actual or perceived race, sex, color, creed, physical or mental disability,**
 15 **sexual orientation, ancestry, or national origin,**

16 **(A) require the minor to perform a minimum of 100 hours**
 17 **of community work service; and**

18 **(B) include a referral to a diversity tolerance program or**
 19 **otherwise provide the minor and the minor's parents or guardian with the**
 20 **opportunity to develop respect for the ethnic, cultural, and personal**
 21 **diversity of all persons of the state.**

22 * **Sec. 12.** AS 47.12.120(b) is amended to read:

23 (b) If the minor is not subject to (j) of this section and the court finds that the
 24 minor is delinquent, it shall

25 (1) order the minor committed to the department for a period of time
 26 not to exceed two years or in any event extend past the day the minor becomes 19
 27 years of age, except that the department may petition for and the court may grant in a
 28 hearing (A) two-year extensions of commitment that do not extend beyond the minor's
 29 19th birthday if the extension is in the best interests of the minor and the public; and
 30 (B) an additional one-year period of supervision past age 19 if continued supervision
 31 is in the best interests of the person and the person consents to it; the department shall

1 place the minor in the juvenile facility that the department considers appropriate and
2 that may include a juvenile correctional school, juvenile work camp, treatment facility,
3 detention home, or detention facility; the minor may be released from placement or
4 detention and placed on probation on order of the court and may also be released by
5 the department, in its discretion, under AS 47.12.260;

6 (2) order the minor placed on probation, to be supervised by the
7 department, and released to the minor's parents, guardian, or a suitable person; if the
8 court orders the minor placed on probation, it may specify the terms and conditions of
9 probation; the probation may be for a period of time not to exceed two years and in no
10 event to extend past the day the minor becomes 19 years of age, except that the
11 department may petition for and the court may grant in a hearing

12 (A) two-year extensions of supervision that do not extend
13 beyond the minor's 19th birthday if the extension is in the best interests of the
14 minor and the public; and

15 (B) an additional one-year period of supervision past age 19 if
16 the continued supervision is in the best interests of the person and the person
17 consents to it;

18 (3) order the minor committed to the custody of the department and
19 placed on probation, to be supervised by the department and released to the minor's
20 parents, guardian, other suitable person, or suitable nondetention setting such as with a
21 relative or in a foster home or residential child care facility, whichever the department
22 considers appropriate to implement the treatment plan of the predisposition report; if
23 the court orders the minor placed on probation, it may specify the terms and conditions
24 of probation; the department may transfer the minor, in the minor's best interests, from
25 one of the probationary placement settings listed in this paragraph to another, and the
26 minor, the minor's parents or guardian, the minor's foster parent, and the minor's
27 attorney are entitled to reasonable notice of the transfer; the probation may be for a
28 period of time not to exceed two years and in no event to extend past the day the
29 minor becomes 19 years of age, except that the department may petition for and the
30 court may grant in a hearing

31 (A) two-year extensions of commitment that do not extend

1 beyond the minor's 19th birthday if the extension is in the best interests of the
2 minor and the public; and

3 (B) an additional one-year period of supervision past age 19 if
4 the continued supervision is in the best interests of the person and the person
5 consents to it;

6 (4) order the minor and the minor's parent to make suitable restitution
7 in lieu of or in addition to the court's order under (1), (2), or (3) of this subsection;
8 under this paragraph,

9 (A) except as provided in (B) of this paragraph, the court may
10 not refuse to make an order of restitution to benefit the victim of the act of the
11 minor that is the basis of the delinquency adjudication; under this
12 subparagraph, the court may require the minor to use the services of a
13 community dispute resolution center that has been recognized by the
14 commissioner under AS 47.12.450(b) to resolve any dispute between the minor
15 and the victim of the minor's offense as to the amount of or manner of payment
16 of the restitution;

17 (B) the court may not order payment of restitution by the parent
18 of a minor who is a runaway or missing minor for an act of the minor that was
19 committed by the minor after the parent has made a report to a law
20 enforcement agency, as authorized by AS 47.10.141(a), that the minor has run
21 away or is missing; for purposes of this subparagraph, "runaway or missing
22 minor" means a minor who a parent reasonably believes is absent from the
23 minor's residence for the purpose of evading the parent or who is otherwise
24 missing from the minor's usual place of abode without the consent of the
25 parent; and

26 (C) at the request of the department, the Department of Law,
27 the victims' advocate, or on its own motion, the court shall, at any time, order
28 the minor and the minor's parent, if applicable, to submit financial information
29 on a form approved by the Alaska Court System to the court, the department,
30 and the Department of Law for the purpose of establishing the amount of
31 restitution or enforcing an order of restitution under AS 47.12.170; the form

1 must include a warning that submission of incomplete or inaccurate
2 information is punishable as unsworn falsification under AS 11.56.210;

3 (5) order the minor committed to the department for placement in an
4 adventure-based education program established under AS 47.21.020 with conditions
5 the court considers appropriate concerning release upon satisfactory completion of the
6 program or commitment under (1) of this subsection if the program is not satisfactorily
7 completed;

8 (6) in addition to an order under (1) - (5) of this subsection, order the
9 minor to perform community service; for purposes of this paragraph, "community
10 service" includes work

11 (A) on a project identified in AS 33.30.901; or

12 (B) that, on the recommendation of the city council or
13 traditional village council, would benefit persons within the city or village who
14 are elderly or disabled; or

15 (7) in addition to an order under (1) - (6) of this subsection, order the
16 minor's parent or guardian to comply with orders made under AS 47.12.155, including
17 participation in treatment under AS 47.12.155(b)(1);

18 **(8) in addition to an order under (1) - (5) and (7) of this subsection,**
19 **if the court finds by clear and convincing evidence that the minor knowingly**
20 **directed the conduct constituting a delinquent act at a victim because of that**
21 **person's actual or perceived race, sex, color, creed, physical or mental disability,**
22 **sexual orientation, ancestry, or national origin,**

23 **(A) order the minor to perform a minimum of 100 hours of**
24 **community work service; and**

25 **(B) carefully assess the plan proposed by the department**
26 **under AS 47.12.130 to ensure that the plan adequately provides the minor**
27 **and the minor's parents or guardian with the opportunity to develop**
28 **respect for the ethnic, cultural, and personal diversity of all persons of the**
29 **state.**

30 * **Sec. 13.** AS 47.12 is amended by adding a new section to article 5 to read:

31 **Sec. 47.12.970. Diversity tolerance program.** The department shall develop

1 and implement, or designate, in cooperation with other state, local, tribal, and
2 nonprofit public service agencies, a diversity tolerance program that provides
3 resources for developing respect for ethnic, cultural, and personal diversity, and that is
4 designed for persons under 18 years of age who have been referred to the program
5 under this chapter in connection with conduct by a minor that is motivated by a
6 person's actual or perceived race, sex, color, creed, physical or mental disability,
7 sexual orientation, ancestry, or national origin.

8 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 **APPLICABILITY.** This Act applies to offenses or acts committed on or after the
11 effective date of this Act.

12 * **Sec. 15.** This Act takes effect immediately under AS 01.10.070(c).