

**CS FOR SENATE BILL NO. 246(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

**BY THE SENATE JUDICIARY COMMITTEE**

**Offered: 5/7/04**

**Referred: Finance**

**Sponsor(s): SENATORS LINCOLN, Davis, Ellis**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to sentencing for the commission of offenses or a juvenile delinquency**  
2 **act directed against peace officers, fire fighters, and other emergency responders or**  
3 **involving the victim's actual or perceived race, sex, color, creed, physical or mental**  
4 **disability, ancestry, or national origin; relating to probation, informal adjustment, and**  
5 **adjudication for those offenses and acts; relating to a diversity tolerance program for**  
6 **certain juvenile delinquency acts; and providing for an effective date."**

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

8 **\* Section 1.** AS 12.55.085(f) is amended to read:

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

10 (1) is convicted of a violation of AS 11.41.100 - 11.41.220, 11.41.260  
11 - 11.41.320, 11.41.410 - 11.41.530, or AS 11.46.400;

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

1 (3) is convicted of a violation of AS 11.41.230 - 11.41.250 or a felony  
 2 and the person has one or more prior convictions for a misdemeanor violation of  
 3 AS 11.41 or for a felony or for a violation of a law in this or another jurisdiction  
 4 having substantially similar elements to an offense defined as a misdemeanor in  
 5 AS 11.41 or as a felony in this state; for the purposes of this paragraph, a person shall  
 6 be considered to have a prior conviction even if that conviction has been set aside  
 7 under (e) of this section or under the equivalent provision of the laws of another  
 8 jurisdiction; or

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

12 \* **Sec. 2.** AS 12.55.125(c) is amended to read:

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

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

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

20 (A) other than for manslaughter and the defendant

21 **(i)** possessed a firearm, used a dangerous instrument, or  
 22 caused serious physical injury during the commission of the offense,  
 23 **seven years;**

24 **(ii)** [OR] knowingly directed the conduct constituting  
 25 the offense at a uniformed or otherwise clearly identified peace officer,  
 26 fire fighter, correctional employee, emergency medical technician,  
 27 paramedic, ambulance attendant, or other emergency responder who  
 28 was engaged in the performance of official duties at the time of the  
 29 offense, seven years; or

30 **(iii) the defendant knowingly directed the conduct**  
 31 **constituting the offense at a victim because of that person's actual**

1 or perceived race, sex, color, creed, physical or mental disability,  
 2 ancestry, or national origin, seven years;

3 (B) for manslaughter and the conduct resulting in the  
 4 conviction was knowingly directed towards a child under the age of 16, seven  
 5 years;

6 (C) for manslaughter and the conduct resulting in the  
 7 conviction involved driving while under the influence of an alcoholic  
 8 beverage, inhalant, or controlled substance, seven years;

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

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

12 \* **Sec. 3.** AS 12.55.125(d) is amended to read:

13 (d) Except as provided in (i) of this section, a defendant convicted of a class B  
 14 felony may be sentenced to a definite term of imprisonment of not more than 10 years,  
 15 and shall be sentenced to the following presumptive terms, subject to adjustment as  
 16 provided in AS 12.55.155 - 12.55.175:

17 (1) if the offense is a second felony conviction, four years;

18 (2) if the offense is a third felony conviction, six years;

19 **(3) if the offense is a first felony conviction, and the defendant**  
 20 **knowingly directed the conduct constituting the offense at a victim because of**  
 21 **that person's actual or perceived race, sex, color, creed, physical or mental**  
 22 **disability, ancestry, or national origin, four years.**

23 \* **Sec. 4.** AS 12.55.125(e) is amended to read:

24 (e) Except as provided in (i) of this section, a defendant convicted of a class C  
 25 felony may be sentenced to a definite term of imprisonment of not more than five  
 26 years, and shall be sentenced to the following presumptive terms, subject to  
 27 adjustment as provided in AS 12.55.155 - 12.55.175:

28 (1) if the offense is a second felony conviction, two years;

29 (2) if the offense is a third felony conviction, three years;

30 (3) if the offense is a first felony conviction, and the defendant

31 **(A)** violated AS 08.54.720(a)(15), one year; **or**

1                    **(B) the defendant knowingly directed the conduct**  
 2                    **constituting the offense at a victim because of that person's actual or**  
 3                    **perceived race, sex, color, creed, physical or mental disability, ancestry, or**  
 4                    **national origin, two years.**

5 \* **Sec. 5.** AS 12.55.125(g) is amended to read:

6                    (g) If a defendant is sentenced under (c), (d)(1), (d)(2), **(d)(3)**, (e)(1), (e)(2),  
 7                    (e)(3), or (i) of this section, except to the extent permitted under AS 12.55.155 -  
 8                    12.55.175,

9                    (1) imprisonment may not be suspended under AS 12.55.080;

10                    (2) imposition of sentence may not be suspended under AS 12.55.085;

11                    (3) terms of imprisonment may not be otherwise reduced.

12 \* **Sec. 6.** AS 12.55.135(d) is amended to read:

13                    (d) A defendant convicted of assault in the fourth degree who knowingly  
 14                    directed the conduct constituting the offense at a uniformed or otherwise clearly  
 15                    identified peace officer, fire fighter, correctional employee, emergency medical  
 16                    technician, paramedic, ambulance attendant, or other emergency responder who was  
 17                    engaged in the performance of official duties at the time of the assault **or knowingly**  
 18                    **directed the conduct constituting the offense at a victim because of that person's**  
 19                    **actual or perceived race, sex, color, creed, physical or mental disability, ancestry,**  
 20                    **or national origin,** shall be sentenced to a minimum term of imprisonment of

21                    (1) 60 days if the defendant violated AS 11.41.230(a)(1) or (2);

22                    (2) 30 days if the defendant violated AS 11.41.230(a)(3).

23 \* **Sec. 7.** AS 12.55.135 is amended by adding a new subsection to read:

24                    (k) A defendant convicted of a misdemeanor in AS 11 shall be sentenced as a  
 25                    worst offender if the court finds by clear and convincing evidence that the defendant  
 26                    knowingly directed the conduct constituting the offense at a

27                    (1) victim because of that person's actual or perceived race, sex, color,  
 28                    creed, physical or mental disability, ancestry, or national origin; or

29                    (2) uniformed or otherwise clearly identified peace officer, fire fighter,  
 30                    correctional employee, emergency medical technician, paramedic, ambulance  
 31                    attendant, or other emergency responder who was engaged in the performance of

1 official duties at the time of the offense.

2 \* **Sec. 8.** AS 12.55.155(c)(22) is amended to read:

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

6 \* **Sec. 9.** AS 12.55.165 is amended to read:

7 **Sec. 12.55.165. Extraordinary circumstances.** (a) If the defendant is  
8 subject to sentencing under AS 12.55.125(c), (d)(1), (d)(2), **(d)(3)**, (e)(1), (e)(2),  
9 (e)(3), or (i) and the court finds by clear and convincing evidence that manifest  
10 injustice would result from failure to consider relevant aggravating or mitigating  
11 factors not specifically included in AS 12.55.155 or from imposition of the  
12 presumptive term, whether or not adjusted for aggravating or mitigating factors, the  
13 court shall enter findings and conclusions and cause a record of the proceedings to be  
14 transmitted to a three-judge panel for sentencing under AS 12.55.175.

15 (b) In making a determination under (a) of this section, the court may not refer  
16 a case to a three-judge panel based on the defendant's potential for rehabilitation if the  
17 court finds that a factor in aggravation set out in AS 12.55.155(c)(2), (8), (10), (12),  
18 **(13)**, (15), (17), (18)(B), (20), (21), **(22)**, or (28) is present.

19 \* **Sec. 10.** AS 47.12.060(b) is amended to read:

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

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

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

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

1 (4) for a violation of habitual minor consuming or in possession or  
 2 control under AS 04.16.050(d) must include an agreement that the minor perform 96  
 3 hours of community work, provide that the minor's driver's license or permit, privilege  
 4 to drive, or privilege to obtain a license be revoked for six months, and provide that  
 5 the driver's license or permit, privilege to drive, or privilege to obtain a license be  
 6 revoked for an additional six months if the informal adjustment is not successful  
 7 because the minor has failed to perform community work as ordered, or has failed to  
 8 submit to evaluation or successfully complete the education or treatment  
 9 recommended; the department or an entity selected by the department shall notify the  
 10 agency responsible for issuing driver's licenses of an informal adjustment under this  
 11 paragraph or of an unsuccessful adjustment described in this paragraph;

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

17 **(6) must, if there is reason to believe that the minor knowingly**  
 18 **directed the conduct constituting the delinquent act at a uniformed or otherwise**  
 19 **clearly identified peace officer, fire fighter, correctional employee, emergency**  
 20 **medical technician, paramedic, ambulance attendant, or other emergency**  
 21 **responder who was engaged in the performance of official duties at the time of**  
 22 **the act, require the minor to perform 60 - 80 hours of community work service;**

23 **(7) must, if there is reason to believe that the minor knowingly**  
 24 **directed the conduct constituting a delinquent act at a victim because of that**  
 25 **person's actual or perceived race, sex, color, creed, physical or mental disability,**  
 26 **ancestry, or national origin,**

27 **(A) require the minor to perform 60 - 80 hours of**  
 28 **community work service; and**

29 **(B) include a referral to a diversity tolerance program or**  
 30 **otherwise provide the minor and the minor's parents or guardian with the**  
 31 **opportunity to develop respect for the ethnic, cultural, and personal**

**diversity of all persons of the state; the court may allow the minor's successful participation in a diversity tolerance program to count towards the minimum hours of community work service.**

\* **Sec. 11.** AS 47.12.120(b) is amended to read:

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

(1) order the minor committed to the department for a period of time not to exceed two years or in any event extend past the day the minor becomes 19 years of age, except that the department may petition for and the court may grant in a hearing (A) two-year extensions of commitment that do not extend beyond the minor's 19th birthday if the extension is in the best interests of the minor and the public; and (B) an additional one-year period of supervision past age 19 if continued supervision is in the best interests of the person and the person consents to it; the department shall place the minor in the juvenile facility that the department considers appropriate and that may include a juvenile correctional school, juvenile work camp, treatment facility, detention home, or detention facility; the minor may be released from placement or detention and placed on probation on order of the court and may also be released by the department, in its discretion, under AS 47.12.260;

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

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

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

(3) order the minor committed to the custody of the department and

1 placed on probation, to be supervised by the department and released to the minor's  
 2 parents, guardian, other suitable person, or suitable nondetention setting such as with a  
 3 relative or in a foster home or residential child care facility, whichever the department  
 4 considers appropriate to implement the treatment plan of the predisposition report; if  
 5 the court orders the minor placed on probation, it may specify the terms and conditions  
 6 of probation; the department may transfer the minor, in the minor's best interests, from  
 7 one of the probationary placement settings listed in this paragraph to another, and the  
 8 minor, the minor's parents or guardian, the minor's foster parent, and the minor's  
 9 attorney are entitled to reasonable notice of the transfer; the probation may be for a  
 10 period of time not to exceed two years and in no event to extend past the day the  
 11 minor becomes 19 years of age, except that the department may petition for and the  
 12 court may grant in a hearing

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

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

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

22 (A) except as provided in (B) of this paragraph, the court may  
 23 not refuse to make an order of restitution to benefit the victim of the act of the  
 24 minor that is the basis of the delinquency adjudication; under this  
 25 subparagraph, the court may require the minor to use the services of a  
 26 community dispute resolution center that has been recognized by the  
 27 commissioner under AS 47.12.450(b) to resolve any dispute between the minor  
 28 and the victim of the minor's offense as to the amount of or manner of payment  
 29 of the restitution;

30 (B) the court may not order payment of restitution by the parent  
 31 of a minor who is a runaway or missing minor for an act of the minor that was

1 committed by the minor after the parent has made a report to a law  
 2 enforcement agency, as authorized by AS 47.10.141(a), that the minor has run  
 3 away or is missing; for purposes of this subparagraph, "runaway or missing  
 4 minor" means a minor who a parent reasonably believes is absent from the  
 5 minor's residence for the purpose of evading the parent or who is otherwise  
 6 missing from the minor's usual place of abode without the consent of the  
 7 parent; and

8 (C) at the request of the department, the Department of Law,  
 9 the victims' advocate, or on its own motion, the court shall, at any time, order  
 10 the minor and the minor's parent, if applicable, to submit financial information  
 11 on a form approved by the Alaska Court System to the court, the department,  
 12 and the Department of Law for the purpose of establishing the amount of  
 13 restitution or enforcing an order of restitution under AS 47.12.170; the form  
 14 must include a warning that submission of incomplete or inaccurate  
 15 information is punishable as unsworn falsification under AS 11.56.210;

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

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

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

25 (B) that, on the recommendation of the city council or  
 26 traditional village council, would benefit persons within the city or village who  
 27 are elderly or disabled; or

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

31 **(8) in addition to an order under (1) - (5) and (7) of this subsection,**

1 if the court finds by clear and convincing evidence that the minor knowingly  
 2 directed the conduct constituting a delinquent act at a uniformed or otherwise  
 3 clearly identified peace officer, fire fighter, correctional employee, emergency  
 4 medical technician, paramedic, ambulance attendant, or other emergency  
 5 responder who was engaged in the performance of official duties at the time of  
 6 the act, require the minor to perform 60 - 80 hours of community work service;

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

12 (A) order the minor to perform 60 - 80 hours of community  
 13 work service; and

14 (B) carefully assess the plan proposed by the department  
 15 under AS 47.12.130 to ensure that the plan adequately provides the minor  
 16 and the minor's parents or guardian with the opportunity to develop  
 17 respect for the ethnic, cultural, and personal diversity of all persons of the  
 18 state; the court may allow the minor's successful participation in a  
 19 diversity tolerance program to count toward the minimum hours of  
 20 community work service.

21 \* **Sec. 12.** AS 47.12 is amended by adding a new section to article 5 to read:

22 **Sec. 47.12.970. Diversity tolerance program.** The department shall develop  
 23 and implement, or designate, in cooperation with other state, local, tribal, and  
 24 nonprofit public service agencies, a diversity tolerance program that provides  
 25 resources for developing respect for ethnic, cultural, and personal diversity, and that is  
 26 designed for persons under 18 years of age who have been referred to the program  
 27 under this chapter in connection with conduct by a minor that was directed at a person  
 28 because of that person's actual or perceived race, sex, color, creed, physical or mental  
 29 disability, ancestry, or national origin. The program shall be designed to be completed  
 30 in 12 hours.

31 \* **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 APPLICABILITY. (a) This Act applies to offenses or acts committed on or after the  
3 effective date of this Act.

4 (b) Notwithstanding AS 47.12.060(b)(7)(B), added by sec. 10 of this Act, and  
5 AS 47.12.120(b)(9)(B), added by sec. 11 of this Act, a court may not refer a minor to a  
6 diversity tolerance program under AS 47.12.970, added by sec. 12 of this Act, until the  
7 Department of Health and Social Services has developed, implemented, or designated  
8 diversity tolerance programs.

9 \* **Sec. 14.** This Act takes effect immediately under AS 01.10.070(c).