

SENATE BILL NO. 6

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY SENATORS DAVIS, Elton

Introduced: 1/16/07

Referred: Health, Education and Social Services, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to offenses or juvenile delinquency acts involving the victim's race, sex,**
2 **color, creed, physical or mental disability, sexual orientation, ancestry, or national**
3 **origin; relating to sentencing, informal adjustment, and adjudication for those offenses**
4 **and acts; relating to diversity tolerance programs; relating to a civil cause of action for**
5 **certain acts involving discriminatory harassment; and providing for an effective date."**

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

7 * **Section 1.** AS 09.55 is amended by adding a new section to read:

8 **Sec. 09.55.670. Discriminatory harassment action.** (a) An individual may
9 maintain a civil action for discriminatory harassment against another, or against the
10 parent or legal guardian of a minor, who has caused physical injury to the individual,
11 or damage to the property of the individual, with the intent to intimidate or harass the
12 individual because of the individual's actual or perceived race, sex, color, creed,
13 physical or mental disability, sexual orientation, ancestry, or national origin.

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

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

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

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

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

12 (c) Compensatory and punitive damages may be awarded to a prevailing
13 claimant in an action brought under this section. Under this section, an award against
14 the parent or legal guardian of a minor for damages caused by the minor must be
15 based on the reckless or intentional conduct of the parent or legal guardian having
16 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 11.31 is amended by adding a new section to read:

20 **Article 1. Motivation by Hatred, Bias, or Prejudice.**

21 **Sec. 11.31.200. Motivation by prejudice, bias, or hatred.** (a) A person
22 commits the crime of motivation by prejudice, bias, or hatred if the person commits a
23 crime in this title and the person knowingly directed the conduct constituting the crime
24 at the victim of the crime because of the victim's actual or perceived race, sex, color,
25 creed, physical or mental disability, sexual orientation, ancestry, or national origin.

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

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

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

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

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

1 (5) unclassified felony if the crime committed is a class A felony or
 2 unclassified felony.

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

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

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

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

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

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

1 (5) class B misdemeanors, which characteristically involve a minor
 2 risk of physical injury to a person, minor offenses against property interests, minor
 3 offenses against public administration or order, or minor offenses against public health
 4 and decency;

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

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

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

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

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

18 (1) is convicted of a violation of **AS 11.31.200,** AS 11.41.100 -
 19 11.41.220, 11.41.260 - 11.41.320, 11.41.410 - 11.41.530, or AS 11.46.400;

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

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

30 **(4) is convicted of an offense and knowingly directed the conduct**
 31 **constituting the offense at a victim because of that person's actual or perceived**

1 race, sex, color, creed, physical or mental disability, sexual orientation, ancestry,
 2 or national origin.

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

4 (b) A defendant convicted of attempted murder in the first degree, solicitation
 5 to commit murder in the first degree, conspiracy to commit murder in the first degree,
 6 kidnapping, a class A felony when motivated by prejudice, bias, or hatred, or
 7 misconduct involving a controlled substance in the first degree shall be sentenced to a
 8 definite term of imprisonment of at least five years but not more than 99 years. A
 9 defendant convicted of murder in the second degree or murder of an unborn child
 10 under AS 11.41.150(a)(2) - (4) shall be sentenced to a definite term of imprisonment
 11 of at least 10 years but not more than 99 years. A defendant convicted of murder in the
 12 second degree shall be sentenced to a definite term of imprisonment of at least 20
 13 years but not more than 99 years when the defendant is convicted of the murder of a
 14 child under 16 years of age and the court finds by clear and convincing evidence that
 15 the defendant (1) was a natural parent, a stepparent, an adoptive [ADOPTED] parent,
 16 a legal guardian, or a person occupying a position of authority in relation to the child;
 17 or (2) caused the death of the child by committing a crime against a person under
 18 AS 11.41.200 - 11.41.530. In this subsection, "legal guardian" and "position of
 19 authority" have the meanings given in AS 11.41.470.

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

21 (i) If a defendant is sentenced under (g) or (l) of this section,

22 (1) execution of sentence may not be suspended and probation or
 23 parole may not be granted until the minimum term of imprisonment has been served;

24 (2) imposition of sentence may not be suspended;

25 (3) the minimum term of imprisonment may not otherwise be reduced.

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

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

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

1 (l) If a defendant is convicted of an offense other than a violation of
 2 AS 11.31.200 and the court finds by clear and convincing evidence that the defendant
 3 has committed a misdemeanor hate crime, the court shall sentence the defendant

4 (1) to a minimum term of imprisonment of 90 days if the defendant
 5 violated AS 11.41.230(a)(1) or (2), 11.41.270, or 11.61.118;

6 (2) to a minimum term of imprisonment of 60 days if the defendant
 7 violated AS 11.41.230(a)(3) or 11.41.250;

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

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

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

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

17 * **Sec. 11.** AS 44.28.020 is amended by adding a new subsection to read:

18 (d) The department shall develop a diversity tolerance program for offenders
 19 who have been convicted of a crime that was motivated by the victim's actual or
 20 perceived race, sex, color, creed, physical or mental disability, sexual orientation,
 21 ancestry, or national origin and require those offenders in the custody of the
 22 department to participate in the program.

23 * **Sec. 12.** AS 44.41.020(c) is amended to read:

24 (c) The department shall

25 (1) establish, and may require state and local law enforcement agencies
 26 to use, standardized methods of collecting and recording law enforcement and crime
 27 statistics;

28 (2) **require state and local law enforcement agencies to separately**
 29 **record and report crimes that are motivated by the victim's actual or perceived**
 30 **race, sex, color, creed, physical or mental disability, sexual orientation, ancestry,**
 31 **or national origin.**

1 * **Sec. 13.** AS 47.12.060(b) is amended to read:

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

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

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

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

14 (4) for a violation of habitual minor consuming or in possession or
15 control under AS 04.16.050(d) must include an agreement that the minor perform 96
16 hours of community work, provide that the minor's driver's license or permit, privilege
17 to drive, or privilege to obtain a license be revoked for six months, and provide that
18 the driver's license or permit, privilege to drive, or privilege to obtain a license be
19 revoked for an additional six months if the informal adjustment is not successful
20 because the minor has failed to perform community work as ordered, or has failed to
21 submit to evaluation or successfully complete the education or treatment
22 recommended; the department or an entity selected by the department shall notify the
23 agency responsible for issuing driver's licenses of an informal adjustment under this
24 paragraph or of an unsuccessful adjustment described in this paragraph;

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

30 **(6) must, if there is reason to believe that the minor knowingly**
31 **directed the conduct constituting a delinquent act at a victim because of that**

1 **person's actual or perceived race, sex, color, creed, physical or mental disability,**
 2 **sexual orientation, ancestry, or national origin,**

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

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

9 * **Sec. 14.** AS 47.12.120(b) is amended to read:

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

12 (1) order the minor committed to the department for a period of time
 13 not to exceed two years or in any event extend past the day the minor becomes 19
 14 years of age, except that the department may petition for and the court may grant in a
 15 hearing (A) two-year extensions of commitment that do not extend beyond the minor's
 16 19th birthday if the extension is in the best interests of the minor and the public; and
 17 (B) an additional one-year period of supervision past age 19 if continued supervision
 18 is in the best interests of the person and the person consents to it; the department shall
 19 place the minor in the juvenile facility that the department considers appropriate and
 20 that may include a juvenile correctional school, juvenile work camp, treatment facility,
 21 detention home, or detention facility; the minor may be released from placement or
 22 detention and placed on probation on order of the court and may also be released by
 23 the department, in its discretion, under AS 47.12.260;

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

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

1 minor and the public; and

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

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

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

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

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

27 (A) except as provided in (B) of this paragraph, the court may
28 not refuse to make an order of restitution to benefit the victim of the act of the
29 minor that is the basis of the delinquency adjudication; under this
30 subparagraph, the court may require the minor to use the services of a
31 community dispute resolution center that has been recognized by the

1 commissioner under AS 47.12.450(b) to resolve any dispute between the minor
2 and the victim of the minor's offense as to the amount of or manner of payment
3 of the restitution;

4 (B) the court may not order payment of restitution by the parent
5 of a minor who is a runaway or missing minor for an act of the minor that was
6 committed by the minor after the parent has made a report to a law
7 enforcement agency, as authorized by AS 47.10.141(a), that the minor has run
8 away or is missing; for purposes of this subparagraph, "runaway or missing
9 minor" means a minor who a parent reasonably believes is absent from the
10 minor's residence for the purpose of evading the parent or who is otherwise
11 missing from the minor's usual place of abode without the consent of the
12 parent; and

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

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

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

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

31 (B) that, on the recommendation of the city council or

1 traditional village council, would benefit persons within the city or village who
2 are elderly or disabled; [OR]

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

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

11 (A) order the minor to perform a minimum of 100 hours of
12 community work service; and

13 (B) carefully assess the plan proposed by the department
14 under AS 47.12.130 to ensure that the plan adequately provides the minor
15 and the minor's parents or guardian with the opportunity to develop
16 respect for the ethnic, cultural, and personal diversity of all persons of the
17 state.

18 * **Sec. 15.** AS 47.12 is amended by adding a new section to article 5 to read:

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

27 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to
28 read:

29 APPLICABILITY. This Act applies to offenses or acts committed on or after the
30 effective date of this Act.

31 * **Sec. 17.** This Act takes effect immediately under AS 01.10.070(c).