

**CS FOR SENATE BILL NO. 151(HSS)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE SENATE HEALTH AND SOCIAL SERVICES COMMITTEE

Offered: 3/6/12

Referred: Judiciary

Sponsor(s): SENATORS MEYER, Hoffman, Dyson, Menard, Paskvan, Egan, Davis, Ellis, McGuire

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to inclusion of fetal alcohol spectrum disorders, traumatic and  
2 acquired brain injury, and intellectual disability in the definition of 'mental disease or  
3 defect'; and relating to mitigation at sentencing in a criminal case for a defendant  
4 suffering from a mental disease or defect."

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

6 \* **Section 1.** AS 12.47.130(5) is amended to read:

7 (5) "mental disease or defect" means a disorder of thought or mood **or**  
8 **a condition of impaired brain function** that substantially impairs judgment,  
9 behavior, capacity to recognize reality, or ability to cope with the ordinary demands of  
10 life; "mental disease or defect" also includes **"intellectual disability"** [MENTAL  
11 RETARDATION], which means a significantly below average general intellectual  
12 functioning that impairs a person's ability to adapt to or cope with the ordinary  
13 demands of life; **in this paragraph, "condition of impaired brain function" means**  
14 **fetal alcohol spectrum disorders or traumatic and acquired brain injury;**

1 \* **Sec. 2.** AS 12.55.155(d) is amended to read:

2 (d) The following factors shall be considered by the sentencing court if proven  
3 in accordance with this section, and may allow imposition of a sentence below the  
4 presumptive range set out in AS 12.55.125:

5 (1) the offense was principally accomplished by another person, and  
6 the defendant manifested extreme caution or sincere concern for the safety or well-  
7 being of the victim;

8 (2) the defendant, although an accomplice, played only a minor role in  
9 the commission of the offense;

10 (3) the defendant committed the offense under some degree of duress,  
11 coercion, threat, or compulsion insufficient to constitute a complete defense, but that  
12 significantly affected the defendant's conduct;

13 (4) the conduct of a youthful defendant was substantially influenced by  
14 another person more mature than the defendant;

15 (5) the conduct of an aged defendant was substantially a product of  
16 physical or mental infirmities resulting from the defendant's age;

17 (6) in a conviction for assault under AS 11.41.200 - 11.41.220, the  
18 defendant acted with serious provocation from the victim;

19 (7) except in the case of a crime defined by AS 11.41.410 - 11.41.470,  
20 the victim provoked the crime to a significant degree;

21 (8) before the defendant knew that the criminal conduct had been  
22 discovered, the defendant fully compensated or made a good faith effort to fully  
23 compensate the victim of the defendant's criminal conduct for any damage or injury  
24 sustained;

25 (9) the conduct constituting the offense was among the least serious  
26 conduct included in the definition of the offense;

27 (10) the defendant was motivated to commit the offense solely by an  
28 overwhelming compulsion to provide for emergency necessities for the defendant's  
29 immediate family;

30 (11) after commission of the offense for which the defendant is being  
31 sentenced, the defendant assisted authorities to detect, apprehend, or prosecute other

1 persons who committed an offense;

2 (12) the facts surrounding the commission of the offense and any  
3 previous offenses by the defendant establish that the harm caused by the defendant's  
4 conduct is consistently minor and inconsistent with the imposition of a substantial  
5 period of imprisonment;

6 (13) the defendant is convicted of an offense specified in AS 11.71 and  
7 the offense involved small quantities of a controlled substance;

8 (14) the defendant is convicted of an offense specified in AS 11.71 and  
9 the offense involved the distribution of a controlled substance, other than a schedule  
10 IA controlled substance, to a personal acquaintance who is 19 years of age or older for  
11 no profit;

12 (15) the defendant is convicted of an offense specified in AS 11.71 and  
13 the offense involved the possession of a small amount of a controlled substance for  
14 personal use in the defendant's home;

15 (16) in a conviction for assault or attempted assault or for homicide or  
16 attempted homicide, the defendant acted in response to domestic violence perpetrated  
17 by the victim against the defendant and the domestic violence consisted of aggravated  
18 or repeated instances of assaultive behavior;

19 (17) except in the case of an offense defined by AS 11.41 or AS  
20 11.46.400, the defendant has been convicted of a class B or C felony, and, at the time  
21 of sentencing, has successfully completed a court-ordered treatment program as  
22 defined in AS 28.35.028 that was begun after the offense was committed;

23 (18) [EXCEPT IN THE CASE OF AN OFFENSE DEFINED UNDER  
24 AS 11.41 OR AS 11.46.400 OR A DEFENDANT WHO HAS PREVIOUSLY BEEN  
25 CONVICTED OF A FELONY,] the defendant committed the offense while suffering  
26 from a mental disease or defect as defined in AS 12.47.130 that was insufficient to  
27 constitute a complete defense but that significantly affected the defendant's conduct;

28 (19) the defendant is convicted of an offense under AS 11.71, and the  
29 defendant sought medical assistance for another person who was experiencing a drug  
30 overdose contemporaneously with the commission of the offense.