

SENATE BILL NO. 210

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY SENATOR MCGUIRE

Introduced: 2/21/12

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to crimes against children; establishing a new aggravating factor at
2 sentencing in certain crimes against children; relating to criminal nonsupport; adding to
3 the list of crimes against children that bar the Department of Public Safety from issuing
4 to a person a license to drive a school bus; adding an exception to a provision that
5 requires the Department of Health and Social Services to make timely, reasonable
6 efforts to provide family support services to prevent out-of-home placement of a child;
7 and providing for an effective date."

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

9 * **Section 1.** AS 11.41.200(a) is amended to read:

10 (a) A person commits the crime of assault in the first degree if

11 (1) the [THAT] person recklessly causes serious physical injury to
12 another by means of a dangerous instrument;

13 (2) with intent to cause serious physical injury to another, the person

1 causes serious physical injury to any person;

2 (3) the person knowingly engages in conduct that results in serious
3 physical injury to another under circumstances manifesting extreme indifference to the
4 value of human life; [OR]

5 (4) **the** [THAT] person recklessly causes serious physical injury to
6 another by repeated assaults using a dangerous instrument, even if each assault
7 individually does not cause serious physical injury;

8 **(5) the person is 18 years of age or older and intentionally causes**
9 **serious bodily harm to a child under 16 years of age who has a disability; or**

10 **(6) the person is 18 years of age or older and recklessly causes**
11 **serious bodily harm**

12 **(A) to a child under 12 years of age; or**

13 **(B) on more than one occasion to a child under 16 years of**
14 **age who has a disability.**

15 * **Sec. 2.** AS 11.41.210(a) is amended to read:

16 (a) A person commits the crime of assault in the second degree if

17 (1) with intent to cause physical injury to another person, that person
18 causes physical injury to another person by means of a dangerous instrument;

19 (2) that person recklessly causes serious physical injury to another
20 person; or

21 (3) that person recklessly causes serious physical injury to another by
22 repeated assaults, even if each assault individually does not cause serious physical
23 injury;

24 **(4) the person is 18 years of age or older and knowingly causes**
25 **serious bodily harm to a child under 16 years of age who has a disability; or**

26 **(5) the person is 18 years of age or older and recklessly causes**
27 **physical injury on more than one occasion to**

28 **(A) a child under 16 years of age who has a disability; or**

29 **(B) a child under 12 years of age.**

30 * **Sec. 3.** AS 11.41.220(a) is amended to read:

31 (a) A person commits the crime of assault in the third degree if that person

- 1 (1) recklessly
- 2 (A) places another person in fear of imminent serious physical
- 3 injury by means of a dangerous instrument;
- 4 (B) causes physical injury to another person by means of a
- 5 dangerous instrument; or
- 6 (C) while being 18 years of age or older [(i)] causes physical
- 7 injury to a child under 12 [10] years of age and the injury would cause a
- 8 reasonable caregiver to seek medical attention from a health care professional
- 9 in the form of diagnosis or treatment;
- 10 [(ii) CAUSES PHYSICAL INJURY TO A CHILD
- 11 UNDER 10 YEARS OF AGE ON MORE THAN ONE OCCASION;]
- 12 (2) with intent to place another person in fear of death or serious
- 13 physical injury to the person or the person's family member makes repeated threats to
- 14 cause death or serious physical injury to another person;
- 15 (3) while being 18 years of age or older, knowingly causes physical
- 16 injury to a child under 16 years of age but at least 12 [10] years of age and the injury
- 17 reasonably requires medical treatment;
- 18 (4) with criminal negligence causes serious physical injury under
- 19 AS 11.81.900(b)(56)(B) to another person by means of a dangerous instrument; or
- 20 (5) commits a crime that is a violation of AS 11.41.230(a)(1) or (2)
- 21 and, within the preceding 10 years, the person was convicted on two or more separate
- 22 occasions of crimes under
- 23 (A) AS 11.41.100 - 11.41.170;
- 24 (B) AS 11.41.200 - 11.41.220, 11.41.230(a)(1) or (2),
- 25 11.41.280, or 11.41.282;
- 26 (C) AS 11.41.260 or 11.41.270;
- 27 (D) AS 11.41.410, 11.41.420, or 11.41.425(a)(1); or
- 28 (E) a law or ordinance of this or another jurisdiction with
- 29 elements similar to those of an offense described in (A) - (D) of this paragraph.
- 30 * **Sec. 4.** AS 11.41 is amended by adding a new section to read:
- 31 **Sec. 11.41.240. Definitions.** In AS 11.41.200 - 11.41.240, unless the context

1 requires otherwise,

2 (1) "disability" means a permanent or temporary

3 (A) mental condition or impairment that causes a child to be
4 substantially incapable of understanding a consequence, of their own conduct
5 or the conduct of others, that would be reasonably obvious to a child with
6 ordinary mental capability who is substantially the same age; or

7 (B) physical condition or impairment, including a physiological
8 disease, disorder, cosmetic disfigurement, or anatomical loss, that substantially
9 limits the child's physical ability to participate in major life activities;

10 (2) "serious bodily harm" means physical injury that includes

11 (A) serious physical injury;

12 (B) substantial skin bruising, burning, or other skin injury;

13 (C) internal bleeding, including a subdural hematoma or
14 subarachnoid hemorrhage;

15 (D) a bone fracture;

16 (E) a skull concussion;

17 (F) a brain contusion;

18 (G) prolonged or extreme physical pain;

19 (H) prolonged or extreme swelling or injury to soft tissue;

20 (I) a cerebral edema; or

21 (J) a substantial strangulation;

22 * **Sec. 5.** AS 11.51.100(b) is amended to read:

23 (b) A person commits the crime of endangering the welfare of a minor in the
24 first degree if the person

25 (1) transports a child in a motor vehicle, aircraft, or watercraft while in
26 violation of AS 28.35.030; **or**

27 (2) **recklessly exposes a child to the unlawful manufacture, use,**
28 **display, or delivery of a schedule IA, IIA, IIIA, IVA, VA, or VIA controlled**
29 **substance by allowing the child to be present during the unlawful manufacture,**
30 **use, display, or delivery when the person knows the unlawful manufacture, use,**
31 **display, or delivery is occurring or about to occur, unless the child's disabilities of**

1 **minority have been removed for general purposes under AS 09.55.590; in this**
 2 **paragraph, "present" means physically present in a manner that creates an**
 3 **immediate and substantial risk of ingesting or later testing positive for ingesting a**
 4 **schedule IA, IIA, IIIA, IVA, VA, or VIA controlled substance.**

5 * **Sec. 6.** AS 11.51.100(e) is amended to read:

6 (e) Endangering the welfare of a child under **(b)(1)** [(b)] of this **section**
 7 [SUBSECTION] is a class A misdemeanor.

8 * **Sec. 7.** AS 11.51.100 is amended by adding a new section to read:

9 (g) Endangering the welfare of a child under (b)(2) of this section is

10 (1) a class B felony for exposure to the unlawful manufacture, use,
 11 display, or delivery of a schedule IA or IIA controlled substance;

12 (2) a class C felony for exposure to the unlawful manufacture, use,
 13 display, or delivery of a schedule IIIA or IVA controlled substance; or

14 (3) a class A misdemeanor for exposure to the unlawful manufacture,
 15 use, display, or delivery of a schedule VA or VIA controlled substance.

16 * **Sec. 8.** AS 11.51.120(b) is amended to read:

17 (b) As used in this section, "support" includes

18 **(1) monetary support required by a court or administrative order**
 19 **from this or another jurisdiction; and**

20 **(2)** necessary food, **water,** care, clothing, shelter, medical attention,
 21 and education; **however, there** [. THERE] is no failure to provide medical attention to
 22 a child if the child is provided treatment solely by spiritual means through prayer in
 23 accordance with the tenets and practices of a recognized church or religious
 24 denomination by an accredited practitioner of the church or denomination.

25 * **Sec. 9.** AS 11.51.120(d) is amended to read:

26 (d) Criminal nonsupport is a class C felony if the support the person failed to
 27 provide is

28 **(1) necessary food and water; or**

29 **(2)** monetary support required by a court or administrative order from
 30 this or another jurisdiction and, at the time the person knowingly failed, without lawful
 31 excuse, to provide the support,

1 (A) [(1)] the aggregate amount of accrued monetary child
2 support arrearage is \$20,000 or more;

3 (B) [(2)] no child support payment has been made for a period
4 of 24 consecutive months or more; or

5 (C) [(3)] the person had been previously convicted under this
6 section or a similar provision in another jurisdiction and

7 (i) [(A)] the aggregate amount of accrued monetary
8 child support arrearage is \$5,000 or more; or

9 (ii) [(B)] no child support payment has been made for a
10 period of six months or more.

11 * **Sec. 10.** AS 12.55.155(c)(18) is amended to read:

12 (18) the offense was a felony

13 (A) specified in AS 11.41 and was committed against a spouse,
14 a former spouse, or a member of the social unit made up of those living
15 together in the same dwelling as the defendant;

16 (B) specified in AS 11.41.410 - 11.41.458 and the defendant
17 has engaged in the same or other conduct prohibited by a provision of
18 AS 11.41.410 - 11.41.460 involving the same or another victim;

19 (C) specified in AS 11.41 that is a crime involving domestic
20 violence and was committed in the physical presence or hearing of a child
21 under 16 years of age who was, at the time of the offense, living within the
22 residence of the victim, the residence of the perpetrator, or the residence where
23 the crime involving domestic violence occurred;

24 (D) specified in AS 11.41 and was committed against a person
25 with whom the defendant has a dating relationship or with whom the defendant
26 has engaged in a sexual relationship; [OR]

27 (E) specified in AS 11.41.434 - 11.41.458 or AS 11.61.128 and
28 the defendant was 10 or more years older than the victim; or

29 (F) specified in AS 11.41.200 - 11.41.220 that is a crime
30 committed against a child and the defendant caused serious bodily harm
31 that resulted in a protracted and substantial impairment of the child's

1 **mental health; in this paragraph, "serious bodily harm" has the meaning**
 2 **given in AS 11.41.240;**

3 * **Sec. 11.** AS 28.15.046(c) is amended to read:

4 (c) The department may not issue a license under this section to an applicant
 5 who has been convicted of any of the following offenses within 20 years of the time of
 6 application:

7 (1) sexual abuse of a minor in any degree under AS 11.41.434 -
 8 11.41.440;

9 (2) sexual assault in any degree under AS 11.41.410 - 11.41.425;

10 (3) incest under AS 11.41.450;

11 (4) unlawful exploitation of a minor under AS 11.41.455;

12 (5) contributing to the delinquency of a minor under AS 11.51.130;

13 (6) a felony involving possession of a controlled or imitation
 14 controlled substance under AS 11.71 or AS 11.73;

15 (7) a felony or misdemeanor involving distribution of a controlled or
 16 imitation controlled substance under AS 11.71 or AS 11.73;

17 (8) promoting prostitution in the first or second degree under
 18 AS 11.66.110 or 11.66.120;

19 (9) indecent exposure in the first or second degree under AS 11.41.458
 20 or 11.41.460;

21 **(10) endangering the welfare of a minor in the first degree under**
 22 **AS 11.51.100(b)(2).**

23 * **Sec. 12.** AS 47.10.086(c) is amended to read:

24 (c) The court may determine that reasonable efforts of the type described in
 25 (a) of this section are not required if the court has found by clear and convincing
 26 evidence that

27 (1) the parent or guardian has subjected the child to circumstances that
 28 pose a substantial risk to the child's health or safety; these circumstances include
 29 abandonment, sexual abuse, torture, chronic mental injury, or chronic physical harm;

30 (2) the parent or guardian has

31 (A) committed homicide under AS 11.41.100 - 11.41.130 of a

1 parent of the child or of a child;

2 (B) aided or abetted, attempted, conspired, or solicited under
3 AS 11.16 or AS 11.31 to commit a homicide described in (A) of this
4 paragraph;

5 (C) committed an assault that is a felony under AS 11.41.200 -
6 11.41.220 and results in serious physical injury **or serious bodily harm** to a
7 child; or

8 (D) committed the conduct described in (A) - (C) of this
9 paragraph that violated a law or ordinance of another jurisdiction having
10 elements similar to an offense described in (A) - (C) of this paragraph;

11 (3) the parent or guardian has, during the 12 months preceding the
12 permanency hearing, failed to comply with a court order to participate in family
13 support services;

14 (4) the department has conducted a reasonably diligent search over a
15 time period of at least three months for an unidentified or absent parent and has failed
16 to identify and locate the parent;

17 (5) the parent or guardian is the sole caregiver of the child and the
18 parent or guardian has a mental illness or mental deficiency of such nature and
19 duration that, according to the statement of a psychologist or physician, the parent or
20 guardian will be incapable of caring for the child without placing the child at
21 substantial risk of physical or mental injury even if the department were to provide
22 family support services to the parent or guardian for 12 months;

23 (6) the parent or guardian has previously been convicted of a crime
24 involving a child in this state or in another jurisdiction and, after the conviction, the
25 child was returned to the custody of the parent or guardian and later removed because
26 of an additional substantiated report of physical or sexual abuse by the parent or
27 guardian;

28 (7) a child has suffered substantial physical harm as the result of
29 abusive or neglectful conduct by the parent or guardian or by a person known by the
30 parent or guardian and the parent or guardian knew or reasonably should have known
31 that the person was abusing the child;

1 (8) the parental rights of the parent have been terminated with respect
2 to another child because of child abuse or neglect, the parent has not remedied the
3 conditions or conduct that led to the termination of parental rights, and the parent has
4 demonstrated an inability to protect the child from substantial harm or the risk of
5 substantial harm;

6 (9) the child has been removed from the child's home on at least two
7 previous occasions, family support services were offered or provided to the parent or
8 guardian at those times, and the parent or guardian has demonstrated an inability to
9 protect the child from substantial harm or the risk of substantial harm; or

10 (10) the parent or guardian is incarcerated and is unavailable to care
11 for the child during a significant period of the child's minority, considering the child's
12 age and need for care by an adult.

13 * **Sec. 13.** AS 47.10.086 is amended by adding a new subsection to read:

14 (h) In this section, "serious bodily harm" has the meaning given in
15 AS 11.41.240.

16 * **Sec. 14.** AS 47.10.990(32) is amended to read:

17 (32) "support" has the meaning given in **AS 11.51.120(b)(2)**
18 [AS 11.51.120(b)].

19 * **Sec. 15.** AS 11.51.130(a)(2) is repealed.

20 * **Sec. 16.** This Act takes effect immediately under AS 01.10.070(c).