

(LIMITED RUN SHOWING ALL ADDITIONAL SPONSORSHIPS)

HOUSE CS FOR CS FOR SENATE BILL NO. 210(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/13/12
Referred: Finance

Sponsor(s): SENATORS MCGUIRE, French, Dyson, Ellis, Wielechowski, Davis, Olson, Giessel, Huggins, Meyer, Menard, Egan, Thomas, Stedman, Hoffman, Wagoner, Stevens

REPRESENTATIVES Lynn, Kawasaki, Tuck, Millett, Petersen, Pruitt, Johnson, Gardner, Peggy Wilson

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to crimes against children; relating to persons found guilty but
2 mentally ill; relating to sentencing procedures for factors that may increase the
3 presumptive range or affect mandatory parole eligibility; relating to the granting of
4 probation; relating to procedures for finding aggravating factors at sentencing; relating
5 to crimes of human trafficking; establishing a task force to evaluate services available to
6 victims of human trafficking, sex trafficking, or promotion of prostitution and examine
7 the prevalence of those crimes; relating to the recommendations and report of the task
8 force; amending Rule 32.1, Alaska Rules of Criminal Procedure; and providing for an
9 effective date."

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

11 * **Section 1.** AS 11.41.220(a) is amended to read:

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

31 * **Sec. 2.** AS 11.41 is amended by adding a new section to read:

1 **Sec. 11.41.255. Definitions for AS 11.41.200 - 11.41.250.** Notwithstanding
 2 the definition of "serious physical injury" in AS 11.81.900(b), for the purpose of an
 3 offense against a child under 12 years of age under AS 11.41.200 - 11.41.250, unless
 4 the context requires otherwise, "serious physical injury" means

5 (1) physical injury caused by an act performed under circumstances
 6 that create a substantial risk of death; or

7 (2) physical injury that terminates a pregnancy or causes

8 (A) serious disfigurement;

9 (B) serious impairment of health by extensive bruising or other
 10 injury that would cause a reasonable person to seek medical attention for the
 11 child from a health care professional in the form of diagnosis or treatment;

12 (C) serious impediment of blood circulation or breathing; or

13 (D) protracted loss or impairment of the function of a body
 14 member or organ.

15 * **Sec. 3.** AS 11.51.100(a) is amended to read:

16 (a) A person commits the crime of endangering the welfare of a child in the
 17 first degree if, being a parent, guardian, or other person legally charged with the care
 18 of a child under 16 years of age, the person

19 (1) intentionally deserts the child in a place under circumstances
 20 creating a substantial risk of physical injury to the child;

21 (2) leaves the child with another person who is not a parent, guardian,
 22 or lawful custodian of the child knowing that the person is

23 (A) registered or required to register as a sex offender or child
 24 kidnapper under AS 12.63 or a law or ordinance in another jurisdiction with
 25 similar requirements;

26 (B) charged by complaint, information, or indictment with a
 27 violation of AS 11.41.410 - 11.41.455 or a law or ordinance in another
 28 jurisdiction with similar elements; or

29 (C) charged by complaint, information, or indictment with an
 30 attempt, solicitation, or conspiracy to commit a crime described in (B) of this
 31 paragraph; [OR]

1 (3) leaves the child with another person knowing that the person has
 2 previously physically mistreated or had sexual contact with any child, and the other
 3 person causes physical injury or engages in sexual contact with the child; or

4 **(4) recklessly fails to provide an adequate quantity of food or**
 5 **liquids to a child, causing protracted impairment of the child's health.**

6 * **Sec. 4.** AS 11.51.100(f) is amended to read:

7 (f) Endangering the welfare of a child in the first degree under (a)(1), (2), or
 8 (4) [OR (2)] of this section is a class C felony.

9 * **Sec. 5.** AS 12.47.040(b) is amended to read:

10 (b) To return a verdict under (a)(4) of this section, the **fact finder** [JURY]
 11 must find beyond a reasonable doubt that the defendant committed the crime and
 12 [FIND BY A PREPONDERANCE OF THE EVIDENCE] that, when the defendant
 13 committed the crime, the defendant was guilty but mentally ill as defined in
 14 AS 12.47.030.

15 * **Sec. 6.** AS 12.47.060(a) is amended to read:

16 (a) In a prosecution for a crime when the affirmative defense of insanity is not
 17 raised and when evidence of mental disease or defect of the defendant is not admitted
 18 at trial under AS 12.47.020, [AND THE DEFENDANT IS CONVICTED OF A
 19 CRIME,] the defendant **or** [,] the prosecuting attorney [, OR THE COURT ON ITS
 20 OWN MOTION] may raise the issue of whether the defendant is guilty but mentally
 21 ill. **A party that seeks a post-conviction determination of guilty but mentally ill**
 22 **must give notice 10 days before trial of intent to do so; however, this deadline is**
 23 **waived if the opposing party presents evidence or argument at trial tending to**
 24 **show that the defendant may be guilty but mentally ill.** A hearing must be held on
 25 this issue [AT OR] before the **same fact finder that returned the verdict of guilty**
 26 **under procedures set by the court. In cases decided by a jury, at the request of**
 27 **the defendant and with the concurrence of the prosecuting attorney, the court**
 28 **may decide the issue. A waiver of consideration by a jury must be in writing and**
 29 **in person before the court** [SENTENCING HEARING]. At the hearing, the **fact**
 30 **finder** [COURT] shall determine whether the defendant has been shown to be guilty
 31 but mentally ill **beyond a reasonable doubt, considering** [BY A

1 PREPONDERANCE OF THE] evidence presented at the hearing and any evidence
2 relevant to the issue that was presented at trial.

3 * **Sec. 7.** AS 12.47.060(b) is amended to read:

4 (b) If the **fact finder** [COURT] finds that a defendant is guilty but mentally
5 ill, **the court** [IT] shall sentence the defendant as provided by law and shall enter the
6 finding of guilty but mentally ill as part of the judgment.

7 * **Sec. 8.** AS 12.55.025(i) is amended to read:

8 (i) Except as **otherwise** provided **in this chapter** [BY AS 12.55.125(a)(3),
9 12.55.145(d), 12.55.155(f), AND 12.55.165], the preponderance of the evidence
10 standard of proof applies to sentencing proceedings.

11 * **Sec. 9.** AS 12.55.090(b) is amended to read:

12 (b) **Except as otherwise provided in (f) of this section, the** [THE] court may
13 revoke or modify any condition of probation [,] or may change the period of
14 probation.

15 * **Sec. 10.** AS 12.55.090 is amended by adding a new subsection to read:

16 (f) Unless the defendant and the prosecuting authority agree at the probation
17 revocation proceeding or other proceeding, the court may not reduce the specific
18 period of probation, or the specific term of suspended incarceration except by the
19 amount of incarceration imposed for a probation violation, if

20 (1) the sentence was imposed in accordance with a plea agreement
21 under Rule 11, Alaska Rules of Criminal Procedure; and

22 (2) the agreement required a specific period of probation or a specific
23 term of suspended incarceration.

24 * **Sec. 11.** AS 12.55.125(a) is amended to read:

25 (a) A defendant convicted of murder in the first degree or murder of an unborn
26 child under AS 11.41.150(a)(1) shall be sentenced to a definite term of imprisonment
27 of at least 20 years but not more than 99 years. A defendant convicted of murder in the
28 first degree shall be sentenced to a mandatory term of imprisonment of 99 years when

29 (1) the defendant is convicted of the murder of a uniformed or
30 otherwise clearly identified peace officer, firefighter, or correctional employee who
31 was engaged in the performance of official duties at the time of the murder;

1 (2) the defendant has been previously convicted of

2 (A) murder in the first degree under AS 11.41.100 or former
3 AS 11.15.010 or 11.15.020;

4 (B) murder in the second degree under AS 11.41.110 or former
5 AS 11.15.030; or

6 (C) homicide under the laws of another jurisdiction when the
7 offense of which the defendant was convicted contains elements similar to first
8 degree murder under AS 11.41.100 or second degree murder under
9 AS 11.41.110;

10 (3) [THE COURT FINDS BY CLEAR AND CONVINCING
11 EVIDENCE THAT] the defendant subjected the murder victim to substantial physical
12 torture;

13 (4) the defendant is convicted of the murder of and personally caused
14 the death of a person, other than a participant, during a robbery; or

15 (5) [THE COURT FINDS BY CLEAR AND CONVINCING
16 EVIDENCE THAT] the defendant is a peace officer who used the officer's authority
17 as a peace officer to facilitate the murder.

18 * **Sec. 12.** AS 12.55.125 is amended by adding a new subsection to read:

19 (p) If the state seeks either (1) the imposition of a sentence under (a) of this
20 section that would preclude the defendant from being awarded a good time deduction
21 under AS 33.20.010(a) based on a fact other than a prior conviction; or (2) to establish
22 a fact that would increase the presumptive sentencing range under (c)(2), (d)(2), (e)(4),
23 (i)(1)(A) or (B), or (i)(2)(A) or (B) of this section, the factual question required to be
24 decided shall be presented to a trial jury and proven beyond a reasonable doubt under
25 procedures set by the court, unless the defendant waives trial by jury and either
26 stipulates to the existence of the fact or consents to have the fact proven to the court
27 sitting without a jury. Written notice of the intent to establish a fact under this
28 subsection must be served on the defendant and filed with the court as provided for
29 notice under AS 12.55.155(f)(2).

30 * **Sec. 13.** AS 12.55.155 is amended by adding a new subsection to read:

31 (i) If one of the aggravating factors in (c) of this section is established as

1 provided in (f)(1) and (2) of this section, the court may increase the term of
 2 imprisonment up to the maximum term of imprisonment. Any additional aggravating
 3 factor may then be established by clear and convincing evidence by the court sitting
 4 without a jury, including an aggravating factor that the jury has found not to have been
 5 established beyond a reasonable doubt.

6 * **Sec. 14.** AS 33.05.050 is amended to read:

7 **Sec. 33.05.050. Report of probation officer.** When directed by the court, the
 8 probation officer shall report to the court [,] with a statement of the conduct of the
 9 probationer while on probation. **Except as otherwise provided by law, the** [THE]
 10 court may then discharge the probationer from further supervision and may terminate
 11 the proceedings against the probationer, or may extend the probation, as shall seem
 12 advisable.

13 * **Sec. 15.** AS 33.05.070(b) is amended to read:

14 (b) As speedily as possible after arrest, the probationer shall be taken before
 15 the court for the district having jurisdiction over the probationer. **Except as provided**
 16 **in AS 12.55.090(f),** [THEREUPON] the court may revoke the probation and require
 17 the probationer to serve the sentence imposed [,] or any lesser sentence [,] and, if
 18 imposition of sentence was suspended, may impose any sentence **that** [WHICH]
 19 might originally have been imposed, subject to the limitation specified in
 20 AS 12.55.086(c).

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

23 **INDIRECT COURT RULE AMENDMENT.** AS 12.55.125(p), enacted by sec. 12 of
 24 this Act, and AS 12.55.155(i), enacted by sec. 13 of this Act, have the effect of changing Rule
 25 32.1, Alaska Rules of Criminal Procedure, by amending procedures for sentencing persons
 26 convicted of certain crimes.

27 * **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to
 28 read:

29 **APPLICABILITY.** (a) AS 12.47.040(b), as amended by sec. 5 of this Act,
 30 AS 12.47.060(a), as amended by sec. 6 of this Act, AS 12.47.060(b), as amended by sec. 7 of
 31 this Act, AS 12.55.025(i), as amended by sec. 8 of this Act, and AS 12.55.125(a), as amended

1 by sec. 11 of this Act, apply to proceedings occurring on or after the effective date of this Act
 2 for offenses occurring before, on, or after the effective date of this Act.

3 (b) AS 12.55.090, as amended by secs. 9 and 10 of this Act, applies to offenses
 4 occurring on or after the effective date of this Act.

5 (c) AS 12.55.125(p), enacted by sec. 12 of this Act, applies to sentencing proceedings
 6 occurring on or after the effective date of this Act for offenses occurring before, on, or after
 7 the effective date of this Act.

8 * **Sec. 18.** The uncodified law of the State of Alaska is amended by adding a new section to
 9 read:

10 **TASK FORCE ON THE CRIMES OF HUMAN TRAFFICKING, PROMOTING**
 11 **PROSTITUTION, AND SEX TRAFFICKING.** (a) The Task Force on the Crimes of Human
 12 Trafficking, Promoting Prostitution, and Sex Trafficking is established in the Department of
 13 Law. The attorney general, or the attorney general's designee, shall serve as the chair of the
 14 task force. The task force consists of representatives of the Department of Law, the
 15 Department of Public Safety, the Department of Health and Social Services, and two
 16 members, appointed by the governor, representing nongovernmental health and social
 17 services organizations that provide services to victims of human trafficking, promoting
 18 prostitution, or sex trafficking. The task force shall examine the prevalence of the crimes of
 19 human trafficking, promoting prostitution, and sex trafficking in the state and the services that
 20 are available to victims of those crimes under AS 11.41.360 and 11.41.365.

21 (b) The task force established in (a) of this section shall submit a report to the
 22 legislature by January 15, 2013. The report must include a current assessment of services
 23 currently available to victims of human trafficking, promoting prostitution, or sex trafficking,
 24 recommendations for improving services to those victims, and the following information on
 25 human trafficking, promoting prostitution, and sex trafficking cases:

26 (1) the number of cases reported to state and local law enforcement agencies
 27 in the state since 2007;

28 (2) the number of cases prosecuted under Alaska law;

29 (3) the number of cases state and local law enforcement agencies have
 30 investigated in cooperation with federal law enforcement agencies;

31 (4) the services currently available in the state to victims including services

1 provided by state agencies, federal agencies, or nongovernmental agencies relating to

2 (A) medical or psychological counseling;

3 (B) emergency shelter;

4 (C) translation;

5 (D) other assistance related to safe housing and legal services.

6 (c) The task force established in (a) of this section shall solicit information and input
7 from local, state, and federal agencies, nongovernmental organizations, and other interested
8 persons. The task force shall hold at least one public meeting and shall provide reasonable
9 public notice, teleconference capability, and an opportunity for interested organizations,
10 groups, or individuals to provide written or oral comments. Minutes of meetings and written
11 comments provided to the task force shall be included in the report provided under (b) of this
12 section.

13 (d) The state agency members of the task force shall be employees of their respective
14 agencies, designated by the attorney general, the commissioner of public safety, or the
15 commissioner of health and social services. Expenses, other than the personnel expenses, of
16 the state agency members of the task force shall be shared by the Department of Law, the
17 Department of Public Safety, and the Department of Health and Social Services. The
18 nongovernmental health and social service organizations whose members are appointed by the
19 governor shall be responsible for their members' costs in participating on the task force.

20 * **Sec. 19.** Section 18 of this Act is repealed June 1, 2013.

21 * **Sec. 20.** The uncodified law of the State of Alaska is amended by adding a new section to
22 read:

23 **CONDITIONAL EFFECT.** Sections 12 and 13 of this Act take effect only if sec. 16 of
24 this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,
25 Constitution of the State of Alaska.

26 * **Sec. 21.** This Act takes effect July 1, 2012.