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SENATE CS FOR CS FOR HOUSE BILL NO. 14(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 5/6/19

Referred: Rules

Sponsor(s): REPRESENTATIVES LINCOLN, Claman, Fields, Spohnholz, Tarr, Tuck, Zulkosky, Hopkins, Drummond, Kreiss-Tomkins, LeDoux, Kopp, Rasmussen, Vance, Stutes, Josephson, Johnson, Pruitt, Thompson, Wilson, Johnston, Story, Tilton, Rauscher

SENATORS Micciche, Kawasaki, Begich, Wielechowski, Gray-Jackson, Hughes, Stedman, Bishop, Reinbold, Stevens, Costello, Hoffman, von Imhof, Shower, Coghill, Birch, Olson, Wilson, Giessel

A BILL**FOR AN ACT ENTITLED**

1 **"An Act relating to assault in the first degree; relating to harassment; relating to sex**
 2 **offenses; relating to the definition of 'dangerous instrument'; relating to sentencing;**
 3 **providing for an aggravating factor at sentencing for strangulation that results in**
 4 **unconsciousness; relating to the duties of the prosecuting attorney; and relating to**
 5 **victim notifications."**

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

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

8 (a) A person commits the crime of assault in the first degree if
 9 (1) that person recklessly causes serious physical injury to another by
 10 means of a dangerous instrument;
 11 (2) with intent to cause serious physical injury to another, the person
 12 causes serious physical injury to any person;
 13 (3) the person knowingly engages in conduct that results in serious

1 physical injury to another under circumstances manifesting extreme indifference to the
2 value of human life; [OR]

3 (4) that person recklessly causes serious physical injury to another by
4 repeated assaults using a dangerous instrument, even if each assault individually does
5 not cause serious physical injury; or

6 **(5) that person knowingly causes another to become unconscious**
7 **by means of a dangerous instrument; in this paragraph, "dangerous instrument"**
8 **has the meaning given in AS 11.81.900(b)(15)(B).**

9 * **Sec. 2.** AS 11.61.118(a) is amended to read:

10 (a) A person commits the crime of harassment in the first degree if, under
11 **circumstances not proscribed under AS 11.41.434 - 11.41.440,**

12 [(1)] the person violates AS 11.61.120(a)(5) and the offensive physical
13 contact is contact

14 **(1)** with human or animal blood, mucus, saliva, semen, urine, vomitus,
15 or feces; or

16 (2) [UNDER CIRCUMSTANCES NOT PROSCRIBED UNDER
17 AS 11.41.434 - 11.41.440, THE PERSON VIOLATES AS 11.61.120(a)(5) AND THE
18 OFFENSIVE PHYSICAL CONTACT IS CONTACT] by the person touching through
19 clothing another person's genitals, buttocks, or female breast.

20 * **Sec. 3.** AS 11.81.900(b)(15) is amended to read:

21 (15) "dangerous instrument" means

22 (A) any deadly weapon or anything that, under the
23 circumstances in which it is used, attempted to be used, or threatened to be
24 used, is capable of causing death or serious physical injury; or

25 (B) hands, **other body parts,** or other objects when used to
26 impede normal breathing or circulation of blood by applying pressure on the
27 throat or neck or obstructing the nose or mouth;

28 * **Sec. 4.** AS 11.81.900(b)(60) is amended to read:

29 (60) "sexual contact" means

30 (A) the defendant's

31 (i) knowingly touching, directly or through clothing, the

1 victim's genitals, anus, or female breast; [OR]

2 (ii) knowingly causing the victim to touch, directly or
3 through clothing, the defendant's or victim's genitals, anus, or female
4 breast; or

5 (iii) knowingly causing the victim to come into
6 contact with semen;

7 (B) but "sexual contact" does not include acts

8 (i) that may reasonably be construed to be normal
9 caretaker responsibilities for a child, interactions with a child, or
10 affection for a child;

11 (ii) performed for the purpose of administering a
12 recognized and lawful form of treatment that is reasonably adapted to
13 promoting the physical or mental health of the person being treated; or

14 (iii) that are a necessary part of a search of a person
15 committed to the custody of the Department of Corrections or the
16 Department of Health and Social Services;

17 * **Sec. 5.** AS 11.81.900(b) is amended by adding a new paragraph to read:

18 (68) "semen" means fluid produced in the male reproductive organs,
19 which may include spermatozoa.

20 * **Sec. 6.** AS 12.55.027(g) is amended to read:

21 (g) Unless the defendant participated in a residential treatment program
22 under (c) and (f) of this section while under electronic monitoring, a [A] court
23 may not grant [GRANTING] credit against a sentence of imprisonment under (d) of
24 this section if the sentence is [MAY GRANT CREDIT OF NOT MORE THAN 360
25 DAYS AGAINST A TOTAL TERM OF IMPRISONMENT IMPOSED] for

26 (1) a felony crime against a person under AS 11.41;

27 (2) a crime involving domestic violence as defined in AS 18.66.990;

28 (3) [A SEX OFFENSE AS DEFINED IN AS 12.63.100;

29 (4)] an offense under AS 11.71 involving the delivery of a controlled
30 substance to a person under 19 years of age;

31 (4) [(5)] burglary in the first degree under AS 11.46.300; or

1 **(5)** [(6)] arson in the first degree under AS 11.46.400.

2 * **Sec. 7.** AS 12.55.027 is amended by adding new subsections to read:

3 (i) A court may not grant credit under this section for time spent in a treatment
4 program or under electronic monitoring for a sex offense as defined in AS 12.63.100.

5 (j) A court may grant credit under this section for time spent in a treatment
6 program or under electronic monitoring if the court finds that the sentence, including
7 credit toward the sentence of imprisonment, meets the requirements of AS 12.55.005.

8 (k) When a court grants credit toward a sentence of imprisonment under this
9 section, if a defendant spends time in a treatment program while under electronic
10 monitoring, the court may grant credit for either the time spent in the treatment
11 program or for the time spent under electronic monitoring, but not for both.

12 * **Sec. 8.** AS 12.55.155(c) is amended to read:

13 (c) The following factors shall be considered by the sentencing court if proven
14 in accordance with this section, and may allow imposition of a sentence above the
15 presumptive range set out in AS 12.55.125:

16 (1) a person, other than an accomplice, sustained physical injury as a
17 direct result of the defendant's conduct;

18 (2) the defendant's conduct during the commission of the offense
19 manifested deliberate cruelty to another person;

20 (3) the defendant was the leader of a group of three or more persons
21 who participated in the offense;

22 (4) the defendant employed a dangerous instrument in furtherance of
23 the offense;

24 (5) the defendant knew or reasonably should have known that the
25 victim of the offense was particularly vulnerable or incapable of resistance due to
26 advanced age, disability, ill health, homelessness, consumption of alcohol or drugs, or
27 extreme youth or was for any other reason substantially incapable of exercising
28 normal physical or mental powers of resistance;

29 (6) the defendant's conduct created a risk of imminent physical injury
30 to three or more persons, other than accomplices;

31 (7) a prior felony conviction considered for the purpose of invoking a

1 presumptive range under this chapter was of a more serious class of offense than the
2 present offense;

3 (8) the defendant's prior criminal history includes conduct involving
4 aggravated assaultive behavior, repeated instances of assaultive behavior, repeated
5 instances of cruelty to animals proscribed under AS 11.61.140(a)(1) and (3) - (5), or a
6 combination of assaultive behavior and cruelty to animals proscribed under
7 AS 11.61.140(a)(1) and (3) - (5); in this paragraph, "aggravated assaultive behavior"
8 means assault that is a felony under AS 11.41, or a similar provision in another
9 jurisdiction;

10 (9) the defendant knew that the offense involved more than one victim;

11 (10) the conduct constituting the offense was among the most serious
12 conduct included in the definition of the offense;

13 (11) the defendant committed the offense under an agreement that the
14 defendant either pay or be paid for the commission of the offense, and the pecuniary
15 incentive was beyond that inherent in the offense itself;

16 (12) the defendant was on release under AS 12.30 for another felony
17 charge or conviction or for a misdemeanor charge or conviction having assault as a
18 necessary element;

19 (13) the defendant knowingly directed the conduct constituting the
20 offense at an active officer of the court or at an active or former judicial officer,
21 prosecuting attorney, law enforcement officer, correctional employee, firefighter,
22 emergency medical technician, paramedic, ambulance attendant, or other emergency
23 responder during or because of the exercise of official duties;

24 (14) the defendant was a member of an organized group of five or
25 more persons, and the offense was committed to further the criminal objectives of the
26 group;

27 (15) the defendant has three or more prior felony convictions;

28 (16) the defendant's criminal conduct was designed to obtain
29 substantial pecuniary gain and the risk of prosecution and punishment for the conduct
30 is slight;

31 (17) the offense was one of a continuing series of criminal offenses

1 committed in furtherance of illegal business activities from which the defendant
2 derives a major portion of the defendant's income;

3 (18) the offense was a felony

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

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

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

15 (D) specified in AS 11.41 and was committed against a person
16 with whom the defendant has a dating relationship or with whom the defendant
17 has engaged in a sexual relationship; or

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

20 (19) the defendant's prior criminal history includes an adjudication as a
21 delinquent for conduct that would have been a felony if committed by an adult;

22 (20) the defendant was on furlough under AS 33.30 or on parole or
23 probation for another felony charge or conviction that would be considered a prior
24 felony conviction under AS 12.55.145(a)(1)(B);

25 (21) the defendant has a criminal history of repeated instances of
26 conduct violative of criminal laws, whether punishable as felonies or misdemeanors,
27 similar in nature to the offense for which the defendant is being sentenced under this
28 section;

29 (22) the defendant knowingly directed the conduct constituting the
30 offense at a victim because of that person's race, sex, color, creed, physical or mental
31 disability, ancestry, or national origin;

1 (23) the defendant is convicted of an offense specified in AS 11.71 and

2 (A) the offense involved the delivery of a controlled substance
3 under circumstances manifesting an intent to distribute the substance as part of
4 a commercial enterprise; or

5 (B) at the time of the conduct resulting in the conviction, the
6 defendant was caring for or assisting in the care of a child under 10 years of
7 age;

8 (24) the defendant is convicted of an offense specified in AS 11.71 and
9 the offense involved the transportation of controlled substances into the state;

10 (25) the defendant is convicted of an offense specified in AS 11.71 and
11 the offense involved large quantities of a controlled substance;

12 (26) the defendant is convicted of an offense specified in AS 11.71 and
13 the offense involved the distribution of a controlled substance that had been
14 adulterated with a toxic substance;

15 (27) the defendant, being 18 years of age or older,

16 (A) is legally accountable under AS 11.16.110(2) for the
17 conduct of a person who, at the time the offense was committed, was under 18
18 years of age and at least three years younger than the defendant; or

19 (B) is aided or abetted in planning or committing the offense by
20 a person who, at the time the offense was committed, was under 18 years of
21 age and at least three years younger than the defendant;

22 (28) the victim of the offense is a person who provided testimony or
23 evidence related to a prior offense committed by the defendant;

24 (29) the defendant committed the offense for the benefit of, at the
25 direction of, or in association with a criminal street gang;

26 (30) the defendant is convicted of an offense specified in AS 11.41.410
27 - 11.41.455, and the defendant knowingly supplied alcohol or a controlled substance to
28 the victim in furtherance of the offense with the intent to make the victim
29 incapacitated; in this paragraph, "incapacitated" has the meaning given in
30 AS 11.41.470;

31 (31) the defendant's prior criminal history includes convictions for five

1 or more crimes in this or another jurisdiction that are class A misdemeanors under the
 2 law of this state, or having elements similar to a class A misdemeanor; two or more
 3 convictions arising out of a single continuous episode are considered a single
 4 conviction; however, an offense is not a part of a continuous episode if committed
 5 while attempting to escape or resist arrest or if it is an assault on a uniformed or
 6 otherwise clearly identified peace officer or correctional employee; notice and denial
 7 of convictions are governed by AS 12.55.145(b) - (d);

8 (32) the offense is a violation of AS 11.41 or AS 11.46.400 and the
 9 offense occurred on school grounds, on a school bus, at a school-sponsored event, or
 10 in the administrative offices of a school district if students are educated at that office;
 11 in this paragraph,

12 (A) "school bus" has the meaning given in AS 11.71.900;

13 (B) "school district" has the meaning given in AS 47.07.063;

14 (C) "school grounds" has the meaning given in AS 11.71.900;

15 (33) the offense was a felony specified in AS 11.41.410 - 11.41.455,
 16 the defendant had been previously diagnosed as having or having tested positive for
 17 HIV or AIDS, and the offense either (A) involved penetration, or (B) exposed the
 18 victim to a risk or a fear that the offense could result in the transmission of HIV or
 19 AIDS; in this paragraph, "HIV" and "AIDS" have the meanings given in
 20 AS 18.15.310;

21 (34) the defendant committed the offense on, or to affect persons or
 22 property on, the premises of a recognized shelter or facility providing services to
 23 victims of domestic violence or sexual assault;

24 (35) the defendant knowingly directed the conduct constituting the
 25 offense at a victim because that person was 65 years of age or older;

26 (36) the defendant committed the offense at a health care facility and
 27 knowingly directed the conduct constituting the offense at a medical professional
 28 during or because of the medical professional's exercise of professional duties; in this
 29 paragraph,

30 (A) "health care facility" has the meaning given in

31 AS 18.07.111;

(B) "medical professional" has the meaning given in AS 12.55.135(k);

(37) the defendant knowingly caused the victim to become unconscious by means of a dangerous instrument; in this paragraph, "dangerous instrument" has the meaning given in AS 11.81.900(b)(15)(B).

* Sec. 9. AS 12.61.015(a) is amended to read:

(a) If a victim of a felony, **a sex offense as defined in AS 12.63.100**, or a crime involving domestic violence requests, the prosecuting attorney shall make a reasonable effort to

(1) confer with the person against whom the offense has been perpetrated about that person's testimony before the defendant's trial;

(2) in a manner reasonably calculated to give prompt actual notice, notify the victim

(A) of the defendant's conviction and the crimes of which the defendant was convicted;

(B) of the victim's right in a case that is a felony to make a written or oral statement for use in preparation of the defendant's presentence report, and of the victim's right to appear personally at the defendant's sentencing hearing to present a written statement and to give sworn testimony or an unsworn oral presentation;

(C) of the address and telephone number of the office that will prepare the presentence report; and

(D) of the time and place of the sentencing proceeding;

(3) notify the victim in writing of the final disposition of the case within 30 days after final disposition of the case;

(4) confer with the victim **or the victim's legal guardian** concerning a proposed plea agreement before entering into **the plea** [AN] agreement **to ask the victim or the victim's legal guardian whether the victim is in agreement with the proposed plea agreement; the prosecuting attorney shall record whether the victim or the victim's legal guardian is in agreement with the proposed plea agreement;**

1 (5) inform the victim of a pending motion that may substantially delay
 2 the prosecution and inform the court of the victim's position on the motion; in this
 3 paragraph, a "substantial delay" is

4 (A) for a misdemeanor, a delay of one month or longer;

5 (B) for a felony, a delay of two months or longer; and

6 (C) for an appeal, a delay of six months or longer.

7 * **Sec. 10.** AS 12.61.015 is amended by adding new subsections to read:

8 (d) The court may reschedule a hearing to consider a plea agreement as
 9 needed to allow additional time to comply with the victim notification requirements
 10 under (a)(2) and (4) of this section.

11 (e) Nothing in this section requires a victim or a victim's legal guardian to
 12 provide a response to a prosecuting attorney regarding a plea agreement or requires the
 13 prosecuting attorney to be bound by the victim's or legal guardian's response regarding
 14 the plea agreement.

15 * **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to
 16 read:

17 APPLICABILITY. AS 11.41.200(a), as amended by sec. 1 of this Act,
 18 AS 11.61.118(a), as amended by sec. 2 of this Act, AS 11.81.900(b)(15), as amended by sec.
 19 3 of this Act, AS 11.81.900(b)(60), as amended by sec. 4 of this Act, AS 12.55.027(g), as
 20 amended by sec. 6 of this Act, AS 12.55.027(i) - (k), enacted by sec. 7 of this Act, and
 21 AS 12.55.155(c), as amended by sec. 8 of this Act, apply to offenses committed on or after
 22 the effective date of this Act.