

SENATE BILL NO. 3

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - FIRST SESSION

BY SENATOR KAWASAKI

Introduced: 1/16/19

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the crime of harassment; providing for an aggravating factor at**
2 **sentencing for certain felonies committed for the sexual gratification of the offender;**
3 **and relating to registration of sex offenders."**

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

5 *** Section 1.** AS 11.41.260(a) is amended to read:

6 (a) A person commits the crime of stalking in the first degree if the person
7 violates AS 11.41.270 and

8 (1) the actions constituting the offense are in violation of an order
9 issued or filed under AS 18.66.100 - 18.66.180 or issued under former
10 AS 25.35.010(b) or 25.35.020;

11 (2) the actions constituting the offense are in violation of a condition of
12 probation, release before trial, release after conviction, or parole;

13 (3) the victim is under 16 years of age;

14 (4) at any time during the course of conduct constituting the offense,

1 the defendant possessed a deadly weapon;

2 (5) the defendant has been previously convicted of a crime under this
3 section, AS 11.41.270, or AS 11.56.740, or a law or ordinance of this or another
4 jurisdiction with elements similar to a crime under this section, AS 11.41.270, or
5 AS 11.56.740; or

6 (6) the defendant has been previously convicted of a crime, or an
7 attempt or solicitation to commit a crime, under (A) AS 11.41.100 - 11.41.250,
8 11.41.300 - 11.41.460, AS 11.56.807, 11.56.810, **or AS 11.61.117 - 11.61.120**
9 [AS 11.61.118, 11.61.120], or (B) a law or an ordinance of this or another jurisdiction
10 with elements similar to a crime, or an attempt or solicitation to commit a crime, under
11 AS 11.41.100 - 11.41.250, 11.41.300 - 11.41.460, AS 11.56.807, 11.56.810, **or**
12 **AS 11.61.117 - 11.61.120** [AS 11.61.118, OR 11.61.120], involving the same victim
13 as the present offense.

14 * **Sec. 2.** AS 11.61 is amended by adding a new section to read:

15 **Sec. 11.61.117. Harassment in the first degree.** (a) A person commits the
16 crime of harassment in the first degree if the person violates AS 11.61.120(a)(5) and
17 the offensive physical contact is contact with human or animal blood, mucus, saliva,
18 semen, urine, vomitus, or feces.

19 (b) Harassment in the first degree is a class C felony.

20 * **Sec. 3.** AS 11.61.118 is amended to read:

21 **Sec. 11.61.118. Harassment in the second [FIRST] degree.** (a) A person
22 commits the crime of harassment in the second [FIRST] degree if

23 (1) the person violates AS 11.61.120(a)(5) and the offensive physical
24 contact is contact with human or animal blood, mucus, saliva, semen, urine, vomitus,
25 or feces; or

26 (2) under circumstances not proscribed under AS 11.41.434 -
27 11.41.440, the person violates AS 11.61.120(a)(5) and the offensive physical contact
28 is contact by the person touching through clothing another person's genitals, buttocks,
29 or female breast.

30 (b) Harassment in the second [FIRST] degree is a class A misdemeanor.

31 * **Sec. 4.** AS 11.61.120 is amended to read:

1 **Sec. 11.61.120. Harassment in the third [SECOND] degree.** (a) A person
 2 commits the crime of harassment in the third [SECOND] degree if, with intent to
 3 harass or annoy another person, that person

4 (1) insults, taunts, or challenges another person in a manner likely to
 5 provoke an immediate violent response;

6 (2) telephones another and fails to terminate the connection with intent
 7 to impair the ability of that person to place or receive telephone calls;

8 (3) makes repeated telephone calls at extremely inconvenient hours;

9 (4) makes an anonymous or obscene telephone call, an obscene
 10 electronic communication, or a telephone call or electronic communication that
 11 threatens physical injury or sexual contact;

12 (5) subjects another person to offensive physical contact;

13 (6) except as provided in AS 11.61.116, publishes or distributes
 14 electronic or printed photographs, pictures, or films that show the genitals, anus, or
 15 female breast of the other person or show that person engaged in a sexual act; or

16 (7) repeatedly sends or publishes an electronic communication that
 17 insults, taunts, challenges, or intimidates a person under 18 years of age in a manner
 18 that places the person in reasonable fear of physical injury.

19 (b) Harassment in the third [SECOND] degree is a class B misdemeanor.

20 * **Sec. 5.** AS 12.55.135(d) is amended to read:

21 (d) A defendant convicted of assault in the fourth degree or harassment in the
 22 second [FIRST] degree who knowingly directed the conduct constituting the offense
 23 at

24 (1) a uniformed or otherwise clearly identified peace officer,
 25 firefighter, correctional employee, emergency medical technician, paramedic,
 26 ambulance attendant, or other emergency responder or medical professional who was
 27 engaged in the performance of official duties at the time of the assault or harassment
 28 shall be sentenced to a minimum term of imprisonment of

29 (A) 60 days if the defendant violated AS 11.41.230(a)(1) or (2)
 30 or AS 11.61.118;

31 (B) 30 days if the defendant violated AS 11.41.230(a)(3);

1 (2) a person who was on school grounds during school hours or during
 2 a school function or a school-sponsored event, on a school bus, at a school-sponsored
 3 event, or in the administrative offices of a school district, if students are educated at
 4 that office, shall be sentenced to a minimum term of imprisonment of 60 days if the
 5 defendant violated AS 11.41.230(a)(1) or (2); in this paragraph,

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

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

8 (C) "school grounds" has the meaning given in AS 11.71.900.

9 * **Sec. 6.** AS 12.55.155(c) is amended to read:

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

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

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

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

19 (4) the defendant employed a dangerous instrument in furtherance of
 20 the offense;

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

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

28 (7) a prior felony conviction considered for the purpose of invoking a
 29 presumptive range under this chapter was of a more serious class of offense than the
 30 present offense;

31 (8) the defendant's prior criminal history includes conduct involving

1 aggravated assaultive behavior, repeated instances of assaultive behavior, repeated
2 instances of cruelty to animals proscribed under AS 11.61.140(a)(1) and (3) - (5), or a
3 combination of assaultive behavior and cruelty to animals proscribed under
4 AS 11.61.140(a)(1) and (3) - (5); in this paragraph, "aggravated assaultive behavior"
5 means assault that is a felony under AS 11.41, or a similar provision in another
6 jurisdiction;

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

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

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

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

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

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

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

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

28 (17) the offense was one of a continuing series of criminal offenses
29 committed in furtherance of illegal business activities from which the defendant
30 derives a major portion of the defendant's income;

31 (18) the offense was a felony

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

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

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

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

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

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

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

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

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

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

30 (A) the offense involved the delivery of a controlled substance
31 under circumstances manifesting an intent to distribute the substance as part of

1 a commercial enterprise; or

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

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

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

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

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

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

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

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

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

23 (30) the defendant is convicted of an offense specified in AS 11.41.410
24 - 11.41.455, and the defendant knowingly supplied alcohol or a controlled substance to
25 the victim in furtherance of the offense with the intent to make the victim
26 incapacitated; in this paragraph, "incapacitated" has the meaning given in
27 AS 11.41.470;

28 (31) the defendant's prior criminal history includes convictions for five
29 or more crimes in this or another jurisdiction that are class A misdemeanors under the
30 law of this state, or having elements similar to a class A misdemeanor; two or more
31 convictions arising out of a single continuous episode are considered a single

1 conviction; however, an offense is not a part of a continuous episode if committed
 2 while attempting to escape or resist arrest or if it is an assault on a uniformed or
 3 otherwise clearly identified peace officer or correctional employee; notice and denial
 4 of convictions are governed by AS 12.55.145(b) - (d);

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

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

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

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

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

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

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

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

27 (A) "health care facility" has the meaning given in
 28 AS 18.07.111;

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

31 **(37) the offense was a felony, other than a sexual felony, and a**

1 **purpose for which the defendant committed the offense was for the defendant's**
 2 **sexual gratification.**

3 * **Sec. 7.** AS 12.63.100(6) is amended to read:

4 (6) "sex offense" means

5 (A) a crime under AS 11.41.100(a)(3), or a similar law of
 6 another jurisdiction, in which the person committed or attempted to commit a
 7 sexual offense, or a similar offense under the laws of the other jurisdiction; in
 8 this subparagraph, "sexual offense" has the meaning given in
 9 AS 11.41.100(a)(3);

10 (B) a crime under AS 11.41.110(a)(3), or a similar law of
 11 another jurisdiction, in which the person committed or attempted to commit
 12 one of the following crimes, or a similar law of another jurisdiction:

13 (i) sexual assault in the first degree;

14 (ii) sexual assault in the second degree;

15 (iii) sexual abuse of a minor in the first degree; or

16 (iv) sexual abuse of a minor in the second degree;

17 (C) a crime, or an attempt, solicitation, or conspiracy to commit
 18 a crime, under the following statutes or a similar law of another jurisdiction:

19 (i) AS 11.41.410 - 11.41.438;

20 (ii) AS 11.41.440(a)(2);

21 (iii) AS 11.41.450 - 11.41.458;

22 (iv) AS 11.41.460 or AS 26.05.900(c) if the indecent
 23 exposure is before a person under 16 years of age and the offender has
 24 previously been convicted under AS 11.41.460 or AS 26.05.900(c);

25 (v) AS 11.61.125 - 11.61.128;

26 (vi) AS 11.66.110, 11.66.130(a)(2)(B), or
 27 AS 26.05.900(b) if the person who was induced or caused to engage in
 28 prostitution was under 20 years of age at the time of the offense;

29 (vii) former AS 11.15.120, former 11.15.134, or assault
 30 with the intent to commit rape under former AS 11.15.160, former
 31 AS 11.40.110, or former 11.40.200;

1 (viii) AS 11.61.118(a)(2) if the offender has a previous
2 conviction for that offense;

3 (ix) AS 11.66.100(a)(2) if the offender is subject to
4 punishment under AS 11.66.100(e);

5 (x) AS 26.05.890 if the person engaged in sexual
6 penetration or sexual contact with the victim;

7 (xi) AS 26.05.890 if, at the time of the offense, the
8 victim is under a duty to obey the lawful orders of the offender,
9 regardless of whether the offender is in the direct chain of command
10 over the victim;

11 (xii) AS 26.05.893 if the person engaged in sexual
12 penetration or sexual contact with the victim;

13 (xiii) AS 26.05.900(a)(1) - (4) if the victim is under 18
14 years of age at the time of the offense; [OR]

15 (xiv) AS 26.05.900 if, at the time of the offense, the
16 victim is under a duty to obey the lawful orders of the offender,
17 regardless of whether the offender is in the direct chain of command
18 over the victim; or

19 **(xv) AS 11.61.117 if the offensive physical contact is**
20 **contact with semen;**

21 (D) an offense, or an attempt, solicitation, or conspiracy to
22 commit an offense, under AS 26.05.935(b), or a similar law of another
23 jurisdiction, if the member of the militia commits one of the following
24 enumerated offenses punishable under Article 134, 10 U.S.C. 934 (Uniform
25 Code of Military Justice):

26 (i) child pornography; or

27 (ii) pandering and prostitution if the person who is
28 induced, enticed, caused, or procured to engage in a sexual act is under
29 20 years of age at the time of the offense; **or**

30 **(E) a crime under AS 11, or an attempt, solicitation, or**
31 **conspiracy to commit a crime under AS 11, where the aggravating factor**

1 **provided in AS 12.55.155(c)(37) has been proven or admitted;**

2 * **Sec. 8.** AS 11.61.118(a)(1) is repealed.

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

5 APPLICABILITY. (a) AS 11.41.260(a), as amended by sec. 1 of this Act,
6 AS 11.61.117, enacted by sec. 2 of this Act, AS 11.61.118, as amended by sec. 3 of this Act,
7 and AS 11.61.120, as amended by sec. 4 of this Act, apply to offenses committed on or after
8 the effective date of secs. 1 - 4 of this Act.

9 (b) AS 12.55.155(c), as amended by sec. 6 of this Act, applies to sentences imposed
10 on or after the effective date of sec. 6 of this Act, for offenses committed on or after the
11 effective date of sec. 6 of this Act.