

Introduced: 2/3/76
Referred: Judiciary

1 IN THE SENATE

BY CHANCE

2 SPONSOR SUBSTITUTE FOR SENATE BILL NO. 306

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to sexual assault; changing Rule
7 43(g)(11) and (h)(7), Rules of Civil Procedure; and
8 providing for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 11.05.150 is amended to read:

11 Sec. 11.05.150. IMPOSING LESS THAN PRESCRIBED PENALTY. Except in
12 a case of murder or aggravated sexual assault [RAPE], the court may,
13 upon conviction, when in its opinion the facts and circumstances make
14 the minimum penalty provided in this title manifestly too severe, impose
15 a lesser penalty, either of a fine or imprisonment or both. When less
16 than the minimum penalty is imposed, the court shall set out the reasons
17 for its action on the record in the case.

18 * Sec. 2. AS 11.15.010 is amended to read:

19 Sec. 11.15.010. FIRST DEGREE MURDER. A person who, being of sound
20 memory and discretion, purposely, and either of deliberate and premedi-
21 tated malice or by means of poison, or in perpetrating or in attempting
22 to perpetrate, aggravated sexual assault [RAPE], arson, robbery, or
23 burglary kills another, is guilty of murder in the first degree, and
24 shall be sentenced to imprisonment for not less than 20 years to life.

25 * Sec. 3. AS 11.15 is amended by adding new sections to read:

26 Sec. 11.15.125. PETTY SEXUAL ASSAULT. (a) A person who has
27 sexual contact with another not his spouse or causes the other to have
28 sexual contact with him, without consent, is guilty of petty sexual
29 assault if

1 (1) he knows that the contact is offensive to the other
2 person;

3 (2) he knows that the other person suffers from a mental
4 disease or defect rendering him incapable of appraising the nature of
5 his conduct;

6 (3) he knows that the other person is unaware that a sexual
7 act is being committed;

8 (4) the other person is less than 16 years old;

9 (5) he has substantially impaired the other person's power
10 to appraise or control his conduct by administering or employing with-
11 out the other's knowledge drugs, intoxicants or other means for the
12 purpose of preventing resistance; or

13 (6) the other person is in custody of law or detained in a
14 hospital or other institution and the actor has supervisory or discip-
15 linary authority over him.

16 (b) The offense of petty sexual assault is a misdemeanor. In this
17 section "sexual contact" is any touching of the genitals of the person
18 for the purpose of arousing or gratifying sexual desire.

19 (c) No court may suspend the sentence of a person convicted of
20 violating this section until the court obtains a report from a reputable
21 psychiatrist stating the mental condition of the person. No paroling
22 authority may parole a person convicted of violating this section until
23 the paroling authority receives a report from a reputable psychiatrist
24 stating the mental condition of the person and stating that the person
25 was under observation while confined in prison.

26 Sec. 11.15.127. AGGRAVATED SEXUAL ASSAULT. (a) A person who has
27 sexual intercourse with another person not his spouse is guilty of
28 aggravated sexual assault if

29 (1) the other person is compelled to submit by force or by

1 threat of imminent death, serious bodily injury, extreme pain or kid-
2 napping, to be inflicted on anyone;

3 (2) the person substantially impairs the other person's power
4 to appraise or control his conduct by administering or employing without
5 his knowledge or consent drugs, intoxicants or other means for the pur-
6 pose of preventing resistance;

7 (3) the other person is unconscious; or

8 (4) the other person is less than 16 years old.

9 (b) Aggravated sexual assault is a felony.

10 (c) For the purpose of this section, sexual intercourse includes
11 intercourse by means of the mouth or rectum, with some penetration
12 however slight; emission is not required.

13 (d) In secs. 125 - 127 of this chapter, when the definition of
14 an offense excludes conduct with a spouse, the exclusion extends to
15 persons living as man and wife, regardless of the legal status of their
16 relationship.

17 (e) A person who assists another person to force or compel a third
18 person to engage in a sexual act, without consent, is considered an
19 accomplice.

20 * Sec. 4. AS 11.15.160 is amended to read:

21 Sec. 11.15.160. ASSAULT WITH INTENT TO KILL OR COMMIT AGGRAVATED
22 SEXUAL ASSAULT [RAPE] OR ROBBERY. A person who assaults another with
23 intent to kill, or to commit aggravated sexual assault [RAPE] or robbery
24 upon the person assaulted, is punishable by imprisonment [IN THE PENI-
25 TENTIARY] for not more than 15 years nor less than one year.

26 * Sec. 5. AS 11.15.295 is amended to read:

27 Sec. 11.15.295. USE OF FIREARMS DURING THE COMMISSION OF CERTAIN
28 CRIMES. A person who uses or carries a firearm during the commission
29 of a robbery, assault, murder, aggravated sexual assault [RAPE],

1 burglary, or kidnapping is guilty of a felony and upon conviction for a
2 first offense is punishable by imprisonment for not less than 10 years.
3 Upon conviction for a second or subsequent offense in violation of this
4 section, the offender shall be imprisoned for not less than 25 years.

5 * Sec. 6. AS 12.30.040(b) is amended to read:

6 (b) Notwithstanding the provisions of (a) of this section, if the
7 offense a person has been convicted of is first degree murder, armed
8 robbery, kidnapping, or aggravated sexual assault (as defined in AS 11.-
9 15.127) [RAPE (AS DEFINED IN AS 11.15.130)], he may not be released on
10 bail either before sentencing or pending appeal.

11 * Sec. 7. AS 12.45.045(a) is amended to read:

12 (a) In prosecutions for the crime of aggravated sexual assault
13 [RAPE] and attempted aggravated sexual assault [ASSAULT WITH INTENT TO
14 COMMIT RAPE], evidence of the complaining witness' previous sexual con-
15 duct shall not be admitted nor reference made to it in the presence of
16 the jury except as provided in this section. When the defendant seeks
17 to admit the evidence for any purpose, he may apply for an order of the
18 court at any time before or during the trial or preliminary hearing.
19 After the application is made, the court shall conduct a hearing in
20 camera to determine the admissibility of the evidence. If the court
21 finds that evidence offered by the defendant regarding the sexual con-
22 duct of the complaining witness is relevant, and that the probative
23 value of the evidence offered is not outweighed by the probability that
24 its admission will create undue prejudice, confusion of the issues, or
25 unwarranted invasion of the privacy of the complaining witness, the
26 court shall make an order stating what evidence may be introduced and
27 the nature of the questions which shall be permitted. The defendant
28 may then offer evidence under the order of the court.

29 * Sec. 8. AS 12.45 is amended by adding a new section to read:

1 Sec. 12.45.047. JURY INSTRUCTIONS IN AGGRAVATED SEXUAL ASSAULT
2 CASES. In a criminal prosecution for aggravated sexual assault or
3 attempted aggravated sexual assault, the jury may not be instructed that
4 the prior sexual conduct of the complaining witness in and of itself may
5 be considered in determining the credibility of the complaining witness,
6 and the jury may not be instructed that it may be inferred that a female
7 who has previously consented to sexual intercourse with a person other
8 than the defendant is more likely to have consented to sexual intercourse
9 with the defendant.

10 * Sec. 9. Sections 7 and 8 of this Act have the effect of changing
11 Rule 43(g)(11) and (h)(7), Rules of Civil Procedure, by requiring certain
12 procedures to be followed in order for the defendant to offer evidence of
13 previous sexual conduct of the complaining witness in cases of aggravated
14 sexual assault.

15 * Sec. 10. AS 11.15.120 - 11.15.134 and AS 11.40.120 are repealed.

16 * Sec. 11. This Act takes effect immediately in accordance with AS 01.10.
17 070(c).

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