

Original sponsor: Judiciary Committee

Offered: 4/18/80
Referred: Rules

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 511

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the criminal laws of the state; and
7 providing for an effective date."

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

9 * Section 1. AS 11.31.100 is amended by adding a new subsection to read:

10 (e) If the crime attempted is an unclassified crime described in a
11 state law which is not part of this title and no provision for punishment
12 of an attempt to commit the crime is specified, the punishment for the
13 attempt is imprisonment for a term of not more than half the maximum
14 period prescribed as punishment for the unclassified crime, or a fine of
15 not more than half the amount of the maximum fine prescribed as punish-
16 ment for the unclassified crime, or both. If the crime attempted is
17 punishable by an indeterminate or life term, the attempt is a class A
18 felony.

19 * Sec. 2. AS 11.31.110 is amended by adding a new subsection to read:

20 (d) If the crime solicited is an unclassified crime described in a
21 state law which is not part of this title and no provision for punishment
22 of a solicitation to commit the crime is specified, the punishment for
23 the solicitation is imprisonment for a term of not more than half the
24 maximum period prescribed as punishment for the unclassified crime, or a
25 fine of not more than half the maximum fine prescribed as punishment for
26 the unclassified crime, or both. If the crime solicited is punishable
27 by an indeterminate or life term, the solicitation is a class A felony.

28 * Sec. 3. AS 11.41.115(e) is amended to read:

29 (e) Nothing in (a) or [,] (b) [, OR (d)] of this section precludes

1 a prosecution for or conviction of manslaughter or any other crime not
2 specifically precluded.

3 * Sec. 4. AS 11.41.210(a) is repealed and re-enacted to read:

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

5 (1) with intent to cause physical injury to another person,
6 he causes physical injury to any person by means of a dangerous instru-
7 ment;

8 (2) with intent to cause physical injury to another person,
9 he causes serious physical injury to any person;

10 (3) he recklessly places another person in fear of imminent
11 serious physical injury by means of a dangerous instrument; or

12 (4) he recklessly causes serious physical injury to another
13 person by means of a dangerous instrument.

14 * Sec. 5. AS 11.41.230(a)(1) is amended to read:

15 (1) he [INTENTIONALLY OR] recklessly causes physical injury
16 to another person;

17 * Sec. 6. AS 11.41.300(a)(1)(C) is amended to read:

18 (C) inflict physical injury upon him or sexually as-
19 sault him or place him or a third person in apprehension that any
20 person will be subjected to serious physical injury or sexual as-
21 sault;

22 * Sec. 7. AS 11.41.410(a)(3) is amended to read:

23 (3) being 16 years of age or older, he engages in sexual
24 penetration with another person under 13 years of age or aids, induces,
25 causes or encourages a person under 13 years of age to engage in sex-
26 ual penetration with another person; or

27 * Sec. 8. AS 11.41.440(a) is amended to read:

28 (a) A person commits the crime of sexual abuse of a minor if,
29 being 16 years of age or older, he [ENGAGES IN]

1 (1) engages in sexual penetration with a person who is under
2 16 years of age but 13 years of age or older or aids, induces, causes
3 or encourages a person under 16 years of age but 13 years of age or
4 older to engage in sexual penetration with another person; [OR]

5 (2) engages in sexual contact with a person who is under 13
6 years of age or aids, induces, causes or encourages a person under
7 13 years of age to engage in sexual contact with another person; or

8 (3) aids, induces, causes or encourages a person who is un-
9 der 16 years of age to engage in conduct described in AS 11.41.455(a)-
10 (2) - (6).

11 * Sec. 9. AS 11.46.210(b) is amended to read:

12 (b) It is not a defense to a prosecution based on theft by fail-
13 ure to make required disposition of funds received or held [UNDER THIS
14 SECTION] that it may be impossible to identify particular property as
15 belonging to the victim at the time of the defendant's failure to make
16 the required payment or disposition.

17 * Sec. 10. AS 11.46.220 is amended to read:

18 Sec. 11.46.220. CONCEALMENT OF MERCHANDISE. (a) A person commits
19 the crime of concealment of merchandise if without authority he know-
20 ingly conceals on or about his person the merchandise of a commercial
21 establishment, not purchased by the person, while still upon the premises
22 of the commercial establishment, with intent to deprive the owner of the
23 merchandise or with intent to appropriate the merchandise.

24 (b) Merchandise found concealed upon or about the person which has
25 not been purchased by the person is prima facie evidence of a knowing
26 concealment.

27 (c) Concealment of merchandise is

28 (1) a class C felony if the merchandise is a firearm or the
29 value of the merchandise is \$500 or more;

1 (2) a class A misdemeanor if the value of the merchandise is
2 \$50 or more but less than \$500;

3 (3) a class B misdemeanor if the value of the merchandise is
4 less than \$50.

5 * Sec. 11. AS 11.46.320(a)(1) is amended to read:

6 (1) on land [REAL PROPERTY] with intent to commit a crime on
7 the land [THAT REAL PROPERTY]; or

8 * Sec. 12. AS 11.46.482(a)(4) is amended to read:

9 (4) he drives, tows away, or takes the propelled vehicle of
10 another and the vehicle or any other property of another is damaged or
11 the owner incurs reasonable expenses as a result of the loss of use of
12 the vehicle in a total amount of \$500 or more [DAMAGES THE VEHICLE IN AN
13 AMOUNT OF \$500 OR MORE OR CAUSES THE OWNER TO INCUR REASONABLE EXPENSES
14 OF \$500 OR MORE AS A RESULT OF THE LOSS OF USE OF THE VEHICLE].

15 * Sec. 13. AS 11.46.600 is repealed and re-enacted to read:

16 Sec. 11.46.600. SCHEME TO DEFRAUD. (a) A person commits the
17 crime of scheme to defraud if he engages in conduct constituting a
18 scheme

19 (1) to defraud five or more persons or to obtain property or
20 services from five or more persons by false or fraudulent pretense, rep-
21 resentation, or promise and obtains property or services in accordance
22 with the scheme; or

23 (2) to defraud one or more persons of \$10,000 or to obtain
24 \$10,000 or more from one or more persons by false or fraudulent pretense,
25 representation, or promise and obtains property or services in accor-
26 dance with the scheme.

27 (b) Scheme to defraud is a class B felony.

28 * Sec. 14. AS 11.46.620(d) is repealed and re-enacted to read:

29 (d) Misapplication of property is

1 (1) a class C felony if the value of the property misapplied
2 is \$500 or more;

3 (2) a class A misdemeanor if the value of the property mis-
4 applied is less than \$500.

5 * Sec. 15. AS 11.51.130(a) is amended to read:

6 (a) A person commits the crime of contributing to the delinquency
7 of a minor if, being 19 years of age or older, he

8 (1) aids, induces, causes, or encourages [PERMITS] a child
9 under 18 years of age to do any act prohibited by state law;

10 (2) [INDUCES, CAUSES, OR PERMITS A CHILD UNDER 18 YEARS OF
11 AGE TO PARTICIPATE IN UNLAWFUL GAMBLING;]

12 (3) aids, induces, causes, or encourages [PERMITS] a child
13 under 18 years of age to enter or remain in a building where the unlawful
14 sale of a drug occurs; or

15 (4) engages in sexual contact with a child under 16 years of
16 age but 13 years of age or older; or

17 (5) aids, induces, causes, or encourages a child under 16
18 years of age to be absent from the custody of a parent, guardian, or cus-
19 todian or from school, without just cause.

20 * Sec. 16. AS 11.56.310(a)(1)(B) is amended to read:

21 (B) official detention for [ON A CHARGE OF] a felony or
22 for extradition; or

23 * Sec. 17. AS 11.56.320 is repealed and re-enacted to read:

24 Sec. 11.56.320. ESCAPE IN THE THIRD DEGREE. (a) A person commits
25 the crime of escape in the third degree if he

26 (1) removes himself from official detention during any lawful
27 movement or activity incident to confinement within a correctional
28 facility for a misdemeanor; or

29 (2) violates AS 11.56.340 or 11.56.350 and leaves or attempts

1 to leave the state.

2 (b) Escape in the third degree is a class C felony.

3 * Sec. 18. AS 11.56.330(a) is amended to read:

4 (a) A person commits the crime of escape in the fourth degree if,
5 without lawful authority, he removes himself from official detention for
6 [ON A CHARGE OF] a misdemeanor [OR IF HE VIOLATES AS 11.56.340 OR 11.56.-
7 350 AND LEAVES OR ATTEMPTS TO LEAVE THE STATE].

8 * Sec. 19. AS 11.56.370(a) is amended to read:

9 (a) A public servant who is required by law to have charge of a
10 person arrested for, charged with or convicted of a crime commits the
11 crime of permitting an escape if with criminal negligence he permits a
12 person under official detention to escape.

13 * Sec. 20. AS 11.61.210(a)(1) is amended to read:

14 (1) possesses on his person a firearm while under the in-
15 fluence [HIS PHYSICAL OR MENTAL CONDITION IS SUBSTANTIALLY IMPAIRED AS A
16 RESULT OF THE INTRODUCTION] of an intoxicating liquor or drug [INTO HIS
17 BODY];

18 * Sec. 21. AS 11.61.210 is amended by adding a new subsection to read:

19 (c) For purposes of (a)(1) of this section, a person is under the
20 influence of an intoxicating liquor or drug when, as a result of the
21 introduction of an intoxicating liquor or drug into his body, his physi-
22 cal or mental abilities are impaired so that he no longer has the ability
23 to possess a firearm with the caution characteristic of a sober person
24 of ordinary prudence under the same or similar circumstances.

25 * Sec. 22. AS 11.61.220(b)(1) is amended to read:

26 (1) in his dwelling or on land owned or leased by him [PRO-
27 PERTY] appurtenant to his dwelling; or

28 * Sec. 23. AS 11.81.300 is repealed and re-enacted to read:

29 Sec. 11.81.300. JUSTIFICATION: DEFENSE. Except as otherwise

1 specified in this title, justification as provided in AS 11.81.320 -
2 11.81.430 is a defense.

3 * Sec. 24. AS 11.81.400 is amended by adding new subsections to read:

4 (c) The exception in (a)(2) of this section is an affirmative
5 defense to a prosecution for an offense arising out of the use of force
6 in resisting an arrest under the circumstances specified.

7 (d) In this section, "unlawful" means that there was no probable
8 cause to arrest. The issue whether there was probable cause to arrest,
9 when an affirmative defense is raised under (c) of this section, is a
10 question of law to be established by the court sitting without a jury.

11 * Sec. 25. AS 11.81.600(b) is repealed and re-enacted to read:

12 (b) A person is not guilty of an offense unless he acts with a
13 culpable mental state, except that no culpable mental state must be
14 proved

15 (1) if the description of the offense does not specify a cul-
16 pable mental state and the offense is

17 (A) a violation; or

18 (B) designated as one of "strict liability"; or

19 (2) if a legislative intent to dispense with the culpable
20 mental state requirement is present.

21 * Sec. 26. AS 11.81.620(b) is amended to read:

22 (b) A person is not relieved of criminal liability for conduct
23 because he engages in the conduct under a mistaken belief of fact,
24 unless

25 (1) the factual mistake is a reasonable one that negates the
26 culpable mental state required for the commission of the offense;

27 (2) the provision of law defining the offense or a related
28 provision of law expressly provides that the factual mistake constitutes
29 a defense or exemption; or

1 (3) the factual mistake is a reasonable one [OF A KIND] that
2 supports a defense of justification as provided in AS 11.81.320 - 11.81.-
3 430.

4 * Sec. 27. AS 11.81.900(b)(11) is amended to read:

5 (11) "dangerous instrument" means any deadly weapon or any-
6 thing which, under the circumstances in which it is used, attempted to
7 be used, or threatened to be used, is capable of causing death or serious
8 physical injury [, "DANGEROUS INSTRUMENT" INCLUDES "DEADLY WEAPON"];

9 * Sec. 28. AS 11.81.900(b)(12) is amended to read:

10 (12) "deadly force" means force which the person uses with
11 the intent of causing, or uses under circumstances which he knows create
12 a substantial risk of causing, death or serious physical injury; "deadly
13 force" includes intentionally discharging or pointing a firearm in the
14 direction of another person or in the direction in which another person
15 is believed to be and intentionally placing another person in fear of
16 imminent serious physical injury by means of a dangerous instrument;

17 * Sec. 29. AS 11.81.900(b)(21) is repealed and re-enacted to read:

18 (21) "firearm" means a weapon, including a pistol, revolver,
19 rifle, or shotgun, whether loaded or unloaded, operable or inoperable,
20 designed for discharging a shot capable of causing death or serious
21 physical injury;

22 * Sec. 30. AS 11.81.900(b)(49) is amended to read:

23 (49) "serious physical injury" means physical injury which
24 creates a substantial risk of death or which causes serious and pro-
25 tracted disfigurement, protracted impairment of health, or protracted
26 loss or impairment of the function of a body member or [BODILY] organ,
27 or physical injury which unlawfully terminates a pregnancy;

28 * Sec. 31. AS 12.25.180 is amended to read:

29 Sec. 12.25.180. WHEN PEACE OFFICER HAS OPTION TO TAKE PERSON

1 BEFORE JUDGE OR MAGISTRATE. (a) When a person is stopped or contacted
2 by a peace officer for the commission of a misdemeanor [OR AN INFRAC-
3 TION] or the violation of a municipal ordinance, he may, in the discre-
4 tion of the contacting peace officer, be issued a citation instead of
5 being taken before a judge or magistrate under AS 12.25.150, unless

6 (1) the person does not furnish satisfactory evidence of
7 identity;

8 (2) the contacting officer has reasonable and probable cause
9 to believe the person is a danger to himself or others;

10 (3) the crime for which the person is contacted is one invol-
11 ving violence or harm to another person or to property; or

12 (4) the person asks to be taken before a judge or magistrate
13 under AS 12.25.150.

14 (b) When a person is stopped or contacted by a peace officer
15 for the commission of an infraction or a violation, he shall be issued
16 a citation instead of being taken before a judge or magistrate under
17 AS 12.25.150, unless

18 (1) the person does not furnish satisfactory evidence of
19 identity; or

20 (2) the person refuses to accept the citation or to give his
21 written promise to appear as provided for under AS 12.25.190(c).

22 * Sec. 32. AS 12.30 is amended by adding a new section to read:

23 Sec. 12.30.025. RELEASE BEFORE TRIAL IN CASES INVOLVING DOMESTIC
24 VIOLENCE. (a) In determining the conditions of release under AS 12.30.-
25 020 in cases involving domestic violence, the court shall consider the
26 following conditions and impose one or more conditions it considers
27 reasonably necessary to protect the alleged victim of the domestic
28 violence, including ordering the defendant

29 (1) not to subject the victim to further domestic violence;

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- (2) to vacate the home of the victim;
- (3) not to contact the victim other than through counsel;
- (4) to engage in personal or family counseling;
- (5) to refrain from the consumption of alcohol.

(b) As used in this section, "domestic violence" means a crime specified in AS 11.41 committed against a spouse, a former spouse, or a member of the social unit comprised of those living together in the same dwelling as the defendant.

* Sec. 33. AS 12.30.040(b) is amended to read:

(b) Notwithstanding the provisions of (a) of this section, if the offense a person has been convicted of is murder in the first degree, robbery in the first degree, kidnapping, or sexual assault in the first degree under AS 11.41.410(a)(1) [FIRST DEGREE MURDER, ARMED ROBBERY, KIDNAPPING, OR RAPE (AS DEFINED IN AS 11.15.130)], he may not be released on bail either before sentencing or pending appeal.

* Sec. 34. AS 12.55.015(b)(3) is amended to read:

(3) sentences [A SENTENCE] of lesser severity have been repeatedly [HAS BEEN] imposed for substantially similar offenses in the past and have proven ineffective in deterring the defendant from further criminal conduct.

* Sec. 35. AS 12.55.045(b) is amended to read:

(b) [BEFORE THE COURT MAY SENTENCE A DEFENDANT TO A PROGRAM OF RESTITUTION, THE VICTIM MUST BE GIVEN NOTICE THAT RESTITUTION MAY BE ORDERED.] An order of restitution under this section does not limit any civil liability of the defendant arising from his conduct.

* Sec. 36. AS 12.55.155(c)(8) is amended to read:

(8) the defendant has a criminal history consisting of prior convictions for offenses, including misdemeanors, that involved aggravated or repeated instances of assaultive behavior [ONE OR MORE CONVIC-

1 TIONS FOR MISDEMEANORS HAVING ASSAULT AS A NECESSARY ELEMENT];

2 * Sec. 37. AS 12.55.155(c) is amended by adding new paragraphs to read:

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

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

7 (17) the offense was one of a continuing series of criminal
8 offenses committed in furtherance of illegal business activities from
9 which the defendant derives a major portion of his income;

10 (18) the offense was a crime specified in AS 11.41 and was
11 committed against a spouse, a former spouse, or a member of the social
12 unit comprised of those living together in the same dwelling as the
13 defendant.

14 * Sec. 38. AS 12.55.155(d) is amended by adding a new paragraph to read:

15 (13) the facts surrounding the commission of the offense and
16 any previous offenses by the defendant establish that the harm caused by
17 the defendant's conduct is consistently minor and inconsistent with the
18 imposition of a substantial period of imprisonment.

19 * Sec. 39. AS 12.80 is amended by adding a new section to read:

20 Sec. 12.80.040. VIOLATIONS AND INFRACTIONS. Except as provided in
21 AS 11.81.900(b)(55) and AS 28.35.230(d), all laws of the state relating
22 to misdemeanors apply to violations and infractions, including the powers
23 of peace officers, the jurisdiction of courts and the periods for com-
24 mencing actions and for bringing a case to trial.

25 * Sec. 40. AS 28.35.135(a) is amended to read:

26 (a) No person may knowingly make a false affidavit, statement, or
27 representation, or affirm falsely with respect to a matter or fact
28 required to be set out under this title, nor may the person use a name
29 other than his true name. A person convicted of violating this section

1 is guilty of unsworn falsification [PERJURY] and is punishable as pre-
2 scribed by law.

3 * Sec. 41. AS 11.41.115(d) and AS 11.81.610(a) are repealed.

4 * Sec. 42. This Act takes effect immediately in accordance with AS 01.10.-
5 070(c).

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