

BY ULMER, HUDSON, GRUSSENDORF,  
BOYER, DAVIDSON, ELLIS, FRANK,  
GOLL, GRUENBERG, HOFFMAN,  
KOPONEN, LARSON, MENARD, NAVARRE,  
PEARCE, PETTYJOHN, PHILLIPS,  
SUND, SWACKHAMMER, TAYLOR AND  
WALLIS

1 IN THE HOUSE

2

HOUSE BILL NO. 237

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

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For an Act entitled: "An Act relating to murder, assault, and the physical

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and sexual abuse of children; the admissibility of

8

certain evidence in criminal prosecutions; amending

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Rule 404 of the Alaska Rules of Evidence; and provid-

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ing for an effective date."

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

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\* Section 1. AS 11.41.110(a) is amended to read:

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

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(1) with intent to cause serious physical injury to another

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person or knowing that the conduct is substantially certain to cause

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death or serious physical injury to another person, the person causes

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the death of any person;

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(2) the person knowingly engages in conduct [INTENTIONALLY

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PERFORMS AN ACT] that results in the death of another person under

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circumstances manifesting an extreme indifference to the value of

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human life; [OR]

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(3) acting either alone or with one or more persons, the

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person commits or attempts to commit arson in the first degree, kid-

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napping, sexual assault in the first degree under AS 11.41.410(a)(1)

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or (2), sexual assault in the second degree, burglary in the first

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degree, escape in the first or second degree, or robbery in any degree

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and, in the course of or in furtherance of that crime, or in immediate

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flight from that crime, any person causes the death of a person other

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than one of the participants; or

1           (4) under circumstances manifesting an extreme indifference  
2           to the welfare of a child under the age of 16, the person engages in a  
3           pattern or practice of abuse of the child that results in the death of  
4           the child.

5 \* Sec. 2. AS 11.41.110 is amended by adding a new subsection to read:

6           (c) In this section, "abuse" includes bodily impact, restraint,  
7           or confinement.

8 \* Sec. 3. AS 11.41.200(a) is amended to read:

9           (a) A person commits the crime of assault in the first degree if

10           (1) that person recklessly causes serious physical injury  
11           to another by means of a dangerous instrument;

12           (2) with intent to cause serious physical injury to another,  
13           the person causes serious physical injury to any person; [OR]

14           (3) the person knowingly engages in conduct [INTENTIONALLY  
15           PERFORMS AN ACT] that results in serious physical injury to another  
16           under circumstances manifesting extreme indifference to the value of  
17           human life; or

18           (4) the person engages in a pattern or practice of abuse of  
19           a child under the age of 16 that results in serious physical injury to  
20           the child.

21 \* Sec. 4. AS 11.41.200 is amended by adding a new subsection to read:

22           (c) In this section, "abuse" includes bodily impact, restraint,  
23           or confinement.

24 \* Sec. 5. AS 11.41 is amended by adding new sections to read:

25           Sec. 11.41.441. REPEATED SEXUAL ABUSE OF A MINOR IN THE FIRST  
26           DEGREE. (a) A person commits the crime of repeated sexual abuse of a  
27           minor in the first degree if, being 16 years of age or older and  
28           having authority over a child under the age of 16, the person engages  
29           in a pattern or practice of sexual penetration with a child who is

1 under 13 years of age or aids, induces, causes, or encourages a person  
2 who is under 13 years of age to engage in a pattern or practice of  
3 sexual penetration with another person.

4 (b) Repeated sexual abuse of a minor in the first degree is an  
5 unclassified felony and is punishable as provided in AS 12.55.

6 Sec. 11.41.442. REPEATED SEXUAL ABUSE OF A MINOR IN THE SECOND  
7 DEGREE. (a) A person commits the crime of repeated sexual abuse of a  
8 minor in the second degree if, being 16 years of age or older and  
9 having authority over a child under the age of 16, the offender

10 (1) engages in a pattern or practice of sexual penetration  
11 with a child who is 13, 14, or 15 years of age and at least three  
12 years younger than the person, or aids, induces, causes, or encourages  
13 a child who is 13, 14, or 15 years of age and at least three years  
14 younger than the person to engage in a pattern or practice of sexual  
15 penetration with another person; or

16 (2) engages in a pattern or practice of sexual contact with  
17 a child who is under 13 years of age or aids, induces, causes, or  
18 encourages a child under 13 years of age to engage in a pattern or  
19 practice of sexual contact with another person.

20 (b) Repeated sexual abuse of a minor in the second degree is a  
21 class A felony.

22 \* Sec. 6. AS 11.41 is amended by adding a new section to read:

23 Sec. 11.41.444. REPEATED SEXUAL ABUSE OF A MINOR IN THE THIRD  
24 DEGREE. (a) A person commits the crime of repeated sexual abuse of a  
25 minor in the third degree if

26 (1) being 16 years of age or older and having authority  
27 over a child under the age of 16, the person engages in a pattern or  
28 practice of sexual contact with a child who is 13, 14, or 15 years of  
29 age and at least three years younger than the person, or aids,

1 induces, causes, or encourages a child who is 13, 14, or 15 years of  
2 age and at least three years younger than the person to engage in a  
3 pattern or practice of sexual contact with another person; or

4 (2) being under 16 years of age and having authority over a  
5 child under the age of 16, the person engages in a pattern or practice  
6 of sexual penetration or sexual contact with a child who is under 13  
7 years of age and at least three years younger than the person.

8 (b) Repeated sexual abuse of a minor in the third degree is a  
9 class B felony.

10 \* Sec. 7. AS 11.41.445 is amended to read:

11 Sec. 11.41.445. AFFIRMATIVE DEFENSES [GENERAL PROVISIONS]. (a)  
12 In a prosecution under AS 11.41.434 - 11.41.444 [AS 11.41.434 -  
13 11.41.440] it is an affirmative defense that, at the time of the  
14 alleged offense, the victim was the legal spouse of the defendant  
15 unless the offense was committed without the consent of the victim.

16 (b) In a prosecution under AS 11.41.410 - 11.41.444 [AS 11.-  
17 41.410 - 11.41.440], whenever a provision of law defining an offense  
18 depends upon a victim's being under a certain age, it is an affirma-  
19 tive defense that, at the time of the alleged offense, the defendant  
20 reasonably believed the victim to be that age or older, unless the  
21 victim was under 13 years of age at the time of the alleged offense.

22 \* Sec. 8. AS 11.41 is amended by adding new sections to read:

23 ARTICLE 6. GENERAL PROVISIONS.

24 Sec. 11.41.600. PATTERN OR PRACTICE. In a prosecution under  
25 this chapter for an offense that includes as one of its elements that  
26 a person engaged in a "pattern or practice" of conduct toward a child

27 (1) it is not necessary that the person be separately  
28 charged with specific incidents of prohibited conduct; however, prose-  
29 cution for separate incidents is not precluded;

1 (2) to support a conviction, each juror in a jury trial  
2 must be convinced beyond a reasonable doubt that at least three inci-  
3 dents of prohibited conduct occurred, but the jury need not be unani-  
4 mous as to particular incidents;

5 (3) if a person who is separately charged with a specific  
6 incident of prohibited conduct is found not guilty of an incident,  
7 that incident may not be relied upon to establish the pattern or  
8 practice; and

9 (4) incidents occurring before the effective date of the  
10 law establishing the offense may be used to establish the pattern or  
11 practice as long as there was at least one incident that occurred  
12 after the effective date of the law.

13 Sec. 11.41.610. DEFINITIONS. In this chapter

14 (1) "having authority over a child" means

15 (A) the child is entrusted to the person's care by  
16 authority of law;

17 (B) the child is the person's son or daughter, includ-  
18 ing an illegitimate or adopted child, or a stepchild;

19 (C) the person resides as a member of a social unit in  
20 the same household as the child; or

21 (D) the child has been temporarily entrusted to the  
22 person's care;

23 (2) "pattern or practice" means three or more incidents of  
24 the prohibited conduct.

25 \* Sec. 9. AS 11.81.250(a) is amended to read:

26 (a) For purposes of sentencing under AS 12.55, all offenses  
27 defined in this title, except murder in the first and second degree,  
28 sexual assault in the first degree, sexual abuse of a minor in the  
29 first degree, repeated sexual abuse of a minor in the first degree,

1 misconduct involving a controlled substance in the first degree, and  
2 kidnapping, are classified on the basis of their seriousness, accord-  
3 ing to the type of injury characteristically caused or risked by  
4 commission of the offense and the culpability of the offender. Except  
5 for murder in the first and second degree, sexual assault in the first  
6 degree, sexual abuse of a minor in the first degree, repeated sexual  
7 abuse of a minor in the first degree, misconduct involving a con-  
8 trolled substance in the first degree, and kidnapping, the offenses in  
9 this title are classified into the following categories:

10 (1) class A felonies, which characteristically involve  
11 conduct resulting in serious physical injury or a substantial risk of  
12 serious physical injury to a person;

13 (2) class B felonies, which characteristically involve  
14 conduct resulting in less severe violence against a person than class  
15 A felonies, aggravated offenses against property interests, or ag-  
16 gravated offenses against public administration or order;

17 (3) class C felonies, which characteristically involve  
18 conduct serious enough to deserve felony classification but not seri-  
19 ous enough to be classified as A or B felonies;

20 (4) class A misdemeanors, which characteristically involve  
21 less severe violence against a person, less serious offenses against  
22 property interests, less serious offenses against public adminis-  
23 tration or order, or less serious offenses against public health and  
24 decency than felonies;

25 (5) class B misdemeanors, which characteristically involve  
26 a minor risk or physical injury to a person, minor offenses against  
27 property interests, minor offenses against public administration or  
28 order, or minor offenses against public health and decency;

29 (6) violations, which characteristically involve conduct

1 inappropriate to an orderly society but which do not denote criminal-  
2 ity in their commission.

3 \* Sec. 10. AS 11.81.250(b) is amended to read:

4 (b) The classification of each felony defined in this title,  
5 except murder in the first and second degree, sexual assault in the  
6 first degree, sexual abuse of a minor in the first degree, repeated  
7 sexual abuse of a minor in the first degree, misconduct involving a  
8 controlled substance in the first degree, and kidnapping, is designat-  
9 ed in the section defining it. A felony under Alaska law defined  
10 outside this title for which no penalty is specifically provided is a  
11 class C felony.

12 \* Sec. 11. AS 12.45 is amended by adding a new section to read:

13 Sec. 12.45.025. PRIOR INCONSISTENT STATEMENTS. In a prosecution  
14 for an offense, evidence of a prior inconsistent statement of a wit-  
15 ness, if believed by the trier of fact, is sufficient to support a  
16 conviction.

17 \* Sec. 12. AS 12.55.035(b) is amended to read:

18 (b) Upon conviction of an offense, a defendant who is not an  
19 organization may be sentenced to pay, unless otherwise specified in  
20 the provision of law defining the offense, a fine of no more than

21 (1) \$75,000 for murder in the first or second degree,  
22 sexual assault in the first degree, sexual abuse of a minor in the  
23 first degree, repeated sexual abuse of a minor in the first degree,  
24 kidnapping, or misconduct involving a controlled substance in the  
25 first degree;

26 (2) \$50,000 for a class A, B, or C felony;

27 (3) \$5,000 for a class A misdemeanor;

28 (4) \$1,000 for a class B misdemeanor;

29 (5) \$300 for a violation.

1 \* Sec. 13. AS 12.55.125 is amended by adding a new subsection to read:

2 (j) A defendant convicted of repeated sexual abuse of a minor in  
3 the first degree may be sentenced to a definite term of imprisonment  
4 of not more than 50 years, and shall be sentenced to the following  
5 presumptive terms, subject to adjustment as provided in AS 12.55.155 -  
6 12.55.175:

7 (1) if the offense is a first felony conviction and does  
8 not involve circumstances described in (2) of this subsection, 13  
9 years;

10 (2) if the offense is a first felony conviction, and the  
11 defendant possessed a firearm, used a dangerous instrument, or caused  
12 serious physical injury during the commission of the offense, 15  
13 years;

14 (3) if the offense is a second felony conviction, 25 years;

15 (4) if the offense is a third felony conviction, 35 years.

16 \* Sec. 14. Rule 404, Alaska Rules of Evidence, is amended by adding a  
17 new subsection to read:

18 (c) Notwithstanding (b) of this rule, in a prosecution for  
19 physical assault upon or sexual misconduct with a child under the age  
20 of 16, evidence of prior acts of the defendant involving the same or  
21 another victim is admissible to show the defendant's disposition to  
22 commit the offense.

23 \* Sec. 15. Section 14 of this Act is retroactive and applies

24 (1) to evidence of acts committed before the effective date of  
25 this Act; and

26 (2) in trials involving offenses committed before the effective  
27 date of this Act.

28 \* Sec. 16. This Act takes effect immediately under AS 01.10.070(c).