

Original sponsors: Ulmer, Hudson,  
Grussendorf, et al.

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

2

CS FOR HOUSE BILL NO. 237 (HESS)

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  
and sexual abuse of children; amending Rule 404 of  
the Alaska Rules of Evidence; and providing for an  
effective date."

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10 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  
person or knowing that the conduct is substantially certain to cause  
death or serious physical injury to another person, the person causes  
the death of any person;

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(2) the person knowingly engages in conduct [INTENTIONALLY  
PERFORMS AN ACT] that results in the death of another person under  
circumstances manifesting an extreme indifference to the value of  
human life; [OR]

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(3) acting either alone or with one or more persons, the  
person commits or attempts to commit arson in the first degree, kid-  
napping, sexual assault in the first degree under AS 11.41.410(a)(1)  
or (2), sexual assault in the second degree, burglary in the first  
degree, escape in the first or second degree, or robbery in any degree  
and, in the course of or in furtherance of that crime, or in immediate  
flight from that crime, any person causes the death of a person other  
than one of the participants; or

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(4) under circumstances manifesting an extreme indifference

1 to the welfare of a child under the age of 16, the person engages in a  
2 pattern or practice of abuse or gross neglect of the child that re-  
3 sults in the death of the child.

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

5 (c) In this section, "abuse or gross neglect" includes inten-  
6 tional bodily impact, restraint, confinement, administration of lethal  
7 chemicals or drugs that create a substantial and unjustifiable risk  
8 that the child will suffer serious physical injury, or knowingly  
9 exposing the child to conditions which create a substantial risk that  
10 the child will suffer serious physical injury due to burns, hypother-  
11 mia, or suffocation.

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

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

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

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

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

22 (4) the person engages in a pattern or practice of abuse or  
23 gross neglect of a child under the age of 16 that results in serious  
24 physical injury to the child.

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

26 (c) In this section, "abuse or gross neglect" includes inten-  
27 tional bodily impact, restraint, confinement, administration of lethal  
28 chemicals or drugs that create a substantial and unjustifiable risk  
29 that the child will suffer serious physical injury, or knowingly

1 exposing the child to conditions which create a substantial risk that  
2 the child will suffer serious physical injury due to burns, hypo-  
3 thermia, or suffocation.

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

5 Sec. 11.41.441. REPEATED SEXUAL ABUSE OF A MINOR IN THE FIRST  
6 DEGREE. (a) A person commits the crime of repeated sexual abuse of a  
7 minor in the first degree if, being 16 years of age or older and  
8 having authority over a child under the age of 13, the person engages  
9 in a pattern or practice of sexual penetration with a child who is  
10 under 13 years of age or aids, induces, causes, or encourages a person  
11 who is under 13 years of age to engage in a pattern or practice of  
12 sexual penetration with another person.

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

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

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

25 (2) engages in a pattern or practice of sexual contact with  
26 a child who is under 13 years of age or aids, induces, causes, or  
27 encourages a child under 13 years of age to engage in a pattern or  
28 practice of sexual contact with another person.

29 (b) Repeated sexual abuse of a minor in the second degree is a

1 class A felony.

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

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

6 (1) being 16 years of age or older and having authority  
7 over a child under the age of 16, the person engages in a pattern or  
8 practice of sexual contact with a child who is 13, 14, or 15 years of  
9 age and at least three years younger than the person, or aids, in-  
10 duces, causes, or encourages a child who is 13, 14, or 15 years of age  
11 and at least three years younger than the person to engage in a pat-  
12 tern or practice of sexual contact with another person; or

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

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

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

20 Sec. 11.41.445. AFFIRMATIVE DEFENSES [GENERAL PROVISIONS]. (a)  
21 In a prosecution under AS 11.41.434 - 11.41.444 [AS 11.41.434 - 11.-  
22 41.440] it is an affirmative defense that, at the time of the alleged  
23 offense, the victim was the legal spouse of the defendant unless the  
24 offense was committed without the consent of the victim.

25 (b) In a prosecution under AS 11.41.410 - 11.41.444 [AS 11.-  
26 41.410 - 11.41.440], whenever a provision of law defining an offense  
27 depends upon a victim's being under a certain age, it is an affirma-  
28 tive defense that, at the time of the alleged offense, the defendant  
29 reasonably believed the victim to be that age or older, unless the

1 victim was under 13 years of age at the time of the alleged offense.

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

3 ARTICLE 6. GENERAL PROVISIONS.

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

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

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

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

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

22 Sec. 11.41.610. DEFINITIONS. In this chapter

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

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

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

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

1 (D) the child has been temporarily entrusted to the  
2 person's care;

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

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

6 (a) For purposes of sentencing under AS 12.55, all offenses  
7 defined in this title, except murder in the first and second degree,  
8 sexual assault in the first degree, sexual abuse of a minor in the  
9 first degree, repeated sexual abuse of a minor in the first degree,  
10 misconduct involving a controlled substance in the first degree, and  
11 kidnapping, are classified on the basis of their seriousness, accord-  
12 ing to the type of injury characteristically caused or risked by  
13 commission of the offense and the culpability of the offender. Except  
14 for murder in the first and second degree, sexual assault in the first  
15 degree, sexual abuse of a minor in the first degree, repeated sexual  
16 abuse of a minor in the first degree, misconduct involving a con-  
17 trolled substance in the first degree, and kidnapping, the offenses in  
18 this title are classified into the following categories:

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

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

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

29 (4) class A misdemeanors, which characteristically involve

1 less severe violence against a person, less serious offenses against  
2 property interests, less serious offenses against public adminis-  
3 tration or order, or less serious offenses against public health and  
4 decency than felonies;

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

9 (6) violations, which characteristically involve conduct  
10 inappropriate to an orderly society but which do not denote criminal-  
11 ity in their commission.

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

13 (b) The classification of each felony defined in this title,  
14 except murder in the first and second degree, sexual assault in the  
15 first degree, sexual abuse of a minor in the first degree, repeated  
16 sexual abuse of a minor in the first degree, misconduct involving a  
17 controlled substance in the first degree, and kidnapping, is designat-  
18 ed in the section defining it. A felony under Alaska law defined  
19 outside this title for which no penalty is specifically provided is a  
20 class C felony.

21 \* Sec. 11. AS 12.55.035(b) is amended to read:

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

25 (1) \$75,000 for murder in the first or second degree,  
26 sexual assault in the first degree, sexual abuse of a minor in the  
27 first degree, repeated sexual abuse of a minor in the first degree,  
28 kidnapping, or misconduct involving a controlled substance in the  
29 first degree;

- 1 (2) \$50,000 for a class A, B, or C felony;  
2 (3) \$5,000 for a class A misdemeanor;  
3 (4) \$1,000 for a class B misdemeanor;  
4 (5) \$300 for a violation.

5 \* Sec. 12. AS 12.55.125(i) is amended to read:

6 (i) A defendant convicted of sexual assault in the first degree,  
7 repeated sexual abuse of a minor in the first degree, or sexual abuse  
8 of a minor in the first degree may be sentenced to a definite term of  
9 imprisonment of not more than 30 years, and shall be sentenced to the  
10 following presumptive terms, subject to adjustment as provided in  
11 AS 12.55.155 - 12.55.175:

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

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

19 (3) if the offense is a second felony conviction, 15 years;

20 (4) if the offense is a third felony conviction, 25 years.

21 \* Sec. 13. Rule 404, Alaska Rules of Evidence, is amended by adding a  
22 new subsection to read:

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

28 \* Sec. 14. Section 13 of this Act is retroactive and applies

29 (1) to evidence of acts committed before the effective date of

1 this Act; and

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

4 \* Sec. 15. This Act takes effect immediately under AS 01.10.070(c).