

Original sponsors: Ulmer, Hudson,
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1 IN THE HOUSE BY THE FINANCE COMMITTEE
2 SENATE CS FOR CS FOR HOUSE BILL NO. 237 (Finance)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL
6 For an Act entitled: "An Act relating to physical and sexual offenses
7 against children; amending the definitions of the
8 crimes of murder in the second degree and assault in
9 the first degree; relating to the joinder of offenses
10 of the same or similar character and the admissibil-
11 ity in a criminal proceeding of evidence of prior
12 acts; amending Rule 8(a) of the Alaska Rules of
13 Criminal Procedure; amending Rule 404(b) of the
14 Alaska Rules of Evidence; and providing for an effec-
15 tive date."

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

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

18 (a) A person commits the crime of murder in the second degree if
19 (1) with intent to cause serious physical injury to another
20 person or knowing that the conduct is substantially certain to cause
21 death or serious physical injury to another person, the person causes
22 the death of any person;

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

27 (3) acting either alone or with one or more persons, the
28 person commits or attempts to commit arson in the first degree, kid-
29 napping, sexual assault in the first degree under AS 11.41.410(a)(1)

1 or (2), sexual assault in the second degree, burglary in the first
2 degree, escape in the first or second degree, or robbery in any degree
3 and, in the course of or in furtherance of that crime, or in immediate
4 flight from that crime, any person causes the death of a person other
5 than one of the participants.

6 * Sec. 2. AS 11.41.200(a) is amended to read:

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

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

10 (2) with intent to cause serious physical injury to another,
11 the person causes serious physical injury to any person; or

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

16 * Sec. 3. AS 12.55.025(e) is amended to read:

17 (e) Except as provided in (g) and (h) of this section, if the
18 defendant has been convicted of two or more crimes, sentences of
19 imprisonment shall run consecutively. If the defendant is imprisoned
20 upon a previous judgment of conviction for a crime, the judgment shall
21 provide that the imprisonment commences at the expiration of the term
22 imposed by the previous judgment.

23 * Sec. 4. AS 12.55.025 is amended by adding a new subsection to read:

24 (h) If the defendant has been convicted of two or more crimes
25 under AS 11.41.200 - 11.41.250 or 11.41.410 - 11.41.455 in which the
26 victim or victims of the crimes were minors and the judgment on any of
27 the convictions has not been entered, the court shall impose some
28 consecutive period of imprisonment for each conviction.

29 * Sec. 5. AS 12.55.155(c) is amended to read:

1 (c) The following factors shall be considered by the sentencing
2 court and may aggravate the presumptive terms set out in AS 12.55.125:

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

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

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

9 (4) the defendant employed a dangerous instrument in fur-
10 therance of the offense;

11 (5) the defendant knew or reasonably should have known that
12 the victim of the offense was particularly vulnerable or incapable of
13 resistance due to advanced age, disability, ill health, or extreme
14 youth or was for any other reason substantially incapable of exercis-
15 ing normal physical or mental powers of resistance;

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

18 (7) a prior felony conviction considered for the purpose of
19 invoking the presumptive terms of this chapter was of a more serious
20 class of offense than the present offense;

21 (8) the defendant's prior criminal history includes conduct
22 involving aggravated or repeated instances of assaultive behavior;

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

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

27 (11) the defendant committed the offense pursuant to an
28 agreement that the defendant either pay or be paid for the commission
29 of the offense, and the pecuniary incentive was beyond that inherent

1 in the offense itself;

2 (12) the defendant was on release under AS 12.30.020 or
3 12.30.040 for another felony charge or conviction or for a misdemeanor
4 charge or conviction having assault as a necessary element;

5 (13) the defendant knowingly directed the conduct constitut-
6 ing the offense at an active officer of the court or at an active or
7 former judicial officer, prosecuting attorney, law enforcement offi-
8 cer, correctional employee, fire fighter, emergency medical techni-
9 cian, paramedic, ambulance attendant, or other emergency responder
10 during or because of the exercise of official duties;

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

14 (15) the defendant has three or more prior felony convic-
15 tions;

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

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

22 (18) the offense was a crime

23 (A) specified in AS 11.41 and was committed against a
24 spouse, a former spouse, or a member of the social unit comprised
25 of those living together in the same dwelling as the defendant;

26 or

27 (B) specified in AS 11.41.410 - 11.41.460 and was
28 committed against a minor, and the defendant has engaged in the
29 same or similar conduct involving the same or another victim who

1 was a minor:

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

5 (20) the defendant was on furlough under AS 33.30 or on
6 parole or probation for another felony charge or conviction;

7 (21) the defendant has a criminal history of repeated in-
8 stances of conduct violative of criminal laws, whether punishable as
9 felonies or misdemeanors, similar in nature to the offense for which
10 the defendant is being sentenced under this section;

11 (22) the defendant knowingly directed the conduct constitut-
12 ing the offense at a victim because of that person's race, sex, color,
13 creed, physical or mental disability, ancestry, or national origin;

14 (23) the defendant is convicted of an offense specified in
15 AS 11.71 and the offense involved the delivery of a controlled sub-
16 stance under circumstances manifesting an intent to distribute the
17 substance as part of a commercial enterprise;

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

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

24 (26) the defendant is convicted of an offense specified in
25 AS 11.71 and the offense involved the distribution of a controlled
26 substance that had been adulterated with a toxic substance.

27 * Sec. 6. Rule 8(a), Alaska Rules of Criminal Procedure, is amended to
28 read:

29 (a) JOINDER OF OFFENSES. Two or more offenses may be charged in

1 the same indictment or information in a separate count for each of-
2 fense if the offenses charged, whether felonies, misdemeanors or both,

3 (1) are of the same or similar character and it can be
4 determined before trial that it is likely that evidence of one charged
5 offense would be admissible to prove another charged offense,

6 (2) [OR] are based on the same act or transaction, or

7 (3) are based on two or more acts or transactions connected
8 together or constituting parts of a common scheme or plan.

9 * Sec. 7. Rule 404(b), Alaska Rules of Evidence, is amended to read:

10 (b) Other Crimes, Wrongs, or Acts.

11 (1) Evidence of other crimes, wrongs, or acts is not admissible
12 to prove the character of a person in order to show that he acted in
13 conformity therewith. It may, however, be admissible for other pur-
14 poses, such as proof of motive, opportunity, intent, preparation,
15 plan, knowledge, identity, or absence of mistake or accident.

16 (2) In a prosecution for a crime involving a physical or sexual
17 assault or abuse of a minor, evidence of other acts by the defendant
18 toward the same or another child is admissible to show a common scheme
19 or plan if admission of the evidence is not precluded by another rule
20 of evidence and if the prior offenses

21 (i) are not too remote in time;

22 (ii) are similar to the offense charged; and

23 (iii) were committed upon persons similar to the pros-
24 ecuting witness.

25 * Sec. 8. Section 7 of this Act is retroactive and applies

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

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

1 * Sec. 9. This Act takes effect immediately under AS 01.10.070(c).