

1 IN THE SENATE

BY DUNCAN

2

SENATE BILL NO. 229

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to murder, assault, and the physical
7 and sexual abuse of children; the admissibility of
8 certain evidence in criminal prosecutions; amending
9 Rule 404 of the Alaska Rules of Evidence; and provid-
10 ing for an effective date."

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

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

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

14 (1) with intent to cause serious physical injury to another
15 person or knowing that the conduct is substantially certain to cause
16 death or serious physical injury to another person, the person causes
17 the death of any person;

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

22 (3) acting either alone or with one or more persons, the
23 person commits or attempts to commit arson in the first degree, kid-
24 napping, sexual assault in the first degree under AS 11.41.410(a)(1)
25 or (2), sexual assault in the second degree, burglary in the first
26 degree, escape in the first or second degree, or robbery in any degree
27 and, in the course of or in furtherance of that crime, or in immediate
28 flight from that crime, any person causes the death of a person other
29 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).