

Offered: 4/20/89
Referred: Rules

6-0597E

Original sponsors: Ulmer, Goll,
and Collins

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 238 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act eliminating the age limitations in the defi-
7 nitions of crimes of sexual assault and the dis-
8 tinctions between types of first degree sexual as-
9 sault in certain criminal statutes; relating to
10 causes of action brought by adult victims based on
11 injury suffered as a result of sexual abuse to a
12 minor under 16 years of age, and to the statute of
13 limitations applicable to those causes of action;
14 extending the period in which civil actions are
15 tolled for persons with mental disabilities, and
16 extending to three years the statute of limitations
17 for civil actions brought by victims of sexual abuse;
18 and providing for an effective date."

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

20 * Section 1. AS 09.10.060 is amended by adding a new subsection to
21 read:

22 (c) A person who was the victim of sexual abuse may not maintain
23 an action for recovery of damages against the perpetrator of the act
24 or acts of sexual abuse based on the perpetrator's intentional conduct
25 for an injury or condition suffered as a result of the sexual abuse
26 unless commenced within three years. In this subsection, "sexual
27 abuse" means an act committed by the defendant against the plaintiff
28 maintaining the cause of action if the defendant's conduct would have
29 violated a provision of AS 11.41.410 - 11.41.440 or 11.41.450 -

1 11.41.455 at the time it was committed.

2 * Sec. 2. AS 09.10.140 is amended to read:

3 Sec. 09.10.140. DISABILITIES OF MINORITY AND INCOMPETENCY. If a
4 person entitled to bring an action mentioned in this chapter is at the
5 time the cause of action accrues either (1) under the age of majority,
6 or (2) incompetent by reason of mental illness or mental disability,
7 the time of a [THE] disability identified in (1) or (2) of this sec-
8 tion is not a part of the time limit [LIMITED] for the commencement of
9 the action. Except as provided in (b) of this section, the [THE]
10 period within which the action may be brought is not extended in any
11 case longer than two years after the disability ceases.

12 * Sec. 3. AS 09.10.140 is amended by adding a new subsection to read:

13 (b) An action based on a claim of sexual abuse under AS 09.55.-
14 650 may be brought more than three years after the plaintiff reaches
15 the age of majority if it is brought under the following circumstan-
16 ces:

17 (1) if the claim asserts that the defendant committed one
18 act of sexual abuse on the plaintiff, the plaintiff shall commence the
19 action within three years after the plaintiff discovered or through
20 use of reasonable diligence should have discovered that the act caused
21 the injury or condition;

22 (2) if the claim asserts that the defendant committed more
23 than one act of sexual abuse on the plaintiff, the plaintiff shall
24 commence the action within three years after the plaintiff discovered
25 or through use of reasonable diligence should have discovered the
26 effect of the injury or condition attributable to the series of acts;
27 a claim based on an assertion of more than one act of sexual abuse is
28 not limited to plaintiff's first discovery of the relationship between
29 any one of those acts and the injury or condition, but may be based on

1 plaintiff's discovery of the effect of the series of acts.

2 * Sec. 4. AS 09.55 is amended by adding a new section to read:

3 ARTICLE 8. ACTIONS BY A VICTIM BASED ON
4 SEXUAL ABUSE AS A MINOR UNDER 16 YEARS OF AGE.

5 Sec. 09.55.650. CLAIM BASED ON SEXUAL ABUSE AS A MINOR UNDER 16
6 YEARS OF AGE. (a) A person who, as a minor under 16 years of age,
7 was the victim of sexual abuse may maintain an action for recovery of
8 damages against the perpetrator of the act or acts of sexual abuse
9 based on the perpetrator's intentional conduct for an injury or condi-
10 tion suffered as a result of the sexual abuse.

11 (b) If the defendant committed more than one act of sexual abuse
12 on the plaintiff, the plaintiff is not required to prove which specif-
13 ic act caused the injury.

14 (c) In this section "sexual abuse" means an act committed by the
15 defendant against the plaintiff maintaining the cause of action if the
16 defendant's conduct would have violated a provision of AS 11.41.410 -
17 11.41.440 or 11.41.450 - 11.41.455, former AS 11.15.120, 11.15.134, or
18 11.15.160, or former AS 11.40.110 at the time it was committed.

19 * Sec. 5. AS 11.41.110(a) is amended to read:

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

21 (1) with intent to cause serious physical injury to another
22 person or knowing that the conduct is substantially certain to cause
23 death or serious physical injury to another person, the person causes
24 the death of any person;

25 (2) the person knowingly engages in conduct that results in
26 the death of another person under circumstances manifesting an extreme
27 indifference to the value of human life; or

28 (3) acting either alone or with one or more persons, the
29 person commits or attempts to commit arson in the first degree,

1 kidnapping, sexual assault in the first degree [UNDER AS 11.41.-
2 410(a)(1) OR (2)], sexual assault in the second degree, burglary in
3 the first degree, escape in the first or second degree, or robbery in
4 any degree and, in the course of or in furtherance of that crime, or
5 in immediate flight from that crime, any person causes the death of a
6 person other than one of the participants.

7 * Sec. 6. AS 11.41.300(d) is amended to read:

8 (d) In a prosecution for kidnapping, it is an affirmative de-
9 fense which reduces the crime to a class A felony that the defendant
10 voluntarily caused the release of the victim alive in a safe place
11 before arrest, or within 24 hours after arrest, without having caused
12 serious physical injury to the victim and without having engaged in
13 conduct described in AS 11.41.410(a) [AS 11.41.410(a)(1) OR (2)] or
14 11.41.420.

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

16 (a) A person commits the crime of sexual assault in the first
17 degree if [,]

18 (1) [BEING ANY AGE,] the defendant engages in sexual pene-
19 tration with another person without consent of that person;

20 (2) [BEING ANY AGE,] the defendant attempts to engage in
21 sexual penetration with another person without consent of that person
22 and causes serious physical injury to that person; or

23 (3) [BEING OVER THE AGE OF 18,] the defendant engages in
24 sexual penetration with another person

25 (A) who the defendant knows is mentally incapable; and

26 (B) who is entrusted to the defendant's care

27 (i) by authority of law; or

28 (ii) in a facility or program that is required by

29 law to be licensed by the Department of Health and Social

1 Services.

2 * Sec. 8. AS 11.41.420(a) is amended to read:

3 (a) An offender commits the crime of sexual assault in the
4 second degree if

5 (1) the offender engages in sexual contact with another
6 person without consent of that person;

7 (2) [BEING OVER THE AGE OF 18,] the offender engages in
8 sexual contact with a person

9 (A) who the offender knows is mentally incapable; and

10 (B) who is entrusted to the offender's care

11 (i) by authority of law; or

12 (ii) in a facility or program that is required by
13 law to be licensed by the Department of Health and Social
14 Services; or

15 (3) [BEING OVER THE AGE OF 18,] the offender engages in
16 sexual penetration with a person who the offender knows is

17 (A) mentally incapable; or

18 (B) incapacitated.

19 * Sec. 9. AS 11.41.425(a) is amended to read:

20 (a) An offender commits the crime of sexual assault in the third
21 degree if [BEING OVER THE AGE OF 18,] the offender engages in sexual
22 contact with a person who the offender knows is

23 (1) mentally incapable; or

24 (2) incapacitated [TEMPORARILY INCAPABLE OF APPRAISING THE
25 NATURE OF THE PERSON'S CONDUCT AND IS PHYSICALLY UNABLE TO EXPRESS
26 UNWILLINGNESS TO ACT].

27 * Sec. 10. AS 11.81.335(a) is amended to read:

28 (a) Except as provided in (b) of this section, a person may use
29 deadly force upon another person when and to the extent

1 (1) the use of nondeadly force is justified under AS 11.81.-
2 330; and

3 (2) the person reasonably believes the use of deadly force
4 is necessary for self defense against death, serious physical injury,
5 kidnapping, sexual assault in the first degree [UNDER AS 11.41.-
6 410(a)(1) OR (2)], sexual assault in the second degree, or robbery in
7 any degree.

8 * Sec. 11. APPLICABILITY. Sections 2 - 4 of this Act apply to all
9 actions commenced on or after the effective date of this Act, regardless of
10 when the cause of action may have arisen.

11 * Sec. 12. This Act takes effect immediately under AS 01.10.070(c).