

HOUSE BILL NO. 396

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Introduced: 1/14/92

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to violent crimes and criminal law and procedure."

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

3 \* Section 1. SHORT TITLE. This Act shall be known as the Anti-Violent Crime Act of 1992.

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

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

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

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

10 (3) the person knowingly engages in conduct that results in serious physical injury  
11 to another under circumstances manifesting extreme indifference to the value of human life; or

12 (4) that person recklessly causes serious physical injury to another by  
13 repeated assaults using a dangerous instrument, even if each assault individually does not  
14 cause serious physical injury.

1 \* Sec. 3. AS 11.41.210(a) is amended to read:

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

3 (1) with intent to cause physical injury to another person, that person causes  
4 physical injury to another person by means of a dangerous instrument; [OR]

5 (2) that person recklessly causes serious physical injury to another person; or

6 (3) that person recklessly causes serious physical injury to another by  
7 repeated assaults, even if each assault individually does not cause serious physical injury.

8 \* Sec. 4. AS 11.41.220(a) is amended to read:

9 (a) A person commits the crime of assault in the third degree if that person  
10 [RECKLESSLY]

11 (1) recklessly places another person in fear of imminent serious physical injury  
12 by means of a dangerous instrument; [OR]

13 (2) recklessly causes physical injury to another person by means of a dangerous  
14 instrument; or

15 (3) being 18 years of age or older, violates AS 11.41.230(a)(1) or (2) when the  
16 victim of the offense is under the age of 10.

17 \* Sec. 5. AS 11.41.410(a) is amended to read:

18 (a) An offender [A PERSON] commits the crime of sexual assault in the first degree if

19 (1) the offender [DEFENDANT] engages in sexual penetration with another  
20 person without consent of that person;

21 (2) the offender [DEFENDANT] attempts to engage in sexual penetration with  
22 another person without consent of that person and causes serious physical injury to that person;  
23 or

24 (3) the offender [DEFENDANT] engages in sexual penetration with another  
25 person

26 (A) who the offender [DEFENDANT] knows is mentally incapable; and

27 (B) who is entrusted to the offender's [DEFENDANT'S] care

28 (i) by authority of law; or

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

31 (4) the offender engages in sexual penetration with a person who the offender

1           knows is unaware that a sexual act is being committed and  
2                                   (A) the offender is a health care worker; and  
3                                   (B) the offense takes place during the course of professional treatment  
4                                   of the victim.

5   \* Sec. 6. AS 11.41.420(a) is amended to read:

6           (a) An offender commits the crime of sexual assault in the second degree if  
7                                   (1) the offender engages in sexual contact with another person without consent  
8                                   of that person;  
9                                   (2) the offender engages in sexual contact with a person  
10                                   (A) who the offender knows is mentally incapable; and  
11                                   (B) who is entrusted to the offender's care  
12   (i) by authority of law; or  
13   (ii) in a facility or program that is required by law to be licensed  
14                                   by the Department of Health and Social Services; [OR]  
15                                   (3) the offender engages in sexual penetration with a person who the offender  
16                                   knows is  
17   (A) mentally incapable; [OR]  
18   (B) incapacitated; or  
19   (C) unaware that a sexual act is being committed; or  
20                                   (4) the offender engages in sexual contact with a person who the offender  
21                                   knows is unaware that a sexual act is being committed and

22                                   (A) the offender is a health care worker; and  
23                                   (B) the offense takes place during the course of professional treatment  
24                                   of the victim.

25   \* Sec. 7. AS 11.41.425(a) is amended to read:

26           (a) An offender commits the crime of sexual assault in the third degree if the offender  
27                                   engages in sexual contact with a person who the offender knows is  
28                                   (1) mentally incapable; [OR]  
29                                   (2) incapacitated; or  
30                                   (3) unaware that a sexual act is being committed.

31   \* Sec. 8. AS 11.41.455(a) is amended to read:

1 (a) A person commits the crime of unlawful exploitation of a minor if, in the state and  
2 with the intent of producing a live performance, film, audio recording, photograph, negative,  
3 slide, book, newspaper, magazine, or other printed material that visually depicts the conduct listed  
4 in (1) - (7) [(1) - (6)] of this subsection, the person knowingly induces or employs a child under  
5 18 years of age to engage in, or photographs, films, records, or televises a child under 18 years  
6 of age engaged in, the following actual or simulated conduct:

- 7 (1) sexual penetration;  
8 (2) the lewd touching of another person's genitals, anus, or breast;  
9 (3) the lewd touching by another person of the child's genitals, anus, or breast;  
10 (4) masturbation;  
11 (5) bestiality; [OR]  
12 (6) the lewd exhibition of the child's genitals; or  
13 (7) sexual masochism or sadism.

14 \* Sec. 9. AS 11.41.470 is amended by adding new paragraphs to read:

15 (7) "health care worker" includes an anesthesiologist, acupuncturist, chiropractor,  
16 dentist, health aide, hypnotist, mental health counselor, midwife, nurse, nurse practitioner,  
17 osteopath, naturopath, physical therapist, physical therapy assistant, physician, physician's  
18 assistant, psychiatrist, psychologist, psychological associate, radiologist, religious healing  
19 practitioner, surgeon, x-ray technician, or a substantially similar position;

20 (8) "sexual act" means sexual penetration or sexual contact.

21 \* Sec. 10. AS 11.61.200(a) is amended to read:

22 (a) A person commits the crime of misconduct involving weapons in the first degree if  
23 the person

24 (1) knowingly possesses a firearm capable of being concealed on one's person  
25 after having been convicted of a felony by a court of this state, a court of the United States, or  
26 a court of another state or territory;

27 (2) knowingly sells or transfers a firearm capable of being concealed on one's  
28 person to a person who has been convicted of a felony by a court of this state, a court of the  
29 United States, or a court of another state or territory;

30 (3) manufactures, possesses, transports, sells, or transfers a prohibited weapon;

31 (4) knowingly sells or transfers a firearm to another whose physical or mental

1 condition is substantially impaired as a result of the introduction of an intoxicating liquor or  
2 controlled substance into that other person's body;

3 (5) removes, covers, alters, or destroys the manufacturer's serial number on a  
4 firearm with intent to render the firearm untraceable;

5 (6) possesses a firearm on which the manufacturer's serial number has been  
6 removed, covered, altered, or destroyed, knowing that the serial number has been removed,  
7 covered, altered, or destroyed with the intent of rendering the firearm untraceable;

8 (7) violates AS 11.46.320 and, during the violation, possesses on the person a  
9 firearm when the person's physical or mental condition is impaired as a result of the introduction  
10 of an intoxicating liquor or controlled substance into the person's body;

11 (8) violates AS 11.46.320 or 11.46.330 by entering or remaining unlawfully on  
12 premises or in a propelled vehicle in violation of a provision of an order issued under  
13 AS 25.35.010(b) or 25.35.020 and, during the violation, possesses on the person a defensive  
14 weapon or a deadly weapon, other than an ordinary pocketknife;

15 (9) communicates in person with another in violation of AS AS 11.56.740 and,  
16 during the communication, possesses on the person a defensive weapon or a deadly weapon, other  
17 than an ordinary pocketknife; [OR]

18 (10) resides in a dwelling knowing that there is a firearm capable of being  
19 concealed on one's person or a prohibited weapon in the dwelling if the person has been  
20 convicted of a felony by a court of this state, a court of the United States, or a court of another  
21 state or territory, unless the person has written authorization to live in a dwelling in which there  
22 is a concealable weapon described in this paragraph from a court of competent jurisdiction or  
23 from the head of the law enforcement agency of the community in which the dwelling is located;

24 or

25 (11) discharges a firearm from a moving propelled vehicle.

26 \* Sec. 11. AS 11.61.200(d) is amended to read:

27 (d) The provisions of (a)(3) and (11) of this section do not apply to a peace officer  
28 acting within the scope and authority of the officer's employment.

29 \* Sec. 12. AS 11.61.200 is amended by adding a new subsection to read:

30 (g) It is an affirmative defense to a prosecution under (a)(11) of this section that the  
31 person was using a firearm while hunting or fishing in a manner not prohibited by statute or

1 regulation.

2 \* Sec. 13. AS 11.61.210(a) is amended to read:

3 (a) A person commits the crime of misconduct involving weapons in the second degree  
4 if the person

5 (1) possesses on the person, or in the interior of a vehicle in which the person is  
6 present, a firearm when the person's physical or mental condition is impaired as a result of the  
7 introduction of an intoxicating liquor or a controlled substance into the person's body in  
8 circumstances other than described in AS 11.61.200(a)(7);

9 (2) discharges a firearm from, on, or across a highway;

10 (3) discharges a firearm with reckless disregard for a risk of damage to property  
11 or a risk of physical injury to a person;

12 (4) manufactures, possesses, transports, sells, or transfers metal knuckles; [OR]

13 (5) manufactures, sells, or transfers a switchblade or a gravity knife; or

14 (6) knowingly sells a firearm or a defensive weapon to a person under 18  
15 years of age.

16 \* Sec. 14. AS 11.61.220(a) is amended to read:

17 (a) A person commits the crime of misconduct involving weapons in the third degree if  
18 the person

19 (1) knowingly possesses a deadly weapon, other than an ordinary pocketknife or  
20 a defensive weapon, that is concealed on the person;

21 (2) knowingly possesses a loaded firearm on the person in any place where  
22 intoxicating liquor is sold for consumption on the premises;

23 (3) being an unemancipated minor under 16 years of age, possesses a firearm  
24 without the consent of a parent or guardian of the minor;

25 (4) knowingly possesses a firearm

26 (A) or a defensive weapon within the grounds of or on a parking lot  
27 immediately adjacent to a public or private preschool, elementary, junior high, or  
28 secondary school [,] without the permission of the chief administrative officer of the  
29 school or district or the designee of the chief administrative officer, except that a person  
30 21 years of age or older may possess

31 (i) an unloaded firearm in the trunk of a motor vehicle or encased

1 in a closed container in a motor vehicle;

2 (ii) a defensive weapon; or

3 (B) within the grounds of or on a parking lot immediately adjacent to a  
4 center, other than a private residence, licensed under AS 47.35.010 - 47.35.075 or  
5 recognized by the federal government for the care of children; or

6 (5) possesses or transports a switchblade or a gravity knife.

7 \* Sec. 15. AS 12.10.010 is amended to read:

8 Sec. 12.10.010. GENERAL TIME LIMITATIONS. A prosecution for murder may be  
9 commenced at any time. Except as otherwise provided by law, a [NO] person may not  
10 [SHALL] be prosecuted, tried, or punished for an [ANY] offense other than [ , NOT] murder  
11 [ ,] unless the indictment is found or the information or complaint is instituted no later than

12 (1) 10 years after the commission of a felony offense in violation of  
13 AS 11.41.120 - 11.41.530, other than an offense set out in (2) of this section, or in violation  
14 of AS 11.46.400;

15 (2) 20 years after the commission of a felony offense involving a victim under  
16 the age of 16 and in violation of AS 11.41.410 - 11.41.455, AS 11.66.110 - 11.66.130, former  
17 AS 11.41.430, or former AS 11.51.130(a)(4); or

18 (3) five years after the commission of any other offense [WITHIN FIVE  
19 YEARS NEXT AFTER SUCH OFFENSE SHALL HAVE BEEN COMMITTED].

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

21 (e) Except as provided in (g) and (h) of this section, if the defendant has been convicted  
22 of two or more crimes, sentences of imprisonment shall run consecutively. If the defendant is  
23 imprisoned upon a previous judgment of conviction for a crime, the judgment shall provide that  
24 the imprisonment commences at the expiration of the term imposed by the previous judgment.  
25 Nothing in AS 12.55.125(a) limits the court's ability to impose consecutive sentences.

26 \* Sec. 17. AS 12.55.025 is amended by adding a new subsection to read:

27 (i) Except as provided by AS 12.55.145(d), 12.55.155(f), and 12.55.165, the  
28 preponderance of the evidence standard of proof applies to sentencing proceedings.

29 \* Sec. 18. AS 12.55.125(a) is amended to read:

30 (a) A defendant convicted of murder in the first degree shall be sentenced to a definite  
31 term of imprisonment of at least 20 years but not more than 99 years. A defendant convicted

1 of murder in the first degree shall be sentenced to a mandatory term of imprisonment of  
2 99 years when the defendant

3 (1) is convicted of the murder of a uniformed or otherwise clearly identified  
4 peace officer, fire fighter, or correctional officer who was engaged in the performance of  
5 official duties at the time of the murder; or

6 (2) has been previously convicted of

7 (A) murder in the first degree under AS 11.41.100 or former  
8 AS 11.15.010 or 11.15.020;

9 (B) murder in the second degree under AS 11.41.110 or former  
10 AS 11.15.030; or

11 (C) homicide under the laws of another jurisdiction when the offense  
12 of which the defendant was convicted contains elements similar to first degree  
13 murder under AS 11.41.100 or second degree murder under AS 11.41.110.

14 \* Sec. 19. AS 12.55.165 is amended by adding a new subsection to read:

15 (b) In making a determination under (a) of this section, the court may not refer a case to  
16 a three-judge panel based on the defendant's potential for rehabilitation if the court finds that a  
17 factor in aggravation set out in AS 12.55.155(c)(2), (8), (10), (12), (15), (17), (18)(B), (19), (20),  
18 (21), or (28) is present.

19 \* Sec. 20. AS 12.55.175 is amended by adding a new subsection to read:

20 (e) If the three-judge panel determines under (b) of this section that manifest injustice  
21 would result from imposition of the presumptive term and the panel also finds that the defendant  
22 has an exceptional potential for rehabilitation and that a sentence of less than the presumptive  
23 term should be imposed because of the defendant's exceptional potential for rehabilitation, the  
24 panel

25 (1) shall sentence the defendant under AS 12.55.125;

26 (2) shall order the defendant under AS 12.55.015 to engage in appropriate  
27 programs of rehabilitation; and

28 (3) may provide that the defendant is eligible for discretionary parole under  
29 AS 33.16.090 during the second half of the sentence imposed under this subsection if the  
30 defendant successfully completes all rehabilitation programs ordered under (2) of this subsection.

31 \* Sec. 21. AS 33.16.090(b) is amended to read:

1 (b) Except as provided in (e) of this section, a [A] prisoner is not eligible for  
2 discretionary parole during the term of a presumptive sentence; however, a prisoner is eligible  
3 for discretionary parole during a term of sentence enhancement imposed under AS 12.55.155(a)  
4 or during the term of a consecutive or partially consecutive presumptive sentence imposed under  
5 AS 12.55.025(e) or (g). A prisoner sentenced to a mandatory 99-year term under  
6 AS 12.55.125(a) is not eligible for discretionary parole during the entire term.

7 \* Sec. 22. AS 33.16.090(c) is amended to read:

8 (c) Except as provided in (e) of this section, a [A] prisoner eligible for discretionary  
9 parole during a period of sentence enhancement imposed under AS 12.55.155(a) or during a  
10 consecutive or partially consecutive presumptive sentence imposed under AS 12.55.025(e) or (g)  
11 shall serve the unenhanced portion of the sentence or the initial presumptive sentence before  
12 being otherwise eligible for discretionary parole under AS 33.16.100(c) or (d). For purposes of  
13 this subsection, the sentence for the most serious offense in the case of consecutive or partially  
14 consecutive presumptive sentences shall be considered the initial presumptive sentence. The  
15 unenhanced sentence or the initial presumptive sentence is considered served for purposes of  
16 discretionary parole on the date the unenhanced or initial presumptive sentence is due to expire  
17 less good time earned under AS 33.20.010.

18 \* Sec. 23. AS 33.16.090 is amended by adding a new subsection to read:

19 (e) Notwithstanding (b) and (c) of this section, a prisoner may be eligible for  
20 discretionary parole during the second half of a sentence imposed under AS 12.55.175(e) if the  
21 three-judge panel provides under AS 12.55.175(e)(3) that the defendant is eligible for  
22 discretionary parole, and the defendant has successfully completed all rehabilitation programs  
23 ordered by the three-judge panel under AS 12.55.175(e)(2).

24 \* Sec. 24. AS 12.10.020(c) is repealed.

25 \* Sec. 25. APPLICABILITY OF SECTION 15. AS 12.10.010, as amended by sec. 15 of this Act,  
26 applies to all offenses committed on or after the effective date of this Act and to all offenses that could  
27 have been prosecuted under AS 12.10.010 and 12.10.020 on the day before the effective date of this Act.